UNANNOTATED

CHAPTER 42
Actions and Proceedings Relating to Property

ARTICLE 1
Eminent Domain Generally (Repealed, Recompiled.)

42-1-1 to 42-1-39. Repealed.

42-1-40. Recompiled.

ARTICLE 2
Special Alternative Condemnation Procedure

42-2-1. Declaration of intent.

The legislature hereby determines and declares that the construction of urgently needed public roads and state highways is being delayed by the inability to enter into timely possession of the condemned property; that the landowner must wait the termination of prolonged litigation before he receives compensation for his property; that the delay in possession and therefore construction of the facility results in increased construction costs and thereby injuriously affects the public. The legislature, recognizing its responsibility, intends to solve these problems by establishing a special procedure whereby the state can enter into possession at the inception of the proceeding, and the interests of the property owner are protected by providing for an adequate bond prior to vesting of title and the taking of possession and also safeguarding the property owners' right to a speedy judicial determination of the total just compensation due. This legislation is necessary for the immediate preservation of the public peace, health, [and] safety, the promotion of the general welfare and to minimize the economic and financial dislocation caused by highway construction.

The special procedure set forth herein shall be in addition to any other condemnation procedure now in effect and shall not be construed as repealing or amending such procedure by implication.

History: 1953 Comp., § 22-9-39, enacted by Laws 1959, ch. 324, § 1.

42-2-2. Definitions.

As used in this act [42-2-1 to 42-2-16 NMSA 1978], "state" includes any commission, department, institution, bureau or agency thereof as well as all political subdivisions of the state.

History: 1953 Comp., § 22-9-40, enacted by Laws 1959, ch. 324, § 2.

42-2-3. Purpose.

Unless otherwise specifically provided by law:

A. the state may acquire, either temporarily or permanently, public or privately owned lands, real property or any interests therein, including water rights or any easements deemed necessary or desirable for present or future public road, street or highway purposes by gift, agreement, purchase, exchange, condemnation or otherwise. Such lands or interests in real property may be acquired in fee simple;

B. present or future public road, street or highway purposes include the taking of personal property, land or any interest in real property, under the Highway Beautification Act [67-12-1 to 67-12-15 NMSA 1978];

C. the state may use the special alternative procedure to acquire lands or any interest therein for any public purpose for which the power of eminent domain may be properly exercised; and

D. for the purposes provided in Subsections A through C of this section, when state-owned property must be taken, the state board of finance shall first determine the greater public need, unless the state defendant in whom title is vested concedes that the purpose for which the property is sought to be taken is the greater public need.

History: 1953 Comp., § 22-9-41, enacted by Laws 1959, ch. 324, § 3; 1966, ch. 65, § 15; 1981, ch. 125, § 49.

42-2-4. Authority to acquire.

In connection with the acquisition of property or property rights the state may by order of the court acquire an entire lot, block or tract of land if by so doing the interests of the public will be best served.

History: 1953 Comp., § 22-9-41.1, enacted by Laws 1965, ch. 158, § 1.

42-2-5. Petition.

A. In any case where the state is the moving party to a condemnation action, a petition may be filed in the district court of the county in which such property is situated. Where the property of any defendant sought to be condemned lies partly in one county

and partly in an adjoining county, the condemnation proceeding may be brought in either county. The petition shall include but not be limited to the following:

(1) a statement by the petitioner of its authority to bring the action;

(2) a general description of the public purpose for which the property is being condemned;

(3) a statement that the action is brought pursuant to this statute;

(4) an accurate surveyed description of the property to be condemned describing the same by metes and bounds and said description shall be incorporated in the petition with or without reference to maps or plats attached to said petition; the property of each defendant to be condemned shall be described separately, and each tract under separate ownerships shall be consecutively numbered for ease in identification;

(5) the names and addresses of all defendants shall be given if known;

(6) the estate to be taken shall be described;

(7) in the event that title to the property to be taken is vested in the state, a statement that the board of finance has proclaimed that the needs and purposes of the condemnor to be of a greater public need than that of the defendant in whom the title is vested;

(8) the petition shall be signed by any attorney employed by the state duly authorized to sign such pleadings;

(9) the name of such attorney and his address or the post-office box number of the state shall appear below the signature, or both addresses may be given;

(10) an allegation that the petitioner has been unable to agree with one or more of the defendants having an interest in a particular tract as to just compensation;

(11) a statement of the amount offered as just compensation for each tract affected;

(12) the petition shall include or have attached thereto a map, plat or plan of the improvement to be constructed and showing the property to be condemned.

B. Parties defendant. The petition shall name as defendants all the parties who own or occupy the property or have any interest therein as may be ascertained by a search of the county records, and if any such parties are known to the petitioner to be infants, or persons of unsound mind or suffering under any other legal disability, when no legal

representative or guardian appears in their behalf, the court shall on motion appoint a guardian ad litem to protect the interest of those under any legal disability.

(1) If any property sought to be condemned belongs to the state, the head of the commission, department, institution, bureau, agency or political subdivision holding either title, or possession, shall be named as well as the commission, department, institution, bureau, agency or political subdivision itself.

(2) If the record owner of the property sought to be condemned is deceased and there has been no recorded legal disposition of the property, the deceased and his known heirs shall be named as defendants, and if the heirs are unknown to the petitioner, they shall be named and designated as defendants under the style of "the unknown heirs of . . . . . ., deceased."

(3) If the estate of any such deceased person is in the process of being administered in any court of the state, the personal representative of such deceased person shall also be named as a defendant.

(4) If the property sought to be condemned is held in trust and the petitioner has knowledge of said trust, the trustee shall be named.

(5) Where the name of the party holding title or any interest therein cannot be determined, such parties shall be designated as "unknown owners or claimants of the property involved."

C. Notice of condemnation. Upon filing of a petition in condemnation in the district court, the clerk shall issue a notice of condemnation which shall contain:

(1) the title of the action;

(2) the name or designation of the court and county in which the action is brought as well as the cause number;

(3) a direction that the defendant appear and answer to the petition within thirty days after service of the notice, and a statement that unless the defendant so appears and answers, the petitioner will apply to the court for the relief demanded in the petition;

(4) the name and address of petitioner's attorney shall appear on every notice;

(5) a general statement of the nature of the action and a general description of the proposed location of such road, street or highway, and that the land involved is more fully described in the petition on file in said cause;

(6) in the event that an ex parte preliminary order of entry is obtained by the petitioner at the time the petition is filed, the notice as required by Section 5 [42-2-6 NMSA 1978], Preliminary Order of Entry, may be incorporated in the notice of condemnation, both for the purpose of personal service and for constructive service by publication.

History: 1953 Comp., § 22-9-42, enacted by Laws 1959, ch. 324, § 4.

42-2-6. Preliminary order of entry.

A. A preliminary order permitting the state or any political subdivision thereof to immediately enter and occupy the premises sought to be condemned pending the action and to do such work thereon as may be required, may be obtained by the petitioner, without notice, upon the filing of the surety bond and deposit of money with the court as hereinafter provided, and a copy of such order shall be filed with the clerk of the court and notice thereof shall be served upon any defendant against whom such order is obtained, or upon his attorney of record. Such notice shall advise such defendant of the nature of the order and inform him that, unless objection thereto is filed within ten days after service thereof, the court shall deem such owner in default and shall proceed to make such preliminary order permanent and shall, without further notice, restrain said defendant from hindering or interfering with the occupation of the premises and the doing thereon of the work required, and that subsequent proceedings shall only affect the amount of compensation allowable.

B. With his application for such preliminary order, the petitioner shall submit proof by affidavit, or otherwise, of the reasons for requiring a speedy occupation, and the court shall issue or refuse to issue the preliminary order according to the equity of the case and the relative damages which may accrue to the parties. If the order is granted, the court may require the petitioner to execute and file in the court a surety bond to the benefit of the defendants, executed by any surety company authorized to do business in the state, in a sum to be fixed by the court, but not less than the value of the premises for which possession is sought after taking into consideration the amount of the deposit, if any, and the damages which will result from such occupation and condemnation, as the same may appear to the court on the hearing, and conditioned to pay the adjudged value of the premises and all damages in case the property is condemned, and to pay all damages arising from the occupation before judgment in case the premises are not condemned. No order of entry to any property being taken from a private property owner for rights-of-way may be granted until there is deposited with the clerk of the district court the amount offered as just compensation. Money from this deposit shall be disbursed under such conditions as the court may deem appropriate, upon the demand of any person having an estate or interest in such property, and the final judgment shall not include interest from the date of said deposit on the amount of such advance deposit. Disbursements may be made only by order of court entered after expiration of the time for the filing of an answer. Any disbursement of money from an advance deposit shall be without prejudice to the right of a defendant landowner to litigate for

additional compensation. The court or jury shall not award a lesser sum than that shown by the petitioner's appraised value testified to in court.

C. Upon the filing of a certificate of the clerk of the court that ten days have elapsed since service of the notice of preliminary order on all defendants, the court, upon notice to all defendants who have appeared or their attorneys of record, may proceed to hear all legal objections to the petition and order, and all objections as to the amount of the bond, if any, and all argument as to why said order should not be made permanent, and shall thereupon make such order as it deems necessary. After said order is made permanent, all subsequent proceedings shall only affect the amount of compensation allowable.

History: 1953 Comp., § 22-9-43, enacted by Laws 1959, ch. 324, § 5; 1966, ch. 40, § 1.

42-2-7. Service; personal or by publication.

A. Personal service, either within or without the state, of the petition, notice of condemnation and the notice of the preliminary order of entry, if any, shall be made and had in the manner as provided in the Rules of Civil Procedure, Rule 4(e), Subsections 1 to 6 inclusive [Rule 1-004 F(1) to F(6) NMRA], or as they may be amended.

B. If the name or residence of any owner be unknown, or if the owners or any of them do not reside within the state, or cannot be found therein, and are not served as hereinbefore provided, the required service and notice shall be given by publication of notice thereof for two consecutive weeks, the last publication to be at least three days prior to any default date, in a newspaper published in the county in which the proceedings are pending, if one is published in that county; if no newspaper is published in such county, then a newspaper published in another county, having a general circulation in the county wherein such proceedings are pending. When the address of any defendant who resides out of state is known to the petitioner, the publication shall be made as aforesaid and in addition, a copy of the petition and required notice thereof and the notice of the preliminary order entered, if any, shall be mailed to said defendant at such address, at least ten days prior to any default date on the preliminary order.

C. Personal service outside the state of any pleading or notice shall be equivalent to publication and mailing, and such personal service of the notice of entry of a preliminary order shall commence the running of the ten-day period within which objections may be made to the granting of a permanent order. Return of such service shall be by affidavit of the person making the same.

History: 1953 Comp., § 22-9-44, enacted by Laws 1959, ch. 324, § 6.

42-2-8. Contents of answer.

The defendant shall set forth in his answer the following:

A. the estate or interest in each tract or parcel of property taken or described in the petition in which the defendant has any interest;

B. the name and address of anyone claiming any interest in such tract or parcel of property known to the defendant and the amount of such interest;

C. the amount which the defendant claims as just compensation for the property taken or described in the petition and the amount, if any, of the various elements of damage, including damage to any remaining portion of a contiguous tract owned or controlled by the defendant;

D. the highest and best use to which the property is adapted;

E. a description of the total tract owned by the defendant or in which he claims an interest, which has been damaged by the taking or the proposed improvement;

F. any other material or pertinent matter with regard to damages known to the defendant.

History: 1953 Comp., § 22-9-45, enacted by Laws 1959, ch. 324, § 7; 1967, ch. 207, § 1.

42-2-9. Time for answering.

The defendant or his attorney shall file his answer to the petition within thirty days after service of the petition and notice.

History: 1953 Comp., § 22-9-46, enacted by Laws 1959, ch. 324, § 8; 1967, ch. 207, § 2.

42-2-10. Intervention.

All persons in occupation of, or having or claiming an interest in, any of the property described in the petition or in the damages, if any, for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the petition, at any time prior to trial.

History: 1953 Comp., § 22-9-47, enacted by Laws 1959, ch. 324, § 9.

42-2-11. Election of trial by court or jury.

Any party desiring to try the cause before a jury, shall make demand and deposit jury fees pursuant to Rule 38, Rules of Civil Procedure [Rule 1-038 NMRA], and any other applicable rules of civil procedure.

The court with or without a jury may separately try the case involving each tract of land affected which is under different ownership, or separate tracts under the same ownership.

History: 1953 Comp., § 22-9-48, enacted by Laws 1959, ch. 324, § 10; 1967, ch. 207, § 3.

42-2-12. Time of trial.

A. The court, upon notice by petitioner that the time for an answer has expired as to all defendants served either personally or by publication, shall forthwith set the cause for trial giving the cause preference over all other civil causes in which the public interest is not involved.

B. The court upon such notice shall immediately impanel a special jury, if necessary, in the county in which the cause is to be tried for the sole purpose of trying said cause, unless the court in its discretion desires in the furtherance of justice to allow other matters to be tried before it at that time.

History: 1953 Comp., § 22-9-49, enacted by Laws 1959, ch. 324, § 11.

42-2-13. Argument.

In any condemnation action brought under the provisions of this act [42-2-1 to 42-2-16 NMSA 1978], the defendant shall have the burden of proceeding and the right to commence and conclude the argument.

History: 1953 Comp., § 22-9-50, enacted by Laws 1959, ch. 324, § 12.

42-2-14. Default.

A. If any defendant who has appeared in the cause shall fail to appear at the time set for trial, whether such trial be set before the court with or without a jury, the court shall direct that his default be entered and shall conduct such hearings as it deems necessary and proper to determine the amount of just compensation due to the defendant.

B. If any defendant has failed to appear or answer within the time allowed, and the clerk has entered his default, then the court shall conduct such hearings as it deems necessary and proper to determine the amount of just compensation due the defendant.

C. For the purpose of the hearing required in Subsection [Subsections] A and B above, the court may consider by affidavit or other proof of the value of the property taken, the damage, if any, which may result from the occupation and condemnation, and the amount offered as set forth in the petition and shall enter such judgment as it deems proper.

History: 1953 Comp., § 22-9-51, enacted by Laws 1959, ch. 324, § 13.

42-2-15. Verdict and judgment.

Notwithstanding the provisions of the Relocation Assistance Act [Chapter 42, Article 3 NMSA 1978]:

A. for the purposes of assessing compensation and damages, the right thereto shall be deemed to have accrued as of the date the petition is filed, and its actual value on that date shall be the measure of compensation for all property taken, and also the basis of damages for property not taken but injuriously affected in cases where such damages are legally recoverable; the amount of the award shall be determined from the evidence and not be limited to any amount alleged in the petition or set forth in the answer;

B. whenever just compensation shall be ascertained and awarded in such proceeding and established by judgment, the judgment shall include as a part of the just compensation awarded, interest at the rate of six percent a year from the date of the date the petition is filed to the date of payment or the date when the proceedings are finally abandoned;

C. the court shall have the power to direct the payment of delinquent taxes, special assessments and rental or other charges owed out of the amount determined to be just compensation, and to make such orders with respect to encumbrances, liens, rents, insurance and other just and equitable charges; and

D. when two or more estates or divided interests in any tract are the subject of a trial by a jury, and the court has determined that there shall be no division of the causes, the verdict shall be in one sum and shall be the amount of just compensation for the tract affected as of the date of the filing of the petition, and the court shall thereafter proceed to hear and determine the value of the respective interests or ownerships in said tract, and shall apportion the amount of the verdict between the defendants according to their various interests therein.

History: 1953 Comp., § 22-9-52, enacted by Laws 1959, ch. 324, § 14; 1972, ch. 41, § 21.

42-2-16. Proof of payment; recording judgment.

After the petitioner has made payment in full to the clerk of the district court in accordance with the judgment in the condemnation action, the clerk shall certify upon the judgment that payment has been made thereon.

A copy of this judgment showing payment shall be recorded in the office of the county clerk of the county in which the property is situate, and thereupon the title or interest in the property affected shall vest in the petitioner.

History: 1953 Comp., § 22-9-53, enacted by Laws 1959, ch. 324, § 15; 1961, ch. 75, § 1.

42-2-17. Purpose of act.

The purpose of this act [42-2-17 to 42-2-21 NMSA 1978] is to clarify certain matters of practice and procedure in the special alternative procedure in eminent domain.

History: 1953 Comp., § 22-9-55, enacted by Laws 1963, ch. 248, § 1.

42-2-18. Application of Rules of Civil Procedure.

The Rules of Civil Procedure shall apply to the special alternative procedure in eminent domain except where special provisions are found in the special alternative procedure which conflict with the Rules of Civil Procedure and then the Rules of Civil Procedure shall not apply.

History: 1953 Comp., § 22-9-56, enacted by Laws 1963, ch. 248, § 2.

42-2-19. Disqualification of judge; effect.

A. Whenever a party or parties to any special alternative proceeding in eminent domain shall make and file an affidavit that the judge before whom the proceeding is pending, whether he be the resident judge or a judge designated by such resident judge, cannot, according to the belief of the party to said proceeding making such affidavit, preside over the same with impartiality, such affidavit shall operate as an automatic severance of the proceedings as to all tracts in which the disqualifying party or parties has an interest. Nothing herein shall be construed to authorize separate trials of different interests in the same tract.

Another judge shall be designated for the trial of the proceeding as to the severed portion thereof by agreement of counsel representing the respective parties. Upon the failure of such counsel to agree, then such facts shall be certified to the chief justice of the supreme court of New Mexico, and the chief justice shall thereupon designate the judge to try the severed portion of such proceeding.

B. Such affidavit shall be filed within the time allowed for filing objections to the preliminary order of entry and not thereafter.

History: 1953 Comp., § 22-9-57, enacted by Laws 1963, ch. 248, § 3.

42-2-20. Waiver of bond.

The surety bond required to be executed and filed by petitioner to the benefit of the defendants under Section 42-2-6B NMSA 1978 of the special alternative procedure in eminent domain may be waived by the court in its discretion.

History: 1953 Comp., § 22-9-58, enacted by Laws 1963, ch. 248, § 4.

42-2-21. Costs.

If the total amount of the final judgment exceeds the total amount offered by petitioner, excluding interest, for the tract or tracts for which the judgment is rendered, the petitioner shall bear all taxable costs or fees as in any other action or proceeding.

History: 1953 Comp., § 22-9-59, enacted by Laws 1963, ch. 248, § 5.

42-2-22. [Flood control; appropriation of land; compensation for immediate use.]

The state or any political subdivision thereof, may also use the special alternative procedure in eminent domain set forth in Sections 42-2-1 through 42-2-21 NMSA 1978 (being Laws 1959, Chapter 324, Sections 1 through 16 and Laws 1963, Chapter 248, Sections 1 through 5) to the extent it is otherwise authorized by law to exercise the power of eminent domain to acquire, either temporarily or permanently, public or privately owned lands, real property or any interests therein for the acquisition, construction, operation or maintenance of facilities for the carrying, channeling, impounding or disposition of storm, flood or surface drainage waters.

Provided, however, that no order of entry to any property being taken under the special alternative procedure for the acquisition, construction, operation and maintenance of facilities for the carrying, channeling, impounding or disposition of storm, flood or surface drainage waters may be granted until there is deposited with the clerk of the district court a warrant for seventy-five percent of the amount offered as just compensation for the immediate use, under such conditions as the court may deem appropriate, of all persons having an estate or interest in such property, and the final judgment shall not include interest from the date of such deposit on the amount of such advance payment.

History: 1953 Comp., § 22-9-61, enacted by Laws 1964 (1st S.S.), ch. 14, § 2.

42-2-23. Condemnation of property in excess of need; sale to prior owner; price.

In the event the state, a state agency or other entity condemns property in excess of the dimensions or amount necessary for public use, as determined by the condemnor, if such determination occurs within five years of the date of condemnation, the prior owner from whom the property was taken, or his personal representative or heirs, shall have

the option to purchase the property determined to be in excess. Such persons may purchase such property at a price equal to the price paid for such excess property by the condemnor to the prior owner at the time of taking, plus interest at the rate of six percent per year, for the period beginning with the date the prior owner received final payment for the land taken, and ending when the notice of intent to dispose is mailed, less the amount of any liens which attached against the property while it was held by the condemnor.

The notice of intent to dispose shall be mailed to the last known address of the prior owner by certified mail with a return receipt requested. The notice shall notify the prior owner of his right to purchase, specify which portion of the property of the prior owner is available for purchase by him, the number of acres available, the amount of money, both the principal and interest it will require to repurchase it and the amount of any liens which may be deducted from the purchase price. If within thirty days after mailing the notice of intent to dispose, the prior owner or his personal representative or heirs elect to exercise the option to purchase, the condemnor shall enter into an agreement prepared and approved by the attorney general, if the condemnor is a state agency, and by appropriate legal officer of the entity if the condemnor is an entity other than a state agency for the sale of the surplus land to the prior owner, his personal representative or heirs.

If the prior owner, his personal representative or heirs have not elected to exercise the option within thirty days from the date of mailing the notice of intent to dispose, the condemnor shall sell the property at public sale.

History: 1953 Comp., § 22-9-62, enacted by Laws 1967, ch. 206, § 1; 1981, ch. 126, § 1.

42-2-24. Exclusion of certain property.

This act [42-2-23, 42-2-24 NMSA 1978] shall not apply to any land which at the time of condemnation was wholly within the boundary of an incorporated municipality.

History: 1953 Comp., § 22-9-67, enacted by Laws 1967, ch. 206, § 6.

ARTICLE 3
Relocation Assistance

42-3-1. Short title.

Chapter 42, Article 3 NMSA 1978 may be cited as the "Relocation Assistance Act".

History: 1953 Comp., § 22-9A-1, enacted by Laws 1972, ch. 41, § 1; 1989, ch. 121, § 1.

42-3-2. Definitions.

As used in the Relocation Assistance Act:

A. "agency" means any department, agency or instrumentality of:

(1) the federal government;

(2) the state;

(3) a political subdivision of the state; or

(4) any combination of the federal government, the state or a political subdivision of the state;

B. "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described real property as of a specific date, supported by the presentation and analysis of relevant market information;

C. "business" means any lawful activity, except a farm operation, conducted primarily:

(1) for the purchase, sale, lease or rental of personal and real property or for the manufacture, processing or marketing of products, commodities or any other personal property;

(2) for the sale of services to the public;

(3) by a nonprofit organization; or

(4) solely for the purposes of Subsection A of Section 42-3-5 NMSA 1978, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted;

D. "displacing agency" means any agency or person carrying out a program or project which causes a person to be a displaced person;

E. "displaced person":

(1) means any person who moves from real property or moves his personal property from real property as a direct result of:

(a) a written notice of intent to acquire or the acquisition of the real property in whole or in part for a program or project undertaken by the displacing agency on which the person is a residential tenant or conducts a farm operation or a business as defined in Subsection C of Section 42-3-2 NMSA 1978; or

(b) rehabilitation, demolition or other displacing activity as the displacing agency may prescribe, under a program or project undertaken by the displacing agency in any case in which the head of the displacing agency determines that the displacement is permanent; and

(2) means solely for the purposes of Section 42-3-11 NMSA 1978 and Subsections A and B of Section 42-3-5 NMSA 1978, any person who moves from real property or moves his personal property from real property as a direct result of:

(a) a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by the displacing agency; or

(b) rehabilitation, demolition or other displacing activity as the displacing agency may prescribe, of other real property on which the person conducts a business or farm operation, under a program or project undertaken by the displacing agency where the head of the displacing agency determines that the displacement is permanent;

(3) does not include:

(a) any person that has been determined, according to criteria established by the head of the displacing agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied the displacement dwelling for the purpose of obtaining assistance under the Relocation Assistance Act; and

(b) any person that is occupying the property on a rental basis for a short term or period once the displacing agency has acquired the property as set forth in that act, other than the person that was an occupant of the property at the time the property was acquired.

F. "family" means two or more individuals living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship;

G. "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity capable of contributing materially to the operator's support;

H. "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of New Mexico, together with the credit instruments, if any, secured by them; and

I. "person", unless a contrary intention appears, means an individual, estate, trust, receiver, association, club, corporation, partnership, joint venture, syndicate or other entity.

History: 1953 Comp., § 22-9A-2, enacted by Laws 1972, ch. 41, § 2; 1989, ch. 121, § 2.

42-3-3. Relocation program.

The displacing agency, as a part of the cost of a program or project, may establish and provide for a program providing fair and reasonable relocation and other payments for persons displaced by a program or project and to carry out relocation assistance programs for displaced persons.

History: 1953 Comp., § 22-9A-4, enacted by Laws 1972, ch. 41, § 4; 1989, ch. 121, § 3.

42-3-4. Administration.

In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, any displacing agency may make relocation payments, provide relocation assistance or otherwise carry out the provisions of the Relocation Assistance Act by entering into an agreement to utilize the facilities, personnel and services of any agency having an established organization for conducting relocation assistance programs.

History: 1953 Comp., § 22-9A-5, enacted by Laws 1972, ch. 41, § 5; 1989, ch. 121, § 4.

42-3-5. Relocation payments.

A. Whenever a program or project undertaken by an agency will result in the displacement of a person, the displacing agency shall provide for payment to the displaced person for:

(1) actual reasonable expenses in moving the person or the person's family, business, farm operation or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the

reasonable expenses that would have been required to relocate the property, as determined by the displacing agency;

(3) actual reasonable expenses in searching for a replacement business or farm, supported by documentation that the displacing agency by regulation may require; and

(4) actual reasonable expenses necessary to reestablish a displaced farm or business at its new site, in accordance with criteria to be established by the displacing agency but not to exceed twenty-five thousand dollars ($25,000).

B. A displaced person eligible for payments under Subsection A of this section who is displaced from a dwelling and who elects to accept the payment authorized by this subsection in lieu of the payments authorized by Subsection A of this section may receive an expense and dislocation allowance that shall be determined according to a schedule established by the displacing agency.

C. A displaced person eligible for payments under Subsection A of this section who is displaced from the person's place of business or from the person's farm operation and who is eligible under the criteria established by the displacing agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by Subsection A of this section. The payment shall consist of a fixed payment in an amount to be determined according to the criteria established by the displacing agency, except that the payment shall be not less than one thousand dollars ($1,000) nor more than forty thousand dollars ($40,000). A person whose sole business at the displacement dwelling is the rental of the dwelling to others shall not qualify for a payment under this subsection.

History: 1953 Comp., § 22-9A-6, enacted by Laws 1972, ch. 41, § 6; 1989, ch. 121, § 5; 2015, ch. 136, § 1.

42-3-6. Additional payment to property owner.

A. In addition to payments authorized by Section 42-3-5 NMSA 1978, the displacing agency, as a part of the cost of the program or project, may make an additional payment not to exceed thirty-one thousand dollars ($31,000) to a displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of the property. The additional payment shall include the following:

(1) the amount that when added to the acquisition cost to the displacing agency of the dwelling acquired by the displacing agency equals the reasonable cost of a comparable replacement dwelling;

(2) the amount that will compensate the displaced person for any increased interest cost and other debt service costs that the displaced person is required to pay

for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage that was a valid lien on the dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of the dwelling. The amount of the increased costs shall be equal to the excess in the aggregate interest and other debt service costs of the amount of the principal of the mortgage on the replacement dwelling that is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located; and

(3) reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of a comparable replacement dwelling, but not including prepaid expenses.

B. The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a comparable replacement dwelling not later than the end of the one-year period beginning on the date on which the displaced person receives from the displacing agency final payment of all costs of the acquired dwelling or on the date on which the displacing agency's obligations, pursuant to Paragraph (3) of Subsection C of Section 42-3-11 NMSA 1978, are fulfilled, whichever is the later date. The displacing agency may extend this one-year period for good cause. If this one-year period is extended, the payment under this section shall be based on the costs of relocating the displaced person to a comparable replacement dwelling within one year of such date.

History: 1953 Comp., § 22-9A-7, enacted by Laws 1972, ch. 41, § 7; 1989, ch. 121, § 6; 2015, ch. 136, § 2.

42-3-7. Additional payment to tenant.

A. In addition to amounts otherwise authorized by the Relocation Assistance Act, the displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under Section 42-3-6 NMSA 1978 when that dwelling was actually and lawfully occupied by the displaced person for not less than ninety days immediately prior to the initiation of negotiations for acquisition of the dwelling or in any case in which the displacement is a direct result of acquisition or other event as the displacing agency shall prescribe.

B. The payment in Subsection A of this section shall consist of the amount necessary to enable the displaced person to lease or rent for a period not to exceed forty-two months a comparable replacement dwelling, but at no time shall this payment exceed seven thousand two hundred dollars ($7,200). At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments.

Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account that person's income.

C. Any person eligible for a payment under Subsection A of this section may elect to apply the payment to a down payment on, and other incidental expenses pursuant to, the purchase of a comparable replacement dwelling. That person may, at the discretion of the displacing agency, be eligible under this subsection for the maximum payment allowed under Subsection B of this section, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least ninety days immediately prior to the initiation of negotiations for the acquisition of the dwelling, this payment shall not exceed the payment the person would otherwise have received under Subsection A of Section 42-3-6 NMSA 1978 had the person owned and occupied the displacement dwelling ninety days immediately prior to the initiation of such negotiations.

History: 1978 Comp., § 42-3-7, enacted by Laws 1989, ch. 121, § 7; 2015, ch. 136, § 3.

42-3-8. Miscellaneous payments.

In addition to other payments authorized by the Relocation Assistance Act, the displacing agency, as part of the cost of any program or project, may reimburse reasonable and necessary expenses incurred for:

A. recording fees, transfer taxes and other expenses incidental to conveying the property;

B. penalty costs for prepayment of any mortgage then existing entered into in good faith encumbering the real property if the mortgage is on record or has been filed for record as provided by law; and

C. the pro rata portion of real property taxes paid which are allocable to the period subsequent to the date of vesting of title in the displacing agency or the effective date of the possession of the real property by the displacing agency, whichever is earlier.

History: 1953 Comp., § 22-9A-9, enacted by Laws 1972, ch. 41, § 9; 1989, ch. 121, § 8.

42-3-9. Reimbursement for expenses where condemnation does not result in acquisition or is abandoned.

A court having jurisdiction over a proceeding instituted by the displacing agency to acquire real property by condemnation shall, when required by federal law or by a federal grant contract governing the project or program, award the owner of any right, title or interest in the real property a sum which will reimburse the owner for his reasonable costs, disbursements and expenses, including reasonable attorney,

appraisal and engineering fees actually incurred because of the condemnation proceedings, if:

A. the final judgment in the proceeding is that the displacing agency cannot acquire the real property by condemnation; or

B. the proceeding is abandoned by the displacing agency.

History: 1953 Comp., § 22-9A-10, enacted by Laws 1972, ch. 41, § 10; 1989, ch. 121, § 9.

42-3-10. Compensation for expenses of inverse condemnation.

A court, rendering a judgment for the plaintiff in a proceeding brought under Section 42A-1-29 NMSA 1978 awarding compensation for the actual physical taking of the property by the displacing agency, or the agency effecting a settlement of any such proceeding, shall, when required by federal law or by a federal grant contract governing the project or program, determine and award or allow to the plaintiff as a part of the judgment or settlement a sum which will reimburse the plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the proceeding.

History: 1953 Comp., § 22-9A-11, enacted by Laws 1972, ch. 41, § 11; 1989, ch. 121, § 10.

42-3-11. Advisory assistance program.

A. Programs or projects undertaken by a displacing agency shall be planned in a manner that:

(1) recognizes at an early stage in the planning of programs or projects, and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses and farm operations; and

(2) provides for the resolution of displacement problems in order to minimize adverse impacts on displaced persons and to expedite the program or project advancement and completion.

B. The head of any displacing agency shall ensure that the relocation assistance advisory services described in Subsection C of this section are made available to all persons displaced by the displacing agency. If the head of the displacing agency determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result of the displacing activity, the head of the displacing agency may make available to any person occupying the adjacent property the relocation assistance advisory services.

C. Each relocation assistance advisory program required by Subsection B of this section shall include those measures, facilities or services that may be necessary or appropriate in order to:

(1) determine the need and make timely recommendations on the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling except in the case of:

(a) a major disaster as defined in Section 102(2) of the Disaster Relief Act of 1974;

(b) a national emergency declared by the president of the United States;

(c) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of the dwelling by the person constitutes a substantial danger to the health or safety of the person;

(4) assist a person displaced from his business or farm operation to obtain and become established in a suitable replacement location; and

(5) supply information concerning federal, state and local programs which may be of assistance to displaced persons, supply technical assistance to displaced persons in applying for assistance under these programs and minimize hardships to the displaced persons in adjusting to relocation.

History: 1978 Comp., § 42-3-11, enacted by Laws 1989, ch. 121, § 11.

42-3-12. Housing replacement as a last resort.

A. If a project cannot proceed to actual construction because comparable replacement sale or rental housing is not available and the displacing agency determines that the housing cannot otherwise be made available, the displacing agency may take action necessary or appropriate to provide the housing by use of funds authorized for the project.

The displacing agency may use this section to exceed the maximum amounts which may be paid under the Relocation Assistance Act on a case-by-case basis for good cause as determined in accordance with such regulations as the agency or department shall issue.

B. No person shall be required to move from his dwelling on account of any project unless the displacing agency is satisfied that a comparable replacement housing is available to the person.

History: 1953 Comp., § 22-9A-13, enacted by Laws 1972, ch. 41, § 13; 1989, ch. 121, § 12.

42-3-13. Implementing regulations.

The displacing agency may adopt regulations that it deems necessary or appropriate to implement the provisions of the Relocation Assistance Act, including but not limited to regulations necessary to assure that:

A. the payments and assistance authorized shall be administered in as fair, reasonable and uniform a manner as practicable;

B. a displaced person who makes proper application for a payment authorized shall be paid promptly after a move or, in hardship cases, be paid in advance; and

C. any person aggrieved by a determination as to eligibility for relocation payments or the amount of payment under that act may have his application reviewed at a formal hearing before the head of the displacing agency or a hearing officer designated by the head of the displacing agency.

History: 1953 Comp., § 22-9A-14, enacted by Laws 1972, ch. 41, § 14; 1989, ch. 121, § 13.

42-3-14. Administrative hearings; court review.

A. A person aggrieved by a determination as to eligibility for relocation payments or the amount of payment received under the Relocation Assistance Act shall have the right to a hearing before the displacing agency or before a hearing officer designated by the displacing agency.

B. After the hearing, a person aggrieved or affected by a final administrative determination concerning eligibility for relocation payments or the amount of the payment under the Relocation Assistance Act may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 22-9A-15, enacted by Laws 1972, ch. 41, § 15; 1989, ch. 121, § 14; 1998, ch. 55, § 45; 1999, ch. 265, § 47.

42-3-15. Contingent authority of act.

The provisions of the Relocation Assistance Act are effective so long as the congress of the United States authorizes and appropriates money for the payments and

services set forth in Section 211 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 for federal aid programs, that act providing for federal reimbursement of the payments and services arising out of relocation assistance as a part of the cost of construction of a project under any federal aid program.

History: 1953 Comp., § 22-9A-16, enacted by Laws 1972, ch. 41, § 16; 1989, ch. 121, § 15.

ARTICLE 4
Ejectment and Recovery of Real Property

42-4-1. [When ejectment maintainable.]

The action of ejectment may be maintained in all cases where the plaintiff is legally entitled to the possession of the premises.

History: C.L. 1897, § 2685 (250), added by Laws 1907, ch. 107, § 1 (250); Code 1915, § 4360; C.S. 1929, § 105-1801; 1941 Comp., § 25-801; 1953 Comp., § 22-8-1.

42-4-2. [Wrongful ouster and detention of realty or mining claim.]

The action of ejectment will lie for the recovery of the possession of a mining claim, as well also of any real estate, where the party suing has been wrongfully ousted from the possession thereof, and the possession wrongfully detained.

History: C.L. 1897, § 2685 (251), added by Laws 1907, ch. 107, § 1 (251); Code 1915, § 4361; C.S. 1929, § 105-1802; 1941 Comp., § 25-802; 1953 Comp., § 22-8-2.

42-4-3. [Principles apply to equity suits.]

The principles of the provisions of this article shall apply and extend to all suits in equity when the object of the complaint or answer is for the recovery of lands and tenements.

History: C.L. 1897, § 2685 (265), added by Laws 1907, ch. 107, § 1 (265); Code 1915, § 4378; C.S. 1929, § 105-1819; 1941 Comp., § 25-803; 1953 Comp., § 22-8-3.

42-4-4. [Parties to action.]

The action shall be prosecuted in the real names of the parties, and shall be brought against the tenant in possession, or against the person under whom such tenant holds or claims possession. Any person claiming such premises may, on motion, be made a defendant.

History: C.L. 1897, § 2685 (252), added by Laws 1907, ch. 107, § 1 (252); Code 1915, § 4362; C.S. 1929, § 105-1803; 1941 Comp., § 25-804; 1953 Comp., § 22-8-4.

42-4-5. [Contents of complaint.]

It shall be sufficient for the plaintiff to declare in his complaint that on some day, named therein, he was entitled to the possession of the premises, describing them; and that the defendant, on a day named in the complaint, afterwards entered into such premises, and unlawfully withheld from the plaintiff the possession thereof, to his damage for any sum he may name.

History: C.L. 1897, § 2685 (253), added by Laws 1907, ch. 107, § 1 (253); Code 1915, § 4363; C.S. 1929, § 105-1804; 1941 Comp., § 25-805; 1953 Comp., § 22-8-5.

42-4-6. [Defendant's pleadings; plaintiff's reply.]

The defendant shall plead to the complaint, as required by Sections 4106 and 4110; and the plaintiff may reply or demur.

History: C.L. 1897, § 2685 (254), added by Laws 1907, ch. 107, § 1 (254); Code 1915, § 4364; C.S. 1929, § 105-1805; 1941 Comp., § 25-806; 1953 Comp., § 22-8-6.

42-4-7. [Ultimate facts authorizing recovery.]

It shall be sufficient to entitle the plaintiff to recover, to show that at the time of the commencement of the action the defendant was in possession of the premises claimed, and that the plaintiff had a right to the possession thereof.

History: C.L. 1897, § 2685 (255), added by Laws 1907, ch. 107, § 1 (255); Code 1915, § 4365; C.S. 1929, § 105-1806; 1941 Comp., § 25-807; 1953 Comp., § 22-8-7.

42-4-8. [Action between cotenants; ouster to be shown.]

In any action brought by a joint tenant, or tenant in common, against a cotenant, he shall be required to prove an actual ouster or act equivalent thereto.

History: C.L. 1897, § 2685 (256), added by Laws 1907, ch. 107, § 1 (256); Code 1915, § 4366; C.S. 1929, § 105-1807; 1941 Comp., § 25-808; 1953 Comp., § 22-8-8.

42-4-9. [Rents and profits recoverable as damages.]

If the plaintiff prevail, he shall recover for damages the value of the rents and profits of such premises to the time of the verdict or the expiration of the plaintiff's title, under these limitations:

A. if the defendant had knowledge of the plaintiff's claim or title, then for the whole time he had such knowledge;

B. if he had no such knowledge, then from the commencement of the action.

History: C.L. 1897, § 2685 (257), added by Laws 1907, ch. 107, § 1 (257); Code 1915, § 4367; C.S. 1929, § 105-1808; 1941 Comp., § 25-809; 1953 Comp., § 22-8-9.

42-4-10. [Title expiring pendente lite; judgment.]

If the plaintiff's title expire after the action is brought, but before its determination, the verdict and judgment shall be for damages and costs only.

History: C.L. 1897, § 2685 (258), added by Laws 1907, ch. 107, § 1 (258); Code 1915, § 4368; C.S. 1929, § 105-1809; 1941 Comp., § 25-810; 1953 Comp., § 22-8-10.

42-4-11. [Judgment for plaintiff.]

If the plaintiff prevail, the judgment shall be for the recovery of the possession, and for the damages and costs.

History: C.L. 1897, § 2685 (259), added by Laws 1907, ch. 107, § 1 (259); Code 1915, § 4369; C.S. 1929, § 105-1810; 1941 Comp., § 25-811; 1953 Comp., § 22-8-11.

42-4-12. [Writ of possession.]

Upon judgment for the recovery of possession, a writ of possession shall be issued, and the sheriff shall deliver to the plaintiff the possession of the premises, and also collect the damages and costs, as on execution in other cases.

History: C.L. 1897, § 2685 (260), added by Laws 1907, ch. 107, § 1 (260); Code 1915, § 4370; C.S. 1929, § 105-1811; 1941 Comp., § 25-812; 1953 Comp., § 22-8-12.

42-4-13. [Execution; judgment for damages and costs.]

If the judgment be for damages and costs, an execution shall issue as in a personal action.

History: C.L. 1897, § 2685 (261), added by Laws 1907, ch. 107, § 1 (261); Code 1915, § 4371; C.S. 1929, § 105-1812; 1941 Comp., § 25-813; 1953 Comp., § 22-8-13.

42-4-14. [Improvements and mesne profits; time; claims; notices.]

In all actions of ejectment, when the defendant or tenant in possession in such suit shall have title of the premises in dispute either by grant from the government of Spain,

Mexico or the United States, deed of conveyance founded on a grant or entry for the same, tax deed or other color of title, such defendant or defendants may file at the time of the filing of the pleas in said cause a notice to the plaintiff, that on the trial of said cause he or they will prove what improvement he or they may have made on the said lands in dispute and the value thereof. After which notice being filed, the said plaintiff may file a notice within twenty days thereafter, to the said defendant or defendants or tenant in possession, that in like manner he or they will prove the amount of the mesne profits of the said premises: provided, that no improvements shall be taken into valuation and allowed for, that shall have been made after the execution of the original summons in such suit or after the plaintiff, his agent or attorney, shall have served said defendant or tenant in possession with a written notice that he or they claim title to the land, specifying in said notice the nature of the claim; nor shall any mesne profits be valued and recovered except such as may have accrued after the commencement of the suit or notice given as aforesaid.

History: C.L. 1897, § 2685 (262), added by Laws 1907, ch. 107, § 1 (262); 1909, ch. 116, § 1; Code 1915, § 4372; C.S. 1929, § 105-1813; 1941 Comp., § 25-814; 1953 Comp., § 22-8-14.

42-4-15. [Improvements and mesne profits; verdict; set-off; judgment; payment by plaintiff before obtaining writ of possession.]

When the jury shall find a verdict for the plaintiff in such action, they shall also find the value of the improvements in favor of the defendant or tenant in possession, proved in the manner aforesaid, and further shall find the amount of the mesne profits proved to have accrued as aforesaid, as also the value of the land in its natural state without the improvements, and if the value of the improvements should exceed the amount of the mesne profits, the balance or overplus thereof shall be found by the jury in favor of the defendant or tenant in possession, and such plaintiff or plaintiffs shall not have a writ of possession awarded or issued against the defendant or defendants until he or they shall have paid to the said defendant or defendants, their agent or attorney, the full amount of balance or overplus, which the value of the improvements is found to exceed the mesne profits as aforesaid. And if the mesne profits as aforesaid shall exceed the value of the improvements as aforesaid, the jury aforesaid shall find the amount of such balance or overplus against the defendant or tenant in possession and judgment shall be entered up against said defendant or tenant in possession for such balance or overplus so found against them.

History: C.L. 1897, § 2685 (263), added by Laws 1907, ch. 107, § 1 (263); Code 1915, § 4373; C.S. 1929, § 105-1814; 1941 Comp., § 25-815; 1953 Comp., § 22-8-15.

42-4-16. [Improvements exceeding mesne profits; election by plaintiff; tender of deed; payment to plaintiff.]

If upon the rendition of any judgment in any such suit, the value of the improvements put upon the land by any defendant or tenant in possession as aforesaid shall exceed the net mesne profits of said land, the plaintiff or plaintiffs shall at the term of court at which said judgment is rendered, elect whether he will take his judgment and pay for the improvements so assessed against him or take pay from the defendant or defendants for the net profits and the value of the land in its natural state without the improvements, and if he elect to take pay for the net profits and the value of the land without the improvements as aforesaid, the said plaintiff or plaintiffs shall tender a warranty deed to the defendant or defendants for the said lands, upon the payment of its value as found by the jury in its natural state without the improvements, which payment shall be made to the plaintiff or plaintiffs in such reasonable term [terms] as the court may allow.

History: C.L. 1897, § 2685 (264), added by Laws 1907, ch. 107, § 1 (264); Code 1915, § 4374; C.S. 1929, § 105-1815; 1941 Comp., § 25-816; 1953 Comp., § 22-8-16.

42-4-17. [Remedy of person deprived of possession of improvements; time; value; lien.]

When any person or his assignors may have heretofore made, or may hereafter make any valuable improvements on any lands, and he or his assignors have been or may hereafter be deprived of the possession of said improvements in any manner whatever, he shall have the right, either in an action of ejectment which may have been brought against him for the possession, or by an appropriate action at any time thereafter within ten years, to have the value of his said improvements assessed in his favor, as of the date he was so deprived of the possession thereof, and the said value so assessed shall be a lien upon the said land and improvements, and all other lands of the person who so deprived him of the possession thereof situate in the same county, until paid; but no improvements shall be assessed which may or shall have been made after the service of summons in an action of ejectment on him in favor of the person against whom he seeks to have said value assessed for said improvements.

History: Laws 1878, ch. 6, § 3; C.L. 1884, § 2581; C.L. 1897, § 3755; Code 1915, § 4375; C.S. 1929, § 105-1816; 1941 Comp., § 25-817; 1953 Comp., § 22-8-17.

42-4-18. [Possession of improvements taken; liability for value; abandonment excepted; specific and general lien.]

When any person claiming possession may have made, or may hereafter make, any valuable improvements on any land in this state, and any other person shall have taken, or may hereafter, in any manner, take from him or his assignor or assigns the possession of such improvements, or any part thereof, the person so taking possession shall be liable for the full value of such improvements so taken possession of, to the person who made the same, or to whom they may have been assigned: provided, the said possession and improvements shall not have been abandoned by the said person making the same, or those holding or claiming through him, for a greater period than six months immediately prior to so taking the possession thereof, and the value of said

improvements shall be a lien upon the said improvements and the land in which they are situate until paid; as also upon all other real estate of the person so taking possession thereof situate in the same county.

History: Laws 1878, ch. 6, § 4; C.L. 1884, § 2582; C.L. 1897, § 3756; Code 1915, § 4376; C.S. 1929, § 105-1817; 1941 Comp., § 25-818; 1953 Comp., § 22-8-18.

42-4-19. [Sale of improvements.]

The possession of land and improvements, provided for in this article, may be sold, transferred and conveyed in the same manner as other real estate in this state; and the person so purchasing and receiving conveyance thereof shall have the same right and title and be subject to the same restrictions as the person who may take possession or make the improvements provided for in this article.

History: Laws 1878, ch. 6, § 5; C.L. 1884, § 2583; C.L. 1897, § 3757; Code 1915, § 4377; C.S. 1929, § 105-1818; 1941 Comp., § 25-819; 1953 Comp., § 22-8-19.

42-4-20. [Reversionary clause in deed; improvements; liens; waiver of claim.]

That any and all liens, encumbrances or money claims for improvements on lands, authorized or permitted in ejectment actions or equitable proceedings for the recovery of lands under reversionary provisions contained in deeds to reality [realty], whether heretofore or hereafter claimed, may be waived by instrument in writing executed either before or after the passage and approval of this act [this section]; provided, further, that in no event shall any such liens, encumbrances or claims be asserted by the grantee, his heirs or assigns, as against his grantor, his heirs or assigns, who becomes entitled to possession of such lands under the terms of the reversionary clauses contained in any such deed to realty.

History: Laws 1937, ch. 31, § 1; 1941 Comp., § 25-820; 1953 Comp., § 22-8-20.

42-4-21. [Mine or mining claim; contested application for patent; ejectment maintainable regardless of possession.]

That when an application is made for a patent to a mine or mining claim under the laws of the United States by any person, persons, company or corporation claiming to own or have an interest therein, and such application is contested by any other person, persons, company or corporation in the land office of the United States, such person, persons, company or corporation so contesting, may bring a suit of ejectment in the district court of the county in which the mine or mining claim is situated, for the recovery of the same, whether in or out of possession of such mine or claim, and the question as to who was in the possession of the mine or claim at the time when the application was made for patent, or when the suit was begun, shall not be considered by the court,

except as it may be necessary in determining the interests of the respective claimants, and their right to the possession of said mine or claim.

History: Laws 1887, ch. 54, § 1; C.L. 1897, § 2290; Code 1915, § 3464; C.S. 1929, § 88-202; 1941 Comp., § 25-821; 1953 Comp., § 22-8-21.

42-4-22. [Special verdict or findings; entry on mining land pending suit.]

The court, in an action for the recovery of a mine or mining claim where a patent is applied for, and the contest is pending in the land office of the United States, may, upon motion of either party to the suit, require the jury to return a special verdict, if tried by a jury; if not, then by a judge trying the same shall make a special finding as to the particular interest each party owns in the mine or claim in dispute, under and by virtue of the mining laws of the United States, which special verdict or finding shall be entered into the judgment and upon the record of the court trying the same: provided, however, there shall be no special verdict by the court or jury, except where the evidence shows both parties to the suit to have a bona fide interest in the mine or claim sued for: and, provided further, that no third person who may have entered upon such mining claim or any part thereof, for the purpose of locating or claiming the same before or during such litigation in the district court growing out of any contest in any United States land office in this state, shall acquire any interest either at law or in equity in the claim or any part thereof in dispute, and shall be deemed and declared a trespasser or trespassers, unless he or they have been, or may, during the pendency of such litigation in the district court resulting from such contest in the United States land office, by a proper application to the court, be made party or parties to such suit adverse to either of such litigants, or both, or shall have taken such legal steps to assert his or their claim in a court of competent jurisdiction within six months after the commencement of such contest in the United States land office.

History: Laws 1887, ch. 54, § 2; 1889, ch. 111, § 1; C.L. 1897, § 2291; Code 1915, § 3465; C.S. 1929, § 88-203; 1941 Comp., § 25-822; 1953 Comp., § 22-8-22.

42-4-23. [Working mine pending suit; waste.]

That nothing in the two preceding sections [42-4-21, 42-4-22 NMSA 1978] shall prohibit the working and development of a mine or mining claim by either party in interest who may be in possession of the mine or claim during the pendency of the suit, nor prohibit anyone from bringing an action for damages, or a suit in equity to prevent waste.

History: Laws 1887, ch. 54, § 3; C.L. 1897, § 2292; Code 1915, § 3466; C.S. 1929, § 88-204; 1941 Comp., § 25-823; 1953 Comp., § 22-8-23.

42-4-24. [Assessment work pending suit; retention of ore.]

Hereafter in any suit or action pending in any of the courts of this state, involving the right to the possession or title of any lode or placer mining claim located under the mining laws, and upon which it is necessary to do the annual assessment work to prevent the same from becoming forfeited and subject to relocation, the party or parties to any such suit out of possession, upon petition to the court in which suit or action is pending, showing that such annual assessment work has not been done on or before the first day of November in the year during which such work is required to be done, shall be entitled to an order as of course in such suit or action, permitting such party or parties to enter in and upon such mine or mining claims, with their agents and laborers, and to do and perform such annual assessment work to prevent the said mining claim or claims from becoming subject to relocation: provided, that in the doing of such work, no ore shall be removed from the boundaries of such mining claim.

History: Laws 1905, ch. 83, § 1; Code 1915, § 3455; C.S. 1929, § 88-111; 1941 Comp., § 25-824; 1953 Comp., § 22-8-24.

42-4-25. [Effect of performing assessment work pending suit.]

Upon the doing of any assessment work, as provided in Section 42-4-24 NMSA 1978, the said mining claim or claims shall not be subject to relocation for failure to do the annual assessment work, as against any of the parties to such suit or action.

History: Laws 1905, ch. 83, § 2; Code 1915, § 3456; C.S. 1929, § 88-112; 1941 Comp., § 25-825; 1953 Comp., § 22-8-25.

42-4-26. [Measurements and surveys of mine pending suit; authorization; expenses.]

In all actions at law, or suits in equity, in any of the district courts of this state, wherein the title or right of possession to any mining claim, or ores and minerals is in dispute, any party to such action or suit shall have the right to go upon or enter the workings of said mining claim for the purpose of measuring or surveying the same, either upon the surface or in the workings thereof, peaceably, and without molestation; the costs and expenses of such measurement or survey to be paid by the party for whose use and benefit the same was done.

History: Laws 1887, ch. 55, § 1; C.L. 1897, § 2293; Code 1915, § 3467; C.S. 1929, § 88-205; 1941 Comp., § 25-826; 1953 Comp., § 22-8-26.

42-4-27. [Who may enter for measurements and surveys.]

The right to go upon and enter said mining claim shall be extended to the party applying therefor, as well as a surveyor and two chain carriers.

History: Laws 1887, ch. 55, § 2; C.L. 1897, § 2294; Code 1915, § 3468; C.S. 1929, § 88-206; 1941 Comp., § 25-827; 1953 Comp., § 22-8-27.

42-4-28. [Notice of desire to enter mine.]

Before any person may enter upon or go into the workings of such mine without the consent of the person or corporation in possession, he shall give not less than five days' notice in writing to such person in possession, or to his agent or manager, and if the possession is held by a corporation, said notice shall be served upon the president, agent or manager of such corporation, or upon the foreman in charge of the mine, that at a certain date, specified in said notice, he desires to enter upon or go into the workings of said mine, as the case may be, for the purpose of surveying and taking a measurement of the same, in order that he may be able to present the facts on the trial.

History: Laws 1887, ch. 55, § 3; C.L. 1897, § 2295; Code 1915, § 3469; C.S. 1929, § 88-207; 1941 Comp., § 25-828; 1953 Comp., § 22-8-28.

42-4-29. [Refusing entry; court may exclude evidence, render judgment or assist entry; costs.]

If such person or corporation shall not permit any party in interest in such suit or action, to go upon or enter said mine, as contemplated in the preceding sections [42-4-26, 42-4-27, 42-4-28 NMSA 1978], after having been notified in the manner designated, the court may, upon proper showing, verified by affidavit, or otherwise, exclude all evidence offered on the trial by the party so refusing, or render judgment or decree in favor of the party giving such notice: provided, that the court may, in its discretion, make an order directing the sheriff to go upon the ground with the party applying for the measurement and survey of such mine, and place the person so applying in possession, for the purpose of measuring and surveying the same, in which case the court may direct the payment of costs as may be just and proper.

History: Laws 1887, ch. 55, § 4; C.L. 1897, § 2296; Code 1915, § 3470; C.S. 1929, § 88-208; 1941 Comp., § 25-829; 1953 Comp., § 22-8-29.

42-4-30. [Evidence of measures and surveys.]

The competency, relevancy and effect of such survey and measurement, as evidence, shall be governed by the ordinary rules of evidence in civil cases.

History: Laws 1887, ch. 55, § 5; C.L. 1897, § 2297; Code 1915, § 3471; C.S. 1929, § 88-209; 1941 Comp., § 25-830; 1953 Comp., § 22-8-30.

ARTICLE 5
Partition

42-5-1. [Complaint; prayer.]

When any lands, tenements or hereditaments shall be owned in joint tenancy, tenancy in common or coparcenary, whether the right or title be derived by donation, grant, purchase, devise or descent, it shall be lawful for any one or more persons interested, whether they be in possession or not, to present to the district court their complaint in chancery, praying for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition cannot be made without great prejudice to the owners.

History: C.L. 1897, § 2685 (266), added by Laws 1907, ch. 107, § 1 (266); Code 1915, § 4379; C.S. 1929, § 105-1901; 1941 Comp., § 25-1201; 1953 Comp., § 22-13-1.

42-5-2. [Parties to action.]

Every person having an interest in the premises, whether having possession or otherwise, or whether such interest be based upon the common source of title or otherwise, shall be made a party to such complaint, and in cases where one or more of such parties shall be unknown, or the share or quantity or interest of any of the parties is unknown to the plaintiff, or when such shares or interest shall be uncertain or contingent, or when there may be any other impediment, so that such parties cannot be named, the same shall be so stated in the complaint.

History: C.L. 1897, § 2685 (267), added by Laws 1907, ch. 107, § 1 (267); Code 1915, § 4380; C.S. 1929, § 105-1902; 1941 Comp., § 25-1202; 1953 Comp., § 22-13-2.

42-5-3. [Unknown persons made parties.]

All persons interested in the lands, tenements or hereditaments of which partition is sought to be made, whose names are unknown, may be made parties to such partition by the name and description of unknown owners or proprietors of the premises, or as unknown heirs of any persons who may have been interested in the same.

History: C.L. 1897, § 2685 (268), added by Laws 1907, ch. 107, § 1 (268); Code 1915, § 4381; C.S. 1929, § 105-1903; 1941 Comp., § 25-1203; 1953 Comp., § 22-13-3.

42-5-4. [Intervention.]

During the pendency of such suit or proceeding any person claiming to be interested in the premises may appear and answer the complaint and assert his right by way of intervention, whether such interest be derived or claimed under the common source of title or otherwise, and the court shall decide upon their [his] rights as though they [he] had been made parties [a party] in the first instance.

History: C.L. 1897, § 2685 (269), added by Laws 1907, ch. 107, § 1 (269); Code 1915, § 4382; C.S. 1929, § 105-1904; 1941 Comp., § 25-1204; 1953 Comp., § 22-13-4.

42-5-5. [Decree; binding effect.]

The court shall ascertain and declare the rights, titles and interests of all the parties to such proceedings and render such decree as may be required by the rights of the said parties, which said decree shall be binding upon all of the said parties, whether they be adults or not.

History: C.L. 1897, § 2685 (270), added by Laws 1907, ch. 107, § 1 (270); Code 1915, § 4383; C.S. 1929, § 105-1905; 1941 Comp., § 25-1205; 1953 Comp., § 22-13-5.

42-5-6. [Commissioners; appointment; qualifications; oath; partition of land; report.]

The court, when it shall decree a partition of any premises, shall appoint three commissioners not connected with any of the parties either by consanguinity or affinity and entirely disinterested; each of whom shall take an oath before some person authorized to administer the same, fairly and impartially to make partition of the said premises in accordance with the decree of the court as to the rights and interests of the parties, if the same can be done consistently with the interests of the estate, and the said commissioners shall go upon the premises and make partition of said lands, tenements and hereditaments, assigning to each party his share by metes and bounds, and shall make report in writing, under their hands, to the court, with all convenient speed, or within the time which may be prescribed by the court, and the court may upon the coming in and filing of such report make all such orders thereon as may be necessary to a final disposition of the case.

History: C.L. 1897, § 2685 (271), added by Laws 1907, ch. 107, § 1 (271); Code 1915, § 4384; C.S. 1929, § 105-1906; 1941 Comp., § 25-1206; 1953 Comp., § 22-13-6.

42-5-7. Finding that property cannot be partitioned; appraisal; report of commissioners; contest of report; hearing; sale.

A. Should the commissioners be of the opinion that the real estate is so circumstanced that a partition thereof cannot be made without manifest prejudice to the owners or proprietors of the same, they shall proceed to appraise the real estate at its cash value at the time, deducting the amount of all liens and encumbrances against such real estate, and the commissioners shall so report to the court and file with their said report a written appraisal. Any party to the action who shall have been adjudged by the court to have an interest in the real estate appraised, may within ten days from the date of filing of said report and appraisal contest said report or said appraisal, and for such purpose shall file in the cause an affidavit setting forth wherein said report, appraisal or both is incorrect; provided, that the affidavit shall put in issue only the value

of the real estate as shown by the appraisal and the question as to whether or not the real estate is so circumstanced that a partition hereof cannot be had without manifest prejudice to the owners or proprietors thereof, and the court shall hear proof touching the matters set forth in the affidavit, and if the report or the appraisal shall be found by the court to be incorrect, the court shall determine the value of the real estate and whether or not the real estate can be divided without manifest prejudice to the owners or proprietors thereof. If the report or appraisal shall be found by the court to be correct the same shall be confirmed by the court. In the event the report of the commissioners shall not be contested within the time above provided, or in the event the report of the commissioners shall be confirmed by the court, the court, in its discretion, may order the premises to be sold at public or private sale, providing in the order for reasonable public notice of such sale on such terms and conditions as it may prescribe; provided, that if the court does not order such sale to be made for cash, a cash payment of not less than one-quarter of the purchase money shall be required by the court, to be made to the person or persons, who shall be appointed by the court to make such sale, by the purchaser of such land at the time of such sale, the balance of such purchase price to be paid and secured in such manner as the court shall direct. If sale is made at private sale, same shall be made for not less than its full value as determined as aforesaid. If the value determined as aforesaid shall be less than ten thousand dollars ($10,000) the court shall authorize sale of the property at a public sale to the highest and best bidder thereat. If such value determined as aforesaid shall be ten thousand dollars ($10,000) or more, public sale of said property shall not be made for less than two-thirds of its value as so determined and fixed. Any sale hereunder shall be subject to any and all liens deducted as provided herein in making the appraisal.

B. The person or persons who shall be appointed by the court to make sale of said real estate shall make and execute good and sufficient conveyance or conveyances to the purchaser or purchasers thereof which shall operate as an effectual bar both in law and equity against such owners and proprietors, parties to the proceedings, and all persons claiming [under] them; and the person or persons making such sale shall report their proceedings to the court and shall pay over the moneys arising therefrom to the parties entitled to receive the same under the direction of the court.

History: C.L. 1897, § 2685 (272), added by Laws 1907, ch. 107, § 1 (272); Code 1915, § 4385; C.S. 1929, § 105-1907; Laws 1939, ch. 170, § 1; 1941 Comp., § 25-1207; 1953 Comp., § 22-13-7; Laws 1959, ch. 164, § 1.

42-5-8. Allocation of costs of partition; definition.

A. In the event partition of the cotenancy is made by the commissioners appointed, the costs of partition shall by the court be apportioned among all the cotenants, and the proportion of the costs assessed against each cotenant shall be a lien upon the share of the cotenancy assigned by the commissioners to the cotenant. If partition cannot be made without manifest prejudice to the cotenants and sale of the estate is ordered, the costs of the action shall be apportioned among all the cotenants, and the proportion of

the costs assessed against each cotenant shall by the court be deducted and withheld from the distributive share of the proceeds of the sale assigned to the cotenant.

B. As used in this section "costs" includes expenses incurred by commissioners, expenses incurred by agents or masters appointed by the court to conduct a sale, costs of survey and other costs incurred in physical partition or in sale which to the court seem just and proper.

C. The reasonable attorney fees of a party to an action for partition of a cotenancy may be awarded in the court's discretion, as it may deem just and equitable.

History: 1953 Comp., § 22-13-7.1, enacted by Laws 1965, ch. 31, § 1.

42-5-9. [Death of party does not abate suit.]

No suit for a partition shall abate by the death of any tenant, but upon the death of any tenant being a party to said suit, the heirs or devisees of the said tenant may on motion be made parties in his stead.

History: C.L. 1897, § 2685 (272A), added by Laws 1907, ch. 107, § 1 (272A); Code 1915, § 4386; C.S. 1929, § 105-1908; 1941 Comp., § 25-1208; 1953 Comp., § 22-13-8.

ARTICLE 5A
Uniform Partition of Heirs Property

42-5A-1. Short title.

Sections 1 through 13 of this act [42-5A-1 to 42-5A-13 NMSA 1978] may be cited as the "Uniform Partition of Heirs Property Act".

History: Laws 2017, ch. 41, § 1.

42-5A-2. Definitions.

As used in the Uniform Partition of Heirs Property Act:

A. "ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual;

B. "collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant;

C. "descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual;

D. "determination of value" means a court order determining the fair market value of heirs property under Section 6 [42-5A-6 NMSA 1978] or 10 [42-5A-10 NMSA 1978] of the Uniform Partition of Heirs Property Act or adopting the valuation of the property agreed to by all cotenants;

E. "heirs property" means real property held in tenancy in common, but does not include undivided mineral interests, and that satisfies all of the following requirements as of the filing of a partition action:

(1) there is no agreement in a record binding all the cotenants that governs the partition of the property;

(2) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(3) any of the following applies:

(a) twenty percent or more of the interests are held by cotenants who are relatives;

(b) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(c) twenty percent or more of the cotenants are relatives;

F. "partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed bids or open-market sale, conducted under Section 10 of the Uniform Partition of Heirs Property Act;

G. "partition in kind" means the division of heirs property into physically distinct and separately titled parcels;

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

I. "relative" means an ascendant, descendant or collateral or an individual otherwise related to another individual by blood, marriage, adoption or law of this state other than the Uniform Partition of Heirs Property Act.

History: Laws 2017, ch. 41, § 2.

42-5A-3. Applicability; relation to other law.

A. The Uniform Partition of Heirs Property Act applies to partition actions filed on or after July 1, 2017.

B. In an action to partition real property under Chapter 42, Article 5 NMSA 1978, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned under the Uniform Partition of Heirs Property Act unless all of the cotenants otherwise agree in a record.

C. The Uniform Partition of Heirs Property Act supplements Chapter 42, Article 5 NMSA 1978 and, if an action is governed by the Uniform Partition of Heirs Property Act, replaces provisions of Chapter 42, Article 5 NMSA 1978 that are inconsistent with the Uniform Partition of Heirs Property Act.

History: Laws 2017, ch. 41, § 3.

42-5A-4. Service; notice by posting.

A. The Uniform Partition of Heirs Property Act does not limit or affect the method by which service of a complaint in a partition action may be made.

B. If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than ten days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

History: Laws 2017, ch. 41, § 4.

42-5A-5. Commissioners.

If the court appoints commissioners pursuant to Section 42-5-6 NMSA 1978, each commissioner, in addition to the requirements and disqualifications applicable to commissioners in Section 42-5-6 NMSA 1978, shall be disinterested and impartial and not a party to or a participant in the action.

History: Laws 2017, ch. 41, § 5.

42-5A-6. Determination of value.

A. Except as otherwise provided in Subsections B and C of this section, if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to Subsection D of this section.

B. If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

C. If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

D. If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

E. If an appraisal is conducted pursuant to Subsection D of this section, not later than ten days after the appraisal is filed, the court shall send notice to each party with a known address stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal not later than thirty days after the notice is sent, stating the grounds for the objection.

F. If an appraisal is filed with the court pursuant to Subsection D of this section, the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty days after a copy of the notice of the appraisal is sent to each party under Subsection E of this section, whether or not an objection to the appraisal is filed under Paragraph (3) of Subsection E of this section. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

G. After a hearing under Subsection F of this section, but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

History: Laws 2017, ch. 41, § 6.

42-5A-7. Cotenant buyout.

A. If any cotenant requests partition by sale, after the determination of value under Section 6 [42-5A-6 NMSA 1978] of the Uniform Partition of Heirs Property Act, the court shall send notice to the parties that any cotenant except a cotenant that requests partition by sale may buy all the interests of the cotenants that request partition by sale.

B. Not later than forty-five days after the notice is sent under Subsection A of this section, any cotenant except a cotenant that requests partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that request partition by sale.

C. The purchase price for each of the interests of a cotenant that requests partition by sale is the value of the entire parcel determined under Section 6 of the Uniform Partition of Heirs Property Act multiplied by the cotenant's fractional ownership of the entire parcel.

D. After expiration of the period in Subsection B of this section, the following rules apply:

(1) if only one cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall notify all the parties of that fact;

(2) if more than one cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant; and

(3) if no cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under Subsections A and B of Section 8 [42-5A-8 NMSA 1978] of the Uniform Partition of Heirs Property Act.

E. If the court sends notice to the parties under Paragraph (1) or (2) of Subsection D of this section, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which electing cotenants shall pay their apportioned price into the court. After this date, the following rules apply:

(1) if all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them;

(2) if no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Subsections A and B of Section 8 of the Uniform Partition of Heirs Property Act as if the interests of the cotenants that requested partition by sale were not purchased; and

(3) if one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

F. Not later than twenty days after the court gives notice pursuant to Paragraph (3) of Subsection E of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the twenty-day period, the following rules apply:

(1) if only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them;

(2) if no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Subsections A and B of Section 8 of the Uniform Partition of Heirs Property Act as if the interests of the cotenants that requested partition by sale were not purchased; and

(3) if more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them and promptly refund any excess payment held by the court.

G. Not later than forty-five days after the court sends notice to the parties pursuant to Subsection A of this section, any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

H. If the court receives a timely request under Subsection G of this section, the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under Subsections A through F of this section have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 6 of the Uniform Partition of Heirs Property Act.

History: Laws 2017, ch. 41, § 7.

42-5A-8. Partition alternatives.

A. If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 7 [42-5A-7 NMSA 1978] of the Uniform Partition of Heirs Property Act or if, after conclusion of the buyout under that section, a cotenant remains that has requested partition in kind, the court shall order

partition in kind unless the court, after consideration of the factors listed in Section 9 [42-5A-9 NMSA 1978] of the Uniform Partition of Heirs Property Act, finds that partition in kind will result in manifest prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

B. If the court does not order partition in kind under Subsection A of this section, the court shall order partition by sale pursuant to Section 10 [42-5A-10 NMSA 1978] of the Uniform Partition of Heirs Property Act, or if no cotenant requested partition by sale, the court shall dismiss the action.

C. If the court orders partition in kind pursuant to Subsection A of this section, the court may require that one or more cotenants pay one or more other cotenants' amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

D. If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable or the subject of a default judgment, if their interests were not bought out pursuant to Section 7 of the Uniform Partition of Heirs Property Act, a part of the property representing the combined interests of these cotenants as determined by the court.

History: Laws 2017, ch. 41, § 8.

42-5A-9. Considerations for partition in kind.

A. In determining under Subsection A of Section 8 [42-5A-8 NMSA 1978] of the Uniform Partition of Heirs Property Act whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

(1) whether the heirs property practicably can be divided among the cotenants, including whether portions of the property once divided would be of sufficient size, and have adequate access and legal rights, to serve intended uses;

(2) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance or upkeep of the property; and

(7) any other relevant factor.

B. The court shall not consider any one factor in Subsection A of this section to be dispositive without weighing the totality of all relevant factors and circumstances.

C. The court shall not partition property in a manner that would result in subdivision of the property that would not otherwise be allowable under valid covenants and restrictions or applicable law.

History: Laws 2017, ch. 41, § 9.

42-5A-10. Open-market sale, sealed bids or auction.

A. If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

B. If the court orders an open-market sale and the parties, not later than ten days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

C. If the broker appointed under Subsection B of this section obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) the broker shall comply with the reporting requirements in Section 11 [42-5A-11 NMSA 1978] of the Uniform Partition of Heirs Property Act; and

(2) the sale may be completed in accordance with state law other than the Uniform Partition of Heirs Property Act.

D. If the broker appointed under Subsection B of this section does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(1) approve the highest outstanding offer, if any;

(2) redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) order that the property be sold by sealed bids or at an auction.

E. If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under Chapter 42, Article 5 NMSA 1978.

F. If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

History: Laws 2017, ch. 41, § 10.

42-5A-11. Report of open-market sale.

A. Unless required to do so within a shorter time by Chapter 42, Article 5 NMSA 1978, a broker appointed under Subsection B of Section 10 [42-5A-10 NMSA 1978] of the Uniform Partition of Heirs Property Act to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under Section 6 [42-5A-6 NMSA 1978] or 10 of the Uniform Partition of Heirs Property Act.

B. The report required by Subsection A of this section shall contain the following information:

(1) a description of the property to be sold to each buyer;

(2) the name of each buyer;

(3) the proposed purchase price;

(4) the terms and conditions of the proposed sale, including the terms of any owner financing;

(5) the amounts to be paid to lienholders;

(6) a statement of contractual or other arrangements or conditions of the broker's commission; and

(7) other material facts relevant to the sale.

History: Laws 2017, ch. 41, § 11.

42-5A-12. Uniformity of application and construction.

In applying and construing the Uniform Partition of Heirs Property Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2017, ch. 41, § 12.

42-5A-13. Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Partition of Heirs Property Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: Laws 2017, ch. 41, § 13.

ARTICLE 6
Quieting Title

42-6-1. By and against whom action may be brought; several tracts may be included in one action.

An action to determine and quiet the title of real property may be brought by anyone having or claiming an interest therein, or by the holder of any mortgage, mortgage deed, trust deed or any other written instrument which may operate as a mortgage, in an action brought to foreclose the said mortgage, mortgage deed, trust deed or such other written instrument, whether in or out of possession of the same, against any person or persons, claiming title thereto, or parcel or portion thereof, or lien thereon, whether such lien be a mortgage or otherwise. Any number of tracts of land may be embraced in the same action, whether claimed by different persons or not; and in instances where a tract of land title to which is sought to be quieted lies within more than one county such action may be brought in any county in which part of said tract lies. Title may be quieted against the owner or holder of any mortgage, claim of lien or other encumbrance, where the owner or holder of such mortgage, lien or encumbrance has permitted same to

become barred by statute of limitations, and where the record or documentary evidence reflects that the required time to bar such mortgage or other lien has elapsed, the same shall constitute prima facie evidence that the debt or obligation and lien securing same is barred, and the owner or holder of such mortgage, lien or claim shall be estopped from asserting any rights thereunder in such suit.

History: C.L. 1897, § 2685 (273), added by Laws 1907, ch. 107, § 1 (273); Code 1915, § 4387; Laws 1925, ch. 21, § 1; 1927, ch. 109, § 1; C.S. 1929, § 105-2001; Laws 1937, ch. 174, § 1; 1941 Comp., § 25-1301; Laws 1945, ch. 34, § 1; 1951, ch. 96, § 1; 1953 Comp., § 22-14-1.

42-6-2. Complaint; parties; unknown claimants.

The plaintiff must file his complaint in the district court, setting forth the nature and extent of his estate and describing the premises as accurately as may be, and averring that he is credibly informed and believes that the defendant makes some claim adverse to the estate of the plaintiff, and praying for the establishment of the plaintiff's estate against such adverse claims, and that the defendant be barred and forever estopped from having or claiming any lien upon or any right or title to the premises, adverse to the plaintiff, and that plaintiff's title thereto be forever quieted and set at rest. Any or all persons whom the plaintiff alleges in his complaint he is informed and believes make claim adverse to the estate of the plaintiff, the unknown heirs of any deceased person whom plaintiff alleges in his complaint in his lifetime made claim adverse to the estate of the plaintiff, and all unknown persons claiming any lien, interest or title adverse to plaintiff, may be made parties defendant to said complaint by their names, as near as the same can be ascertained, such unknown heirs by the style of unknown heirs of such deceased person, and said unknown persons who may claim any lien, interest or title adverse to the plaintiff, by the name and style of unknown claimants of interest in the premises adverse to the plaintiff. When the plaintiff shall allege generally in his complaint that he has made due search and inquiry to ascertain whether any person whom he desires to name as party defendant in said cause is living or dead and is unable to ascertain with certainty whether such person is living or dead, such person and his unknown heirs may be made parties defendant to said complaint under the name and style of "(name of the party), if living, if deceased, the unknown heirs of (name of the party), deceased." Service of process and notice of said suit against all of such defendants shall be made as in other cases in conformity with the provisions of law and rules of court relating to the service of process.

History: Trial Court Rule 105-2002; 1941 Comp., § 25-1302; 1953 Comp., § 22-14-2; Laws 1973, ch. 199, § 1; 1977, ch. 150, § 1.

42-6-3. [Numerous claimants; suit by committee.]

Whenever any number of persons, more than ten, hold or claim the title to any tract of land as tenants in common, coclaimants, joint tenants or coparceners holding and claiming such land by adverse possession or otherwise they may elect or appoint a

committee from their number who shall be authorized to commence and maintain an action in the name of such committee for the benefit and to the use of the whole number of such persons against any person or persons claiming an adverse estate or interest therein for the purpose of determining such adverse claim or of establishing their title, or of removing a cloud upon the same.

History: Laws 1907, ch. 76, § 2; Code 1915, § 4389; C.S. 1929, § 105-2003; 1941 Comp., § 25-1303; 1953 Comp., § 22-14-3.

42-6-4. [Committee may make contracts; binding effect.]

The committee so appointed may make and execute all contracts which they deem necessary or requisite for the commencement and prosecution of said action and the same shall be binding upon all the persons who participate in the selection or appointment of said committee.

History: Laws 1907, ch. 76, § 3; Code 1915, § 4390; C.S. 1929, § 105-2004; 1941 Comp., § 25-1304; 1953 Comp., § 22-14-4.

42-6-5. [Manner of appointment of committee; effect of appointment; persons not appointing committee made defendants; unknown claimants.]

The appointment of such committee may be by an instrument or instruments in writing, executed by the persons so holding or claiming such title and acknowledged as provided by law for acknowledgment of other interests affecting the title to real estate in this state, which instrument or instruments or certified copies thereof shall be filed at the time of commencement of such action in the office of the clerk of the district court of the district in which such tract of land is situate and the decree rendered therein shall recite the names of all such persons so participating in the selection of said committee and shall be binding upon all such persons as an adjudication of their interests in the tract of land involved. All persons claiming any interest or estate in such tract of land as tenants in common or otherwise who do not participate in the selection of such committee, and all unknown claimants thereto may be made parties defendant to such action and process may be served upon them as in other civil actions.

History: Laws 1907, ch. 76, § 4; Code 1915, § 4391; C.S. 1929, § 105-2005; 1941 Comp., § 25-1305; 1953 Comp., § 22-14-5.

42-6-6. [Joinder of parties plaintiff.]

Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners or in severalty, may unite in an action against any person or persons claiming an adverse

estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title or of removing a cloud upon the same.

History: Laws 1907, ch. 76, § 5; Code 1915, § 4392; C.S. 1929, § 105-2006; 1941 Comp., § 25-1306; 1953 Comp., § 22-14-6.

42-6-7. [Disclaimer; costs; default.]

If the defendant, or any of them, shall appear and disclaim all right and title adverse to the plaintiff, he shall recover his costs, and in all other cases the costs shall be in the discretion of the court. If the defendant or any one of them fails to appear and answer, the court may render decree against such defendant so failing to appear in accordance with the prayer of the bill of complaint, or such other decree in the premises as to the court shall appear meet and proper.

History: C.L. 1897, § 2685 (275), added by Laws 1907, ch. 107, § 1 (275); Code 1915, § 4393; C.S. 1929, § 105-2007; 1941 Comp., § 25-1307; 1953 Comp., § 22-14-7.

42-6-8. [Mines deemed real estate.]

For the purposes of this article and for all other purposes, mines shall be deemed and taken to be real estate.

History: C.L. 1897, § 2685 (277), added by Laws 1907, ch. 107, § 1 (277); Code 1915, § 4395; C.S. 1929, § 105-2009; 1941 Comp., § 25-1308; 1953 Comp., § 22-14-8.

42-6-9. [Equitable procedure.]

The action contemplated by this article shall be conducted as other actions, by equitable proceedings under the rules of chancery.

History: C.L. 1897, § 2685 (276), added by Laws 1907, ch. 107, § 1 (276); Code 1915, § 4394; C.S. 1929, § 105-2008; 1941 Comp., § 25-1309; 1953 Comp., § 22-14-9.

42-6-10. [Attorneys' fees payable in land; suit by attorney; intervention in other actions; partition.]

Whenever any attorney-at-law performs any legal services for the plaintiff, at the request or instance of any person interested in lands or land claims, or any part thereof, in any court which may be held in this state, either federal or state, for the purpose of confirming, quieting or establishing the title of any tract of land and it shall be agreed or it has been agreed, between such attorney and such person so interested, that such attorney shall represent the plaintiff and receive for such services any part or portion of such land, such attorney may directly institute suit against all the owners of such tract of land, known or unknown, to establish his right and title in him under said agreement to

the part or portion of such land agreed to be paid to him for his services; or he may in any suit brought to quiet the title to such tract of land or any part thereof, thereafter, or to partition the same, or both, intervene and set up his claim therein for the part of such land so agreed to be paid him for his services, and it shall be the duty of the court in all such cases to decide in such suit or intervention, and if it be found that there was such an agreement, made by such person owning or interested in such lands, or any part thereof, and acting in whole or in part for the plaintiff or any of them, and also that the services were worth, according to the usual charges in this state for such service, at the time they were rendered, or agreed to be rendered, the amount so agreed to be paid for the same to adjudge or decree the amount so agreed to be paid for such services out of the lands involved in the suit or proceedings, as his property. And the same may be partitioned or set apart to him, in any partition suit then pending, or which may thereafter be pending; or if the court should find that the amount so agreed to be paid exceeds the value of the services in this state at the time they were rendered or contracted for, then the court shall allow or adjudge or decree to such attorney an amount of such land as compensation for his services as will be reasonable as aforesaid.

History: Laws 1909, ch. 120, § 5; Code 1915, § 4396; C.S. 1929, § 105-2010; 1941 Comp., § 25-1310; 1953 Comp., § 22-14-10.

42-6-11. [Joint owners; share in expenses of suit; lien on property of co-owners; interest; no exemption.]

Whenever any joint owner of real estate, whether claimed by private land grant or otherwise, shall bring suit to establish the title thereto in any court for the benefit of himself and other owners of such real estate, and such suit shall be favorably determined, then in that case the just and reasonable expenses incurred in the prosecution of such suits, including reasonable attorney's fees, actually expended by him, shall be and remain a charge against the real property so affected of such co-owners, with lien in proportion to the several amounts of land claimed by each, and such proportionate charge shall be collected, with interest at the rate of twelve percent per annum additional, as a charge or lien upon the real property of such co-owners which was beneficially affected by such suit, and none of such real estate so beneficially affected shall be exempt from said charge or lien by virtue of any execution or forced sale exemption law in force in this state.

History: Laws 1893, ch. 37, § 1; C.L. 1897, § 2186; Code 1915, § 4397; C.S. 1929, § 105-2011; 1941 Comp., § 25-1311; 1953 Comp., § 22-14-11.

42-6-12. [Consent of state in quiet title and foreclosure suits.]

Upon the conditions herein prescribed for the protection of the state of New Mexico, the consent of the state is given to be named a party in any suit which is now pending or which may hereafter be brought in any court of competent jurisdiction of the state to quiet title to or for the foreclosure of a mortgage or other lien upon real estate or

personal property, for the purpose of securing an adjudication touching any mortgage or other lien the state may have or claim on the premises or personal property involved.

History: 1941 Comp., § 25-1312, enacted by Laws 1947, ch. 150, § 1; 1953 Comp., § 22-14-12.

42-6-13. Method of service on state; answer.

Service upon the state shall be made by serving the process of the court, with a copy of the complaint, upon the attorney general of the state and the state agency involved in the action. The complaint shall set forth with particularity the nature of the interest or lien of the state on the property. The attorney general and the state agency shall have thirty days after service as above provided, or such further time as the court may allow, within which to serve an answer or other pleading.

History: 1941 Comp., § 25-1313, enacted by Laws 1947, ch. 150, § 2; 1953 Comp., § 22-14-13; Laws 1969, ch. 111, § 1; 1970, ch. 24, § 1.

42-6-14. Judicial sale; alternative remedies.

A. Except as provided in Subsection B or C of this section, a judicial sale made in pursuance of a judgment in a suit in which the state is a party, to quiet title to or to foreclose a mortgage or other lien upon real estate or personal property, shall have the same effect respecting the discharge of the property from liens and encumbrances held by the state as may be provided with respect to such matters by law as to all other persons.

B. A sale to satisfy a lien inferior to one of the state shall be made subject to and without disturbing the lien of the state, unless the state consents that the property may be sold free of its mortgage or lien and the proceeds divided as the parties may be entitled.

C. Where a sale of real estate is made to satisfy a lien prior to that of the state, the state shall have one month from the date of sale within which to redeem, but the district court, upon a showing of good cause that redemption will be effected, may increase the redemption period to not more than nine months.

D. In any case where the debt owing the state is due, the state may ask, by way of affirmative relief, for the foreclosure of its own lien or mortgage.

E. In any case where property is sold to satisfy a first mortgage or first lien held by the state, the state may bid at the sale a sum not exceeding the amount of its claim with expenses of sale, as may be directed by the head of the agency of the state that has charge of the administration of the laws in respect of which the claim of the state arises.

History: 1941 Comp., § 25-1314, enacted by Laws 1947, ch. 150, § 3; 1953 Comp., § 22-14-14; 2011, ch. 171, § 1.

42-6-15. [Release of lien held by state.]

If any person shall have a lien upon any real or personal property, duly filed of record in the county in which the property is located and a junior lien (other than a lien for any tax) in favor of the state attaches to such property, such person may make a written request to the officer of the state charged with the administration of the laws in respect of which the lien of the state arises, to have the same extinguished. If, after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to satisfy, in whole or in part, the lien of the state, or that the claim of the state has been satisfied, or by lapse of time or otherwise, has become unenforceable, such officer shall so report to the attorney general, who thereupon may issue a certificate of release which shall operate to release the property from such lien.

History: 1941 Comp., § 25-1315, enacted by Laws 1947, ch. 150, § 4; 1953 Comp., § 22-14-15.

42-6-16. [State exempt from payment of costs or money judgment.]

No judgment for costs or other money judgment shall be rendered against the state in any suit or proceeding which may be instituted under the provisions of this act [42-6-12 to 42-6-16 NMSA 1978]. Nor shall the state be or become liable for the payment of the costs of any such suit or proceeding or any part thereof.

History: 1941 Comp., § 25-1316, enacted by Laws 1947, ch. 150, § 5; 1953 Comp., § 22-14-16.

42-6-17. Effect of decree against state.

A decree quieting title against the state is effective only against a claim, interest or lien of the state that has been set forth in the pleading served upon the state with sufficient factual detail to give the state reasonable notice of the basis of the claim, interest or lien sought to be quieted; provided, however, that service of a copy of the complaint on the state tax commission [property tax division of the taxation and revenue department], identifying the land, and setting out all delinquent taxes shown on the county tax rolls, pertaining to such land, shall be deemed sufficient notice to the state of all claims of the state arising out of delinquent ad valorem taxes or unrecorded instruments of title and any decree quieting title against the state shall be effective to cut off any claim arising from such unrecorded instrument of title or claim for unpaid taxes.

History: 1953 Comp., § 22-14-17, enacted by Laws 1965, ch. 176, § 1; 1969, ch. 111, § 2.

ARTICLE 7
Specific Performance

42-7-1. [Contracts for sale of real estate; venue of action.]

An action to compel the specific performance of a contract of sale of real estate may be brought in the county where the defendants or any of them reside; but if any of the defendants are nonresidents of the state, it shall be brought in the county where the real estate or some part thereof is situated.

History: Laws 1933, ch. 9, § 1; 1941 Comp., § 25-1601; 1953 Comp., § 22-18-1.

42-7-2. [Service by publication.]

Service by publication may be had in all actions brought under Section 1 [42-7-1 NMSA 1978] of this act when it is made to appear by affidavit that any defendant is a nonresident of the state.

History: Laws 1933, ch. 9, § 2; 1941 Comp., § 25-1602; 1953 Comp., § 22-18-2.

42-7-3. [Affidavit for service by publication.]

Before service can be made by publication an affidavit must be filed in the action showing the cause to be one for the specific performance of a contract for the sale of real estate, and that the defendant to be served with process is a nonresident of the state, and it being shown to the satisfaction of the court that the defendant is in fact a nonresident, the court shall order service by publication.

History: Laws 1933, ch. 9, § 3; 1941 Comp., § 25-1603; 1953 Comp., § 22-18-3.

42-7-4. [Effect of decree; compelling conveyance.]

Whenever in an action under the provisions of this act [42-7-1 to 42-7-4 NMSA 1978] a decree of specific performance is made it shall act upon the land itself and the court may compel a conveyance of the real estate by attachment or appoint a commission to make the conveyance.

History: Laws 1933, ch. 9, § 4; 1941 Comp., § 25-1604; 1953 Comp., § 22-18-4.

ARTICLE 8
Replevin

42-8-1. [Right of action; purpose of remedy.]

Any person having a right to the immediate possession of any goods or chattels, wrongfully taken or wrongfully detained, may bring an action of replevin for the recovery thereof and for damages sustained by reason of the unjust caption or detention thereof.

History: C.L. 1897, § 2685 (228), added by Laws 1907, ch. 107, § 1 (228); Code 1915, § 4340; C.S. 1929, § 105-1701; 1941 Comp., § 25-1501; 1953 Comp., § 22-17-1.

42-8-2. [Cross-replevin; property in hands of officer.]

No cross-replevin or replevin for property in the hands of an officer shall be brought, except as herein provided.

History: C.L. 1897, § 2685 (229), added by Laws 1907, ch. 107, § 1 (229); Code 1915, § 4341; C.S. 1929, § 105-1702; 1941 Comp., § 25-1502; 1953 Comp., § 22-17-2.

42-8-3. [Replevin against officer; authorization; additional affidavit; third party may intervene and give forthcoming bond.]

Whenever the property, goods or chattels of any person not a party to the record are wrongfully seized by any officer under or by virtue of any writ of execution, mesne or other process from any court, except under a writ of replevin, such person or persons may maintain a suit in replevin for the possession of the same against such officer, by proceeding in the usual manner as now provided by law for bringing suits in replevin and making an additional affidavit that such goods and chattels have not been seized under any process, execution or attachment against the property of the plaintiff, and that the defendant or defendants in the original process by virtue of which the same were so wrongfully seized by the officer have no interest, right or title and had no interest, right or title in the said chattels at the time of such wrongful seizure and that said plaintiff is entitled to the possession thereof or is the owner of the same: provided, that in any action of replevin, any third person claiming an interest in property replevied or the right to the possession of the same may intervene in such suit as in other suits of intervention, and; provided, further, that nothing herein shall be construed to prevent any third person in such suits from giving a forthcoming bond and retaining possession of the goods as provided by law.

History: C.L. 1897, § 2685 (230), added by Laws 1907, ch. 107, § 1 (230); Code 1915, § 4342; C.S. 1929, § 105-1703; 1941 Comp., § 25-1503; 1953 Comp., § 22-17-3.

42-8-4. [Remedy against corporation same as against individual.]

Suits of replevin may be commenced and carried to a conclusion against any incorporated company in this state in all cases that may be begun and carried against any ordinary defendants.

History: C.L. 1897, § 2685 (231), added by Laws 1907, ch. 107, § 1 (231); Code 1915, § 4343; C.S. 1929, § 105-1704; 1941 Comp., § 25-1504; 1953 Comp., § 22-17-4.

42-8-5. Affidavit.

Before the writ of replevin is issued, the plaintiff or some creditable person in his stead shall file in the district court an affidavit stating:

A. that the plaintiff is lawfully entitled to the possession of the property mentioned in the complaint;

B. that the same was wrongfully taken or wrongfully detained by the defendant;

C. that the plaintiff has reason to believe that the defendant may conceal, dispose of, or waste the property or the revenues therefrom or remove the property from the jurisdiction, during the pendency of the action;

D. that the right of action accrued within one year; and

E. specific facts, from which it clearly appears that the above allegations are justified.

History: C.L. 1897, § 2685 (232), added by Laws 1907, ch. 107, § 1 (232); Code 1915, § 4344; C.S. 1929, § 105-1705; 1941 Comp., § 25-1505; 1953 Comp., § 22-17-5; Laws 1975, ch. 249, § 1.

42-8-6. Replevin bond; when filed; parties; conditions.

The plaintiff shall before the execution of the writ enter into bond with sufficient sureties, to the officer to whom the writ is directed, in double the value of the property, conditioned on the prosecution of the suit with effect and without delay and that he will without delay make return of the property if a return is adjudged, keep harmless the officer and pay all costs that may accrue.

History: C.L. 1897, § 2685 (233), added by Laws 1907, ch. 107, § 1 (233); Code 1915, § 4345; C.S. 1929, § 105-1706; 1941 Comp., § 25-1506; 1953 Comp., § 22-17-6; Laws 1975, ch. 249, § 2.

42-8-7. [Procedure for waiver of affidavit and bond; election to take value of property or its return.]

That if in any suit for replevin of property the plaintiff shall allege in his complaint a demand upon the defendant for the return of the property and a reasonable opportunity to comply therewith, and that he waives seizure and delivery thereof, the affidavit and bond prescribed in Sections 42-8-5 and 42-8-6 NMSA 1978 need not be filed, nor the

writ issued. In such case, the verdict, if for the plaintiff, shall fix the value of the property, as well as the damages for detention; upon which verdict plaintiff shall have judgment for such damages, and either for the value of such property, as so fixed, or for the return thereof, at his election.

History: 1941 Comp., § 25-1507a, enacted by Laws 1945, ch. 14, § 1; 1953 Comp., § 22-17-7.

42-8-8. [Requiring additional security.]

Any person plaintiff or defendant in any replevin suits pending in any court in this state, may at any time before judgment, after reasonable notice to the person by whom any bond has been given in any such suit, move the court for additional security on the part of any such principal in such bond, and if, on such motion, the court is satisfied that any surety on such bond has removed from the state or that for any other reason such bond is not sufficient security for the amount thereof, it may direct a new and sufficient bond to be given within a reasonable time, to be fixed by the court, and in default thereof may make such order disposing of the property, the possession of which is held by virtue of such bond, as the failure to give such additional security may require and such orders may be made in vacation as well as in term time.

History: C.L. 1897, § 2685 (234), added by Laws 1907, ch. 107, § 1 (234); Code 1915, § 4346; C.S. 1929, § 105-1707; 1941 Comp., § 25-1508; 1953 Comp., § 22-17-8.

42-8-9. Replevin against sheriff.

Whenever any writ of replevin is granted against the sheriff of any county in this state, the judge of the district court shall designate a person to serve process on the defendant.

History: C.L. 1897, § 2685 (235), added by Laws 1907, ch. 107, § 1 (235); Code 1915, § 4347; C.S. 1929, § 105-1708; 1941 Comp., § 25-1509; 1953 Comp., § 22-17-9; Laws 1975, ch. 249, § 3.

42-8-10. [Manner of executing writ.]

The writ shall be executed by delivering the goods and chattels in the complaint mentioned, to the plaintiff, and by summoning the defendant to appear on the return day of the writ, to answer the action of the plaintiff.

History: C.L. 1897, § 2685 (237), added by Laws 1907, ch. 107, § 1 (237); Code 1915, § 4348; C.S. 1929, § 105-1709; 1941 Comp., § 25-1510; 1953 Comp., § 22-17-10.

42-8-11. [Judgment against plaintiff and sureties; value plus damages; option of defendant.]

In case the plaintiff fails to prosecute his suit with effect and without delay judgment shall be given for the defendant and shall be entered against the plaintiff and his securities for the value of the property taken, and double damages for the use of the same from the time of delivery, and it shall be in the option of the defendant to take back such property or the assessed value thereof.

History: C.L. 1897, § 2685 (239), added by Laws 1907, ch. 107, § 1 (239); Code 1915, § 4350; C.S. 1929, § 105-1711; 1941 Comp., § 25-1512; 1953 Comp., § 22-17-12.

42-8-12. [Property not returned and accepted; collection of value.]

If such property be not returned and accepted within thirty days after the judgment, the sheriff shall collect the assessed value thereof from the plaintiff and his securities as on other executions.

History: C.L. 1897, § 2685 (240), added by Laws 1907, ch. 107, § 1 (240); Code 1915, § 4351; C.S. 1929, § 105-1712; 1941 Comp., § 25-1513; 1953 Comp., § 22-17-13.

42-8-13. [Officer damnified; suit on bond.]

Any officer damnified by the execution of a writ of replevin may maintain an action therefor on the bond by him taken.

History: C.L. 1897, § 2685 (241), added by Laws 1907, ch. 107, § 1 (241); Code 1915, § 4352; C.S. 1929, § 105-1713; 1941 Comp., § 25-1514; 1953 Comp., § 22-17-14.

42-8-14. [Defendant may sue on bond in name of officer.]

The defendant may, for any violation of the bond, bring an action thereon in the name of the officer for his use.

History: C.L. 1897, § 2685 (242), added by Laws 1907, ch. 107, § 1 (242); Code 1915, § 4353; C.S. 1929, § 105-1714; 1941 Comp., § 25-1515; 1953 Comp., § 22-17-15.

42-8-15. [Liability of sheriff for failure to take sufficient bond from plaintiff.]

The sheriff for failing to take bond, or for taking insufficient bond from the plaintiff, shall be responsible on his official bond for all damages sustained thereby, recoverable by action in the name of the party injured.

History: C.L. 1897, § 2685 (243), added by Laws 1907, ch. 107, § 1 (243); Code 1915, § 4354; C.S. 1929, § 105-1715; 1941 Comp., § 25-1516; 1953 Comp., § 22-17-16.

42-8-16. Form of affidavit.

Affidavits for writs of replevin shall be in substantially the following form:

"STATE OF NEW MEXICO
COUNTY OF _____

(Name), Plaintiff)
)
v.) CIVIL DOCKET NO. _____
)
(Name), Defendant)

AFFIDAVIT IN REPLEVIN

I, (plaintiff or attorney), being duly sworn, state that (plaintiff) is lawfully entitled to the possession of (property); that the same was wrongfully taken or wrongfully detained by (defendant); that (plaintiff) has reason to believe that (defendant) may conceal, dispose of, or waste the property or the revenues therefrom, or remove the property from the jurisdiction during the pendency of the action; that the right of action originated within one year; and that the following facts, from which it clearly appears that the above allegations are justified, are true:

Sworn _____
PLAINTIFF

Approved:

_____
DISTRICT COURT JUDGE."

History: 1953 Comp., § 22-17-17.1, enacted by Laws 1975, ch. 249, § 4.

42-8-17. Form of bond.

Replevin bonds shall be in substantially the following form:

"STATE OF NEW MEXICO
COUNTY OF _____

(Name), Plaintiff)
)
v.) CIVIL DOCKET NO. _____
)
(Name), Defendant)

REPLEVIN BOND

We bind ourselves, our heirs, executors and administrators to the state of New Mexico in the sum of $ _____ on condition that the plaintiff will diligently prosecute this action to final judgment without delay, will return all property and pay to the defendant all money found due to him in this action, including all damages, and will keep harmless the officer executing the writ of replevin, upon completion of which this obligation is void.

_____
PLAINTIFF (Principal)

_____
SURETY

_____
SURETY

Approved: _____,
19___

_____
DISTRICT COURT JUDGE."

History: 1953 Comp., § 22-17-17.2, enacted by Laws 1975, ch. 249, § 5.

42-8-18. Approval of bond; issuance of writ.

The judge of the district court shall, upon the filing of the affidavit and bond in conformity with Sections 42-8-5 and 42-8-6 NMSA 1978, the bond to have sufficient surety approved by the judge, issue the writs of replevin applied for by the complainant directed to the sheriff of the county and commanding him to replevy the property described in the affidavit of the complainant.

History: C.L. 1897, § 2685 (246), added by Laws 1907, ch. 107, § 1 (246); Code 1915, § 4356; C.S. 1929, § 105-1717; 1941 Comp., § 25-1518; 1953 Comp., § 22-17-18; Laws 1965, ch. 268, § 2; 1975, ch. 249, § 6.

42-8-19. Motion to dissolve; damages.

A. Upon the defendant's motion before trial, the district court shall determine the truth of the facts stated in the plaintiff's affidavit at a hearing, to be held without delay. If the plaintiff fails to prove the truth of the facts stated, the writ shall be dissolved, the plaintiff shall be ordered to return the property to the defendant and an order shall be entered for the defendant against the plaintiff and his sureties for the attorney's fees incurred in the dissolution of the writ and for double damages for the use of the property from the time of its delivery to the plaintiff.

B. If the writ of replevin is dissolved, the action shall then proceed as if no writ had been issued.

History: 1953 Comp., § 22-17-18.1, enacted by Laws 1975, ch. 249, § 7.

42-8-20. Docketing; proceedings in district court.

The district court clerk shall docket the action in replevin and the cause shall then proceed as in other civil actions.

History: 1953 Comp., § 22-17-19, enacted by Laws 1965, ch. 268, § 3.

42-8-21. [Defendant may keep property on giving forthcoming bond; time; parties; condition.]

The defendant, either in person or by his agent or attorney, at any time within five days after the service of a writ of replevin on him, and the replevin of the property thereunder, may require the return of the property replevied upon giving to the sheriff a bond with two or more sufficient sureties in double the value of the property as sworn to in the affidavit of replevin, conditioned for the delivery of the property to the plaintiff, if such delivery be adjudged, and for payment to him of such sum as may for any cause be recovered against the defendant in the suit.

History: C.L. 1897, § 2685 (248), added by Laws 1907, ch. 107, § 1 (248); Code 1915, § 4358; C.S. 1929, § 105-1719; 1941 Comp., § 25-1520; 1953 Comp., § 22-17-20.

42-8-22. [Forthcoming bond; approval; return with writ to district court; additional security; sheriff's liability.]

The sheriff shall judge of the sufficiency of the sureties on the bond of the defendant, and shall return the same with the writ of replevin into the district court; and shall be responsible on his official bond on returning any property replevied; but any party interested in the result of any such cause may move the court on cause shown to require the defendant in such cases to give additional security, when that taken by the sheriff shall be deemed insufficient, or to return the property to the sheriff to be delivered over to the plaintiff, if the plaintiff has given a good and sufficient replevin bond, as required by law.

History: C.L. 1897, § 2685 (249), added by Laws 1907, ch. 107, § 1 (249); Code 1915, § 4359; C.S. 1929, § 105-1720; 1941 Comp., § 25-1521; 1953 Comp., § 22-17-21.

ARTICLE 9
Attachment

42-9-1. [Grounds for attachment; unmatured debts.]

Creditors may sue their debtors before justices of the peace [magistrates] or in the district courts, by attachment, in the following cases, to wit:

A. when the debtor is not a resident of, nor resides in this state;

B. when the debtor has concealed himself, or absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be passed upon him;

C. when the debtor is about to remove his property or effects out of this state, or has fraudulently concealed or disposed of his property or effects so as to defraud, hinder or delay his creditors;

D. when the debtor is about fraudulently to convey or assign, conceal or dispose of his property or effects, so as to hinder or delay his creditors;

E. when debt was contracted out of this state, and the debtor has absconded or secretly removed his property or effects into the state, with the intent to hinder, delay or defraud his creditors;

F. where the defendant is a corporation whose principal office or place of business is out of the state, unless such corporation shall have a designated agent in the state, upon whom service of process may be made in suits against the corporation;

G. where the defendant fraudulently contracted the debt or incurred the obligation respecting which the suit is brought or obtained credit from the plaintiff by false pretenses;

H. that the debt is for work and labor, or for any services rendered by the plaintiff, or his assignor, at the instance of the defendant;

I. where the debt was contracted for the necessities of life.

An attachment may issue on a demand not yet due in any case where an attachment is authorized, in the same manner as upon demands already due.

History: C.L. 1897, § 2685 (182), added by Laws 1907, ch. 107, § 1 (182); Code 1915, § 4299; Laws 1917, ch. 113, § 3; 1929, ch. 127, § 1; C.S. 1929, § 105-1601; 1941 Comp., § 22-101; 1953 Comp., § 26-1-1.

42-9-2. [Attachment authorized in actions ex delicto.]

Wherever an attachment may issue against the property of any person upon any debt or other action founded upon contract, attachment may also issue upon any action founded upon a tort or other action ex delictu [ex delicto]; this law shall apply to actions which have heretofore or may hereafter accrue.

History: C.L. 1897, § 2685 (183), added by Laws 1907, ch. 107, § 1 (183); Code 1915, § 4300; C.S. 1929, § 105-1602; 1941 Comp., § 22-102; 1953 Comp., § 26-1-2.

42-9-3. [Situs of debts and intangible interest in property.]

The situs of debts and obligations for the purpose of attachment shall be the domicile of the debtor or obliger [obligor] and the situs of intangible interests in property, real or personal, legal or equitable, shall be the place where such property is located.

History: Laws 1939, ch. 159, § 5; 1941 Comp., § 22-103; 1953 Comp., § 26-1-3.

42-9-4. [Filing complaint or statement, affidavit and bond; issuance of writ; property subject to attachment.]

A creditor wishing to sue his debtor by attachment, may place in the clerk's office of the district court of any county in this state, having jurisdiction, a complaint, or other lawful statement of his cause of action, and shall also file an affidavit and bond; and thereupon such creditor may sue out an original attachment against the lands, tenements, goods, moneys, effects, credits and any right, title, lien or interest whether legal or equitable upon, in or to real or personal, tangible or intangible property whether present or possessory or reversionary or in remainder and all property which could be reached upon execution or upon equitable proceedings in aid of execution, of the debtor in whosesoever hands they may be except such property as is now, or may hereafter be, specifically exempted from attachment or execution by law and except interests of beneficiaries in spendthrift trusts for whom spendthrift trusts are or may be created.

History: C.L. 1897, § 2685 (184), added by Laws 1907, ch. 107, § 1 (184); Code 1915, § 4301; C.S. 1929, § 105-1603; Laws 1939, ch. 159, § 1; 1941 Comp., § 22-104; 1953 Comp., § 26-1-4.

42-9-5. [Affidavit; by whom made; contents.]

The affidavit shall be made by the plaintiff, or some person for him, and shall state that the defendant is justly indebted to the plaintiff, after allowing all just credits and offsets, in a sum (to be specified in the affidavit), and on what account, and shall also state that the affiant has good reason to believe, and does believe, the existence of one or more of the causes which, according to the provision of Section 42-9-1 NMSA 1978, will entitle the plaintiff to sue by attachment.

History: C.L. 1897, § 2685 (185), added by Laws 1907, ch. 107, § 1 (185); Code 1915, § 4302; C.S. 1929, § 105-1604; 1941 Comp., § 22-105; 1953 Comp., § 26-1-5.

42-9-6. [Form of affidavit.]

The form of the affidavit of attachment shall be as follows, to wit:

STATE OF NEW MEXICO)
County of _____) ss.

This day personally appeared before me, the undersigned clerk of the district court, A. B. (or C. D., agent for A. B., as the case may be), and being duly sworn, says that E. F. is justly indebted to the said A. B. in the sum of _____ dollars, after allowing all just offsets, and that the said E. F. is (setting forth one of the causes of attachment).

A. B. or
C. D., Agent for A. B.

Subscribed and sworn to before me this _____ day of _____, A. D. [20]_____.

_____
County Clerk.

History: C.L. 1897, § 2685 (207), added by Laws 1907, ch. 107, § 1 (207); Code 1915, § 4317; C.S. 1929, § 105-1620; 1941 Comp., § 22-106; 1953 Comp., § 26-1-6.

42-9-7. [Bond; parties; amount; condition.]

The bond shall be executed by the plaintiff or some responsible person as principal, and two or more sureties, residents of the state, each of which sureties shall be worth the penalty of the bond over and above all debts, or by some bond company authorized to do business in this state, in a sum at least double the amount sworn to in the affidavit, or in such lesser amount as the district court in its discretion shall by order direct, payable to the defendant and conditioned that the plaintiff will prosecute his action without delay, and with effect, and will refund all sums of money that may be adjudged to be refunded to the defendant and pay all damages that may accrue to any defendant or garnishee by reason of such attachment or any process or judgment thereon.

History: C.L. 1897, § 2685 (186), added by Laws 1907, ch. 107, § 1 (186); Laws 1913, ch. 56, § 1; Code 1915, § 4303; C.S. 1929, § 105-1605; Laws 1939, ch. 159, § 2; 1941 Comp., § 22-107; 1953 Comp., § 26-1-7.

42-9-8. [Form of bond.]

The form of said bond shall be as follows, to wit:

Know all men by these presents, that we (A. B., principal, or C. D., agent for A. B., principal, as the case may be) and N. N. and M. M., his securities, are held and firmly bound unto ..... (defendant), in the sum of ..... dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seals and dated this ..... day of ....., A. D. .....

The condition of the above obligation is such that, whereas the above named A. B. has this day sued out an attachment before J. J., clerk of the district court, against E. F. for the sum of ..... dollars, in the district court for the county of .....

Now, if the said A. B. shall prosecute his said action without delay, and with effect, and refund all sums of money that may be adjudged to be refunded to the defendant, and pay all damages that may accrue, to any defendant or garnishee by reason of said attachment, or any process of judgment thereon, then this obligation to be null and void, otherwise to remain in full force and effect.

A. B.	(L. S.)
N. N.	(L. S.)
M. M.	(L. S.)

History: C.L. 1897, § 2685 (208), added by Laws 1907, ch. 107, § 1 (208); Code 1915, § 4318; C.S. 1929, § 105-1621; 1941 Comp., § 22-108; 1953 Comp., § 26-1-8.

42-9-9. [Sureties on bonds; qualifications; acknowledgments.]

The securities on attachment bonds shall be residents of this state, or a bond company authorized to do business in this state, and shall acknowledge the execution of such bond by them in the manner and before such officer as may be prescribed by law for the acknowledgment of conveyances of real estate.

History: C.L. 1897, § 2685 (187), added by Laws 1907, ch. 107, § 1 (187); Code 1915, § 4304; C.S. 1929, § 105-1606; 1941 Comp., § 22-109; 1953 Comp., § 26-1-9.

42-9-10. [Approval of bond; papers filed before issuance of writ.]

The clerk shall judge of the sufficiency of the penalty and the security in the bond; if they be approved, he shall endorse his approval thereon, and the same, together with the affidavits and complaint or other lawful statement of the cause of action, shall be filed before an attachment shall be issued.

History: C.L. 1897, § 2685 (188), added by Laws 1907, ch. 107, § 1 (188); Code 1915, § 4305; C.S. 1929, § 105-1607; 1941 Comp., § 22-110; 1953 Comp., § 26-1-10.

42-9-11. [Suit on bond.]

The bond given by the plaintiff or other person in a suit by attachment may be sued on by any party injured in the name of the state, and [he] shall proceed as in ordinary suits, and shall recover such damages as he may sustain.

History: C.L. 1897, § 2685 (189), added by Laws 1907, ch. 107, § 1 (189); Code 1915, § 4306; C.S. 1929, § 105-1608; 1941 Comp., § 22-111; 1953 Comp., § 26-1-11.

42-9-12. [Requiring additional security.]

Any person, plaintiff or defendant, in any attachment suits pending in any court in this state, may, at any time before judgment, after reasonable notice to the person by whom any bond has been given in any such suit, move the court for additional security on the part of any such principal in such bond, and if, on such motion, the court is satisfied that any surety on such bond has removed from the state, or that for any other reason such bond is not sufficient security for the amount thereof, it may direct a new and sufficient bond to be given within a reasonable time, to be fixed by the court, and in default thereof, may make such order disposing of the property, the possession of which is held by virtue of such bond as the failure to give such additional security may require, and such orders may be made in vacation, as well as in term time.

History: C.L. 1897, § 2685 (221), added by Laws 1907, ch. 107, § 1 (221); Code 1915, § 4333; C.S. 1929, § 105-1636; 1941 Comp., § 22-112; 1953 Comp., § 26-1-12.

42-9-13. [Contents of writ.]

Original writs of attachment shall be directed to the sheriff of the proper county, commanding him to attach the defendant, by all and singular, his lands and tenements, goods, moneys, effects, credits and all other property and interests in property of whatsoever nature and kind, in whosesoever hands the same may be found, with a clause of the nature and to the effect of an ordinary citation to answer the action of the plaintiff.

History: C.L. 1897, § 2685 (191), added by Laws 1907, ch. 107, § 1 (191); Code 1915, § 4308; C.S. 1929, § 105-1610; Laws 1939, ch. 159, § 3; 1941 Comp., § 22-113; 1953 Comp., § 26-1-13.

42-9-14. [Amending attachment and replevin writs; alias and pluries writs; proceeding in conversion when replevin writ not executed.]

That where an original writ of attachment or replevin has been quashed for defect in the affidavit, bond or writ, the court shall allow an amendment thereof to cure the defect, under such circumstances as amendments of ordinary pleadings are allowed by law and with like effect; and alias and pluries writs of attachment or replevin shall be issued in the following cases:

A. where on attachment under a prior writ an insufficient amount of property has been levied upon to satisfy the amount of damages claimed in the affidavit, with costs accrued or likely to accrue;

B. where a prior writ has been quashed for defect that cannot be cured by amendment;

C. where, in replevin, the property to be replevied has not been found in the county to or in which the original writ was directed or attempted to be served and the plaintiff wishes to undertake the replevin of property in another county.

Alias and pluries writs of attachment shall not be issued except upon a new affidavit and bond laying the foundation therefor the same as required of original writs; but alias and pluries writs of replevin may be issued upon the foundation laid by the original affidavit, bond to be given to the officer serving the writ as in cases of original writs of replevin.

Where the goods and chattels sought to be seized by a proceeding in replevin are not found, the action shall not abate, but may proceed as for conversion upon the facts set out in the complaint as originally stated, or as the same may be amended.

History: C.L. 1897, § 2685 (227), added by Laws 1907, ch. 107, § 1 (227); Code 1915, § 4339; C.S. 1929, § 105-1642; 1941 Comp., § 22-114; 1953 Comp., § 26-1-14.

42-9-15. [Issuance and return of writ; proceedings; judgment.]

Original writs of attachment shall be issued and returned in like manner as ordinary writs of summons; and when the defendant is cited to answer the action, like proceedings shall be had between him and the plaintiff as in ordinary actions on contracts, and a general judgment may be rendered for or against the defendant.

History: C.L. 1897, § 2685 (192), added by Laws 1907, ch. 107, § 1 (192); Code 1915, § 4309; C.S. 1929, § 105-1611; 1941 Comp., § 22-115; 1953 Comp., § 26-1-15.

42-9-16. [Time for return of writs of execution, attachment and replevin.]

All executions, writs of attachment and writs of replevin shall be returned within sixty days from the date of the delivery thereof to the sheriff or other officer or person whose duty it is, or who may be designated to serve the same.

History: Laws 1897, ch. 73, § 176; C.L. 1897, § 2685 (176); Code 1915, § 4257; C.S. 1929, § 105-1004; 1941 Comp., § 22-116; 1953 Comp., § 26-1-16.

42-9-17. [Service of writ; seizure or levy; return; endorsements; garnishment of inaccessible property.]

The manner of serving writs of attachement [attachment] shall be as follows:

A. the writ or other lawful statement of the cause of action, shall be served on the defendant as an ordinary summons;

B. when lands or tenements or interests or estates in real estate whether legal or equitable are to be attached, the officer shall briefly describe the same in his return, and state that he attached all the right, title and interest of the defendant to the same, and shall moreover give notice to the actual occupants, if any there be;

C. when goods and chattels, moneys, effects, evidences of debt or other personal property are to be attached, the officer shall seize the same and keep them in his custody, if accessible, and if not accessible, he shall summon the person in whose hands they may be as garnishee. If the property to be attached is an intangible interest or right either legal or equitable in personal property in the possession of someone other than the defendant, the officer in whose hands the writ of attachment is placed shall endorse an entry thereon of his levy on all of the right, title and interest, legal or equitable, of the defendant in and to said personal property describing it, and shall forthwith serve a copy of the writ of attachment so endorsed upon the person in possession of said personal property in the same manner as summons are served, and if said property be in possession of a corporation incorporated under the laws of this state or any foreign corporation doing business in this state, a copy of the writ of attachment so endorsed shall be served on said corporation by delivering the same to the agent designated by said corporation upon whom process against the corporation may be served or said copy may be served upon said corporation as provided by law for the service of process upon corporations doing business in the state of New Mexico; if service cannot thus be made, such copy shall be served by leaving the same at the usual and most notorious place of doing business of such corporation in this state, which entry and service shall amount to and be considered a seizure of all the right, title and interest of defendant, legal or equitable, in and to the personal property so described, to all intent [intents] and purposes, and may be sold under execution;

D. if any provision of this section is inconsistent with the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978] the code shall control.

History: C.L. 1897, § 2685 (193), added by Laws 1907, ch. 107, § 1 (193); Laws 1909, ch. 63, § 33; Code 1915, § 4310; C.S. 1929, § 105-1612; Laws 1939, ch. 159, § 4; 1941 Comp., § 22-117; 1953 Comp., § 26-1-17; Laws 1961, ch. 96, § 11-104.

42-9-18. [Service by publication; personal service outside state.]

Whenever property of a defendant has been attached and it shall appear from the affidavit for attachment and the return of the sheriff, that such defendant cannot be personally served with process, the court shall order a publication to be made stating the nature and amount of the plaintiff's demand, and notifying the defendant that his property has been attached, and that unless he appears at the return day named in said publication, judgment will be rendered against him and his property sold to satisfy the same; which notice by publication shall be published in the same manner prescribed by law for the publication of other notices from the district courts; provided that personal service of such notice of suit upon the defendant outside the state of New Mexico, made in the same manner as now provided by law for the personal service of summons outside the state of New Mexico, shall be equivalent to publication.

History: C.L. 1897, § 2685 (196), added by Laws 1907, ch. 107, § 1 (196); 1913, ch. 53, § 1; Code 1915, § 4311; Laws 1927, ch. 91, § 2; C.S. 1929, § 105-1614; 1941 Comp., § 22-118; 1953 Comp., § 26-1-18.

42-9-19. [Default after service by publication; judgment; effect.]

When the defendant shall be notified, by publication as aforesaid, and shall not appear and answer the action, judgment by default may be entered, which may be proceeded on to final judgment as in ordinary actions, but such judgment shall only bind the property attached, and shall be no evidence of indebtedness against the defendant in any subsequent suit.

History: C.L. 1897, § 2685 (197), added by Laws 1907, ch. 107, § 1 (197); Code 1915, § 4312; C.S. 1929, § 105-1615; 1941 Comp., § 22-119; 1953 Comp., § 26-1-19.

42-9-20. [Forthcoming bond.]

When property of the defendant found in his possession, or in the hands of any other person, shall be attached, the defendant or such other person may retain possession thereof by giving bond and security to the satisfaction of the officer executing the writ, to the officer or his successor in double the value of the property attached conditioned that the same shall be forthcoming when and where the court shall direct, and shall abide the judgment of the court.

History: C.L. 1897, § 2685 (198), added by Laws 1907, ch. 107, § 1 (198); Code 1915, § 4313; C.S. 1929, § 105-1616; 1941 Comp., § 22-120; 1953 Comp., § 26-1-20.

42-9-21. [Officer's return.]

The officer executing the writ of attachment shall return, with the writ, all bonds taken by him in virtue thereof, a schedule of all property and effects attached, and the names of all the garnishees, the times and places when and where respectively summoned.

History: C.L. 1897, § 2685 (199), added by Laws 1907, ch. 107, § 1 (199); Code 1915, § 4314; C.S. 1929, § 105-1617; 1941 Comp., § 22-121; 1953 Comp., § 26-1-21.

42-9-22. [Officer's liability on failure to return bond.]

If the officer wilfully [willfully] fail to return a good and sufficient bond in any case where bond is required by law, he shall be held and considered as security for the performance of all acts and the payment of all money to secure the performance of which such bond ought to have been taken.

History: C.L. 1897, § 2685 (200), added by Laws 1907, ch. 107, § 1 (200); Code 1915, § 4315; C.S. 1929, § 105-1618; 1941 Comp., § 22-122; 1953 Comp., § 26-1-22.

42-9-23. [When court acquires jurisdiction; survival of action.]

From the time of the issuing of the order of attachment, the court shall be deemed to have acquired jurisdiction, and to have control of all subsequent proceedings in relation thereto; and if after the issuing of the order, the defendant being a person, should die, or a corporation, and its charter should expire by limitation, forfeiture or otherwise, the proceedings, shall be carried on, but in all such cases other than where the defendant was a foreign corporation, his legal representatives shall be made parties to the action.

History: C.L. 1897, § 2685 (220), added by Laws 1907, ch. 107, § 1 (220); Code 1915, § 4332; C.S. 1929, § 105-1635; 1941 Comp., § 22-123; 1953 Comp., § 26-1-23.

42-9-24. [Perishable property; petition for sale; hearing; order.]

In all suits in the district courts by attachments, when the property attached shall be of a perishable nature and liable to be lost or diminished in value before the final adjudication of the case, and the defendant shall not give bond to retain the possession of the same, the plaintiff or defendant may make out a petition in writing setting forth the kind, nature and condition of the property, and present said petition to the judge of the district in vacation; and if he shall find it sufficient in form and conditions, he may hear the testimony of witnesses as to the property, and if he shall believe that the interests of both plaintiff and defendant will be promoted by the sale of the property, may order such sale to be made, and direct the manner thereof.

History: C.L. 1897, § 2685 (209), added by Laws 1907, ch. 107, § 1 (209); Code 1915, § 4319; C.S. 1929, § 105-1622; 1941 Comp., § 22-124; 1953 Comp., § 26-1-24.

42-9-25. [Designating person to make sale; requiring bond.]

In such case the judge may appoint someone to make such sale, and require such bond and security to be given for the faithful performance of the same and the accounting for the proceeds and paying the same over, as the nature of the case may demand.

History: C.L. 1897, § 2685 (210), added by Laws 1907, ch. 107, § 1 (210); Code 1915, § 4320; C.S. 1929, § 105-1623; 1941 Comp., § 22-125; 1953 Comp., § 26-1-25.

42-9-26. [Receiver; appointment; bond.]

The judge may, if he shall find the safety of the property or the security of the proceeds shall require it, appoint a special receiver to take possession of the same, after giving such bond and security as the judge shall approve.

History: C.L. 1897, § 2685 (211), added by Laws 1907, ch. 107, § 1 (211); Code 1915, § 4321; C.S. 1929, § 105-1624; 1941 Comp., § 22-126; 1953 Comp., § 26-1-26.

42-9-27. [Disposition of proceeds of sale.]

All such proceeds of sale of property shall be delivered to such person as the judge or court shall determine entitled to the same upon the final disposition of the suit.

History: C.L. 1897, § 2685 (212), added by Laws 1907, ch. 107, § 1 (212); Code 1915, § 4322; C.S. 1929, § 105-1625; 1941 Comp., § 22-127; 1953 Comp., § 26-1-27.

42-9-28. [Expenses in connection with receivership and sale.]

The judge or court may allow to the receiver or person making said sale a reasonable compensation for his services, and the necessary costs for keeping and preserving the property.

History: C.L. 1897, § 2685 (213), added by Laws 1907, ch. 107, § 1 (213); Code 1915, § 4323; C.S. 1929, § 105-1626; 1941 Comp., § 22-128; 1953 Comp., § 26-1-28.

42-9-29. [Intervention in attachment proceedings.]

Any person owning or claiming any property, or a lien thereon, which has been attached in any proceeding to which he is not a party may intervene therein at any time before the trial thereof begins, by filing a petition, under oath, setting up his right, and thereafter said cause shall proceed as in other cases of intervention.

History: Laws 1917, ch. 75, § 1; C.S. 1929, § 105-1613; 1941 Comp., § 22-129; 1953 Comp., § 26-1-29.

42-9-30. [Bond discharging attachment and garnishment; restitution of property.]

If the defendant or other person on his behalf at any time before judgment cause a bond to be executed to the plaintiff, by one or more sureties, possessing the same qualifications required of sureties on bonds for the issuance of attachment, to the effect that the defendant shall perform the judgment of the court, the attachment in such action shall be discharged and restitution made of any property taken under it or the proceeds thereof. Such bond shall also discharge any garnishee from liability in said cause.

History: C.L. 1897, § 2685 (225), added by Laws 1907, ch. 107, § 1 (225); Code 1915, § 4337; C.S. 1929, § 105-1640; 1941 Comp., § 22-130; 1953 Comp., § 26-1-30.

42-9-31. [Answer denying truth of fact stated in attachment affidavit; trial of issue; decision.]

In all cases when properties or effects shall be attached, defendant may within the time limited in the writ of attachment, put in his answer, without oath, denying the truth of any material fact contained in the affidavit, to which the plaintiff may reply; and trial of

the truth of the affidavit shall be had and on such trial the plaintiff shall be held to prove the existence of the facts denied, as set forth in the affidavit as the ground of attachment, and if the issue shall be found for plaintiff, the cause shall proceed, but if it be found for the defendant, the attachment shall be dismissed at the costs of plaintiff.

History: C.L. 1897, § 2685 (201), added by Laws 1907, ch. 107, § 1 (201); Code 1915, § 4316; C.S. 1929, § 105-1619; 1941 Comp., § 22-131; 1953 Comp., § 26-1-31.

42-9-32. [Issues found for defendant; attachment dismissed; properties released; suit unabated.]

In all cases commenced by attachment, in which the truth of the affidavit for attachment, or of any material allegation therein contained shall be denied, and the issue thus formed shall, upon the trial be found for the defendant, the attachment shall be dismissed and all property, rights, effects and credits held or affected thereby, or thereunder, shall be released and discharged from the operation thereof; but such dismissal of the attachment shall not abate the suit, but the same shall proceed as in ordinary cases.

History: C.L. 1897, § 2685 (216), added by Laws 1907, ch. 107, § 1 (216); Code 1915, § 4326; C.S. 1929, § 105-1629; 1941 Comp., § 22-132; 1953 Comp., § 26-1-32.

42-9-33. [Appeal from order discharging attachment; supersedeas.]

When an order or judgment discharging an attachment is rendered in the district court, and the party who obtained such attachment shall seek to have the proceedings, on the trial of the issue on the affidavit for the attachment or the action of the court in cases where such trial was not had, reviewed in the supreme court, he shall have the right to do so upon appeal or writ of error [as] in other cases. Upon his giving bond for a supersedeas, as in other cases, the lien of his attachment shall be preserved until the final review and determination of his right to his lien in the court of final appellate jurisdiction.

History: C.L. 1897, § 2685 (223), added by Laws 1907, ch. 107, § 1 (223); Code 1915, § 4335; C.S. 1929, § 105-1638; 1941 Comp., § 22-133; 1953 Comp., § 26-1-33.

42-9-34. [Appeal before final judgment.]

It shall not be necessary that a final judgment as to the indebtedness claimed by the plaintiff in attachment shall be rendered, before the questions arising on the attachment proceedings may be reviewed on appeal or writ of error, but such appeal or writ of error may be sued out either before or after rendition of judgment on the indebtedness sued for.

History: C.L. 1897, § 2685 (224), added by Laws 1907, ch. 107, § 1 (224); Code 1915, § 4336; C.S. 1929, § 105-1639; 1941 Comp., § 22-134; 1953 Comp., § 26-1-34.

42-9-35. [Judgment against sureties on bond given to discharge attachment.]

If upon the trial of said cause judgment shall be rendered against the defendant on the demand sued for, such judgment shall also be rendered against the sureties on said bond given for the discharge of said attachment; and the giving of said bond shall have the effect of conferring jurisdiction upon the court to render said judgment against the said sureties, for the amount of the damages recovered against the defendant, without further process or notice.

History: C.L. 1897, § 2685 (226), added by Laws 1907, ch. 107, § 1 (226); Code 1915, § 4338; C.S. 1929, § 105-1641; 1941 Comp., § 22-135; 1953 Comp., § 26-1-35.

42-9-36. [Sale of attached realty after judgment for plaintiff.]

If plaintiff receives judgment, any real estate belonging to defendant or right, title, estate or interest therein whether legal or equitable which has been attached may be sold to satisfy said judgment and the district court of the county in which said property is located shall upon application appoint a special master to sell the same, who shall publish notice of said sale describing the property to be sold, giving the time and place of sale, and the amount of plaintiff's judgment including interest and costs of suit.

History: Laws 1939, ch. 159, § 6; 1941 Comp., § 22-136; 1953 Comp., § 26-1-36.

42-9-37. [Sale of attached personalty after judgment for plaintiff.]

Any personal property belonging to the defendant or right, title or interest therein legal or equitable which has been attached may be sold under an execution issued on such attachment as in other cases of ordinary execution to satisfy plaintiff's judgment.

History: Laws 1939, ch. 159, § 7; 1941 Comp., § 22-137, 1953 Comp., § 26-1-37.

42-9-38. [Ancillary attachments; affidavit; bond; writ.]

In any civil suit, when the summons against the defendant has been returned, executed, the plaintiff, his agent or attorney, may, at any time, before judgment, file an affidavit with the clerk of the court in which the suit is pending, and give bond with security as in cases of original attachments; and thereupon the clerk must issue an attachment, returnable as in other cases of original attachments.

History: C.L. 1897, § 2685 (214), added by Laws 1907, ch. 107, § 1 (214); Code 1915, § 4324; C.S. 1929, § 105-1627; 1941 Comp., § 22-143; 1953 Comp., § 26-1-43.

42-9-39. [Procedure in suit containing ancillary attachment.]

In all cases when attachments are sued out ancillary to the original suit, the suit must thereafter proceed in all respects as if it had been commenced originally by attachment.

History: C.L. 1897, § 2685 (215), added by Laws 1907, ch. 107, § 1 (215); Code 1915, § 4325; C.S. 1929, § 105-1628; 1941 Comp., § 22-144; 1953 Comp., § 26-1-44.

ARTICLE 10
Exemptions

42-10-1. Exemptions.

A. The following shall be exempt from receivers or trustees in bankruptcy or other insolvency proceedings, fines, attachment, execution, garnishment, levy or foreclosure by a judgment creditor:

(1) a person's aggregate interest in household goods and furnishings, not exceeding a value of seventy-five thousand dollars ($75,000);

(2) a person's aggregate interest in motor vehicles, not exceeding ten thousand dollars ($10,000) in value;

(3) a person's interest in a wedding band and an engagement ring and a person's interest in additional jewelry held primarily for the use of the person, the person's spouse or any dependent of the person, not exceeding five thousand dollars ($5,000) in the aggregate for this additional jewelry;

(4) works of art or artwork of the person or any relative of the person, not exceeding a value of two thousand five hundred dollars ($2,500) in the aggregate;

(5) tools, equipment, implements, professional books, instruments, inventory, supplies and materials reasonably necessary for use in the person's trade, profession, business or occupation, or that of the person's spouse, not exceeding fifteen thousand dollars ($15,000) in the aggregate;

(6) the person's right to receive:

(a) social security benefits;

(b) veteran's benefits;

(c) disability, illness, unemployment or workers' compensation benefits;

(d) public benefits such as medicaid, medicare, food stamps or other aid from a government public assistance program;

(e) alimony, family or domestic support or separate maintenance to the extent reasonably necessary for the support of the person or any dependent of the person; and

(f) payment pursuant to a stock bonus, pension, profit-sharing individual retirement account, annuity or similar plan or contract on account of illness, disability, death or length of service, to the extent reasonably necessary for the support of the person or any dependent of the person, unless such plan or contract does not qualify pursuant to Section 401(a), 403(a), 403(b) or 408 of the Internal Revenue Code of 1986;

(7) refundable federal and state tax credits;

(8) exempt wages as defined by Section 35-12-7 NMSA 1978;

(9) any stimulus payment held by or payable to the person or the person's dependents in any form;

(10) an interest in or proceeds from a pension, individual retirement account, annuity, profit-sharing plan and any other retirement account;

(11) an individual retirement account that would qualify for tax exemptions under 26 U.S.C. 408 or any similar individual retirement account;

(12) an educational savings account that would qualify for tax exemptions under 26 U.S.C. 529 or any similar educational savings account;

(13) a health savings account that would qualify for tax exemptions under 26 U.S.C. 223 or any similar health savings account; and

(14) a person's aggregate interest, not exceeding fifteen thousand dollars ($15,000), in any personal property, tangible or intangible, not otherwise specified in this subsection, including any deposits in financial or investments accounts or personal property that exceeds the monetary limits set forth in this section; provided that for an individual or sole proprietor who is a defendant in any action except a bankruptcy action, the maximum cumulative amount that a defendant may claim as exempt in a depository or investment account is two thousand four hundred dollars ($2,400), plus any money derived from the sources set forth in Paragraphs (6) through (11) of this subsection.

B. As used in this section, "household goods and furnishings" means items primarily used by or for the support and maintenance of the household of the person or the person's spouse, family and dependents, including:

(1) furniture;

(2) appliances such as a refrigerator, stove, oven, freezer, clothes washer, clothes dryer, dishwasher, microwave, coffee maker, toaster and vacuum cleaner;

(3) clothing and personal effects;

(4) electronic equipment such as televisions, radios, cellular telephones, computers, computer equipment, digital or compact disc players and other electronic consumer devices;

(5) medical equipment, supplies and professionally prescribed health aids reasonably necessary for the care and support of the person or any dependent of the person;

(6) musical instruments, not exceeding four thousand dollars ($4,000) in the aggregate;

(7) toys, games, sports, hobby and craft equipment, materials and supplies, not exceeding two thousand five hundred dollars ($2,500) in the aggregate;

(8) books; and

(9) two firearms.

C. Property exempted pursuant to the provisions of this section shall be valued at the property's fair market value.

History: 1953 Comp., § 24-5-1, enacted by Laws 1971, ch. 215, § 1; 1979, ch. 182, § 1; 1981, ch. 113, § 1; 1983, ch. 69, § 1; 2023, ch. 104, § 4.

42-10-2. Repealed.

History: 1953 Comp., § 24-5-2, enacted by Laws 1971, ch. 215, § 2; 1979, ch. 182, § 2; 1981, ch. 113, § 2; 1983, ch. 69, § 2; 1978 Comp., § 42-10-2, repealed by Laws 2023, ch. 104, § 12.

42-10-3. [Life, accident and health insurance benefits.]

The cash surrender value of any life insurance policy, the withdrawal value of any optional settlement, annuity contract or deposit with any life insurance company, all weekly, monthly, quarterly, semiannual or annual annuities, indemnities or payments of every kind from any life, accident or health insurance policy, annuity contract or deposit heretofore or hereafter issued upon the life of a citizen or resident of the state of New Mexico, or made by any such insurance company with such citizen, upon whatever form and whether the insured or the person protected thereby has the right to change the

beneficiary therein or not, shall in no case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or who is protected by said contract, or who receives or is to receive the benefit thereof, nor shall it be subject in any other manner to the debts of the person whose life is so insured, or who is protected by said contract or who receives or is to receive the benefit thereof, unless such policy, contract or deposit be taken out, made or assigned in writing for the benefit of such creditor.

History: Laws 1937, ch. 223; § 1; 1941 Comp., § 21-503; 1953 Comp., § 24-5-3.

42-10-4. Benevolent associations; benefits.

Any beneficiary fund not exceeding fifty thousand dollars ($50,000) set apart, appropriated or paid by any benevolent association or society, according to its rules, regulations or bylaws, to the family of any deceased member or to any member of the deceased member's family, shall not be liable to be taken by any process or proceedings, legal or equitable, to pay any debts of the deceased member.

History: Laws 1887, ch. 37, § 7; C.L. 1897, § 1741; Code 1915, § 2315; C.S. 1929, § 48-105; 1941 Comp., § 21-504; 1953 Comp., § 24-5-4; 1978 Comp., § 42-10-4; 2023, ch. 104, § 5.

42-10-5. [Life insurance proceeds.]

The proceeds of any life insurance are not subject to the debts of the deceased, except by special contract or arrangement, to be made in writing.

History: C.L. 1884, § 1422, substituted by Laws 1889, ch. 90, § 21; C.L. 1897, § 2042; Code 1915, § 2316; C.S. 1929, § 48-106; 1941 Comp., § 21-505; 1953 Comp., § 24-5-5.

42-10-6. Personal property used as a security under the Uniform Commercial Code is not exempt.

A secured creditor who has personal property of the debtor as security as provided by the Uniform Commercial Code [Chapter 55 NMSA 1978] may proceed according to the terms of the security instrument and the Uniform Commercial Code. The debtor cannot exempt personal property given to a secured creditor as security unless there be more property than is necessary to pay the debt to the secured creditor. The debtor may claim an exemption out of the surplus.

History: 1953 Comp., § 24-5-6, enacted by Laws 1971, ch. 215, § 3.

42-10-7. Taxes excepted.

Sections 42-10-1 through 42-10-7 NMSA 1978 are not applicable to taxes.

History: 1953 Comp., § 24-5-7, enacted by Laws 1971, ch. 215, § 4; 1978 Comp., § 42-10-7; 2023, ch. 104, § 6.

42-10-8. Repealed.

42-10-9. Homestead exemption.

A. A person shall have a homestead exemption in a domicile or land owned by the person that is the primary residence of the person. Such homestead is exempt from attachment, execution or foreclosure by a judgment creditor and from any proceeding of receivers or trustees in insolvency or bankruptcy proceedings and from executors or administrators in probate.

B. The amount of the homestead exemption is:

(1) one hundred fifty thousand dollars ($150,000); or

(2) three hundred thousand dollars ($300,000) if the spouse of the person claiming the exemption died within two years prior to the date of claiming the homestead exemption and if the deceased spouse would have been able to claim the homestead exemption had the deceased spouse survived until the date of claiming the homestead exemption.

C. As used in this section, "domicile" means any shelter or dwelling used by the person as a primary residence and may include a mobile home, trailer, recreational vehicle, outbuilding or other similar shelter, regardless of whether such dwelling complies with relevant housing or building regulations.

D. This section shall be liberally construed in favor of the person claiming a homestead exemption.

E. The provisions of this section shall not apply to garnishment or properly perfected liens of secured creditors.

History: 1953 Comp., § 24-6-1, enacted by Laws 1971, ch. 215, § 6; 1973, ch. 277, § 1; 1978 Comp., § 42-10-9; 1979, ch. 9, § 1; 1979, ch. 182, § 3; 1987, ch. 193, § 1; 1993, ch. 44, § 1; 2007, ch. 95, § 1; 2023, ch. 104, § 7.

42-10-10. Exemption in lieu of homestead.

Any resident of this state who does not own a homestead shall in addition to other exemptions hold exempt real or personal property in the amount of fifteen thousand dollars ($15,000) in lieu of the homestead exemption.

History: 1953 Comp., § 24-6-2, enacted by Laws 1971, ch. 215, § 7; 1978 Comp., § 42-10-10; 1979, ch. 9, § 2; 1979, ch. 182, § 4; 2007, ch. 95, § 2; 2023, ch. 104, § 8.

42-10-11. When homestead exemption does not apply.

The provisions of this article [42-10-9 to 42-10-12 NMSA 1978] do not apply or extend to taxes, garnishment, recorded liens of mortgagees or lessors or recorded liens of laborers or materialmen for labor or materials furnished for the construction or repair of the dwelling house.

History: 1953 Comp., § 24-6-3, enacted by Laws 1971, ch. 215, § 8.

42-10-12. Repealed.

42-10-13. Claim of exemption or priority.

A. Any person desiring to claim that property is exempt from execution or garnishment or is subject to execution only after other property is used to satisfy a debt under the provisions of Sections 40-3-10 and 40-3-11 NMSA 1978 shall file a claim of exemption or priority in the appropriate court; provided that the time to file that claim of exemption shall not be less than ten days after the filing of a writ of execution as set forth in New Mexico Rule of Civil Procedure 1-065.1 [1-065.1 NMRA].

B. A notice of the right to claim exemption to garnishment, execution, levy, attachment or foreclosure or a form to file or claim that exemption shall be provided by the creditor to the person whose property is subject to garnishment, execution, levy, attachment or foreclosure, and that notice shall contain a complete list of exemptions provided by the law.

History: 1953 Comp., § 24-7-1, enacted by Laws 1975, ch. 246, § 1; 1978 Comp., § 42-10-13; 2023, ch. 104, § 9.

42-10-14. Cost-of-living adjustments.

A. On July 1, 2025, and at each two-year interval ending on July 1 thereafter, each dollar amount provided for in Sections 35-12-18, 42-10-1, 42-10-4, 42-10-9 and 42-10-10 NMSA 1978 shall be adjusted to reflect the change in the consumer price index for all urban consumers as published by the United States department of labor for the most recent two-year period ending immediately before such January 1 preceding such July 1. The administrative office of the courts shall publish any adjustments to the exemptions in Sections 35-12-18, 42-10-1, 42-10-4, 42-10-9 and 42-10-10 NMSA 1978 every two years on July 1, beginning July 1, 2025. The dollar amount shall be adjusted to the twenty-five-dollar ($25.00) increment nearest to the dollar amount that represents such change.

B. Adjustments made in accordance with Subsection A of this section shall not apply to legal proceedings commenced prior to the date of such adjustments.

History: 1978 Comp., § 42-10-14, enacted by Laws 2023, ch. 104, § 10.

ARTICLE 11
Government Immunity

42-11-1. Granting immunity; providing for exceptions.

The state of New Mexico and its political subdivisions or any of their branches, agencies, departments, boards, commissions, instrumentalities or institutions are granted immunity from and may not be named a defendant in any suit, action, case or legal proceeding involving a claim of title to or interest in real property except as specifically authorized by law.

History: Laws 1979, ch. 110, § 1.

ARTICLE 13
Equine Liability

42-13-1. Short title.

This act [42-13-1 NMSA 1978] may be cited as the "Equine Liability Act".

History: Laws 1993, ch. 117, § 1.

42-13-2. Legislative purpose and findings.

The legislature recognizes that persons who participate in or observe equine activities may incur injuries as a result of the numerous inherent risks involved in such activities. The legislature also finds that the state and its citizens derive numerous personal and economic benefits from such activities. It is the purpose of the legislature to encourage owners, trainers, operators and promoters to sponsor or engage in equine activities by providing that no person shall recover for injuries resulting from the risks related to the behavior of equine animals while engaged in any equine activities.

History: Laws 1993, ch. 117, § 2.

42-13-3. Definitions.

As used in the Equine Liability Act:

A. "equine" means a llama, horse, pony, mule, donkey or hinny;

B. "equine activities" means:

(1) equine shows, fairs, competitions, rodeos, gymkhanas, performances or parades that involve any or all breeds of equines and any of the equine disciplines;

(2) training or teaching activities;

(3) boarding equines;

(4) riding an equine belonging to another whether or not the owner has received some monetary consideration or other thing of equivalent value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine;

(5) rides, shows, clinics, trips, hunts or other equine occasions of any type, however informal or impromptu, connected with any equine or nonequine group or club; and

(6) equine racing;

C. "behavior of equine animals" means the propensity of an equine animal to kick, bite, shy, buck, stumble, bolt, rear, trample, be unpredictable or collide with other animals, objects or persons;

D. "llama" means a South American camelid that is an animal of the genus lama, including llamas, alpacas, guanacos and vicunas; and

E. "rider" means a person, whether amateur or professional, who is engaged in an equine activity.

History: Laws 1993, ch. 117, § 3; 1995, ch. 193, § 1.

42-13-4. Limitation on liability.

A. No person, corporation or partnership is liable for personal injuries to or for the death of a rider that may occur as a result of the behavior of equine animals while engaged in any equine activities.

B. No person, corporation or partnership shall make any claim against, maintain any action against or recover from a rider, operator, owner, trainer or promoter for injury, loss or damage resulting from equine behavior unless the acts or omissions of the rider, owner, operator, trainer or promoter constitute negligence.

C. Nothing in the Equine Liability Act shall be construed to prevent or limit the liability of the operator, owner, trainer or promoter of an equine activity who:

(1) provided the equipment or tack, and knew or should have known that the equipment or tack was faulty and an injury was the proximate result of the faulty condition of the equipment or tack;

(2) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the rider to:

(a) engage safely in the equine activity; or

(b) safely manage the particular equine based on the rider's representations of his ability;

(3) owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which a rider sustained injuries because of a dangerous condition that was known to the operator, owner, trainer or promoter of the equine activity;

(4) committed an act or omission that constitutes conscious or reckless disregard for the safety of a rider and an injury was the proximate result of that act or omission; or

(5) intentionally injures a rider.

History: Laws 1993, ch. 117, § 4.

42-13-5. Posting of notice.

Operators, owners, trainers and promoters of equine activities or equine facilities, including but not limited to stables, clubhouses, ponyride strings, fairs and arenas, and persons engaged in instructing or renting equine animals shall post clearly visible signs at one or more prominent locations that shall include a warning regarding the inherent risks of the equine activity and the limitations on liability of the operator, owner, trainer or promoter.

History: Laws 1993, ch. 117, § 5.

ARTICLE 14
Right to Repair

42-14-1. Short title.

This act [42-14-1 to 42-14-3 NMSA 1978] may be cited as the "Right to Repair Act".

History: Laws 2023, ch. 200, § 1.

42-14-2. Definitions.

As used in the Right to Repair Act:

A. "construction defect" means a deficiency in the construction of a dwelling that is the result of a failure to exercise that degree of skill a reasonably prudent person skilled in such work would exercise in such circumstances;

B. "construction professional" means a contractor or subcontractor performing the construction of a dwelling;

C. "dwelling" means a newly constructed single family housing unit designed for residential use. "Dwelling" includes the systems and other components and improvements that are part of a single family housing unit at the time of construction;

D. "dwelling action" means a complaint in court or the mechanism for dispute resolution in the construction contract between the purchaser and seller involving an alleged construction defect brought by a purchaser against the seller of a dwelling arising out of or related to the construction of the dwelling;

E. "purchaser" means a person or entity who was the original purchaser or subsequent owner of a dwelling;

F. "reasonable detail" includes all of the following:

(1) an itemized list that describes each alleged construction defect; and

(2) the street address of the dwelling where the alleged construction defect is observed and the location in the dwelling that is the subject of the notice; and

G. "seller" means the party responsible for construction of the dwelling.

History: Laws 2023, ch. 200, § 2.

42-14-3. Notice and right to repair.

A. Except with respect to claims for alleged construction defects involving an immediate threat to the life or safety of persons occupying a dwelling, rendering a dwelling uninhabitable or in which the seller, after notice from the purchaser pursuant to this subsection, refused to make a repair under any applicable express warranty, a purchaser shall first comply with the provisions of this section before filing a dwelling action. A purchaser shall give written notice by the United States postal service with delivery confirmation or electronic means, to the seller specifying the reasonable detail of each alleged defect. A seller who receives notice pursuant to this subsection shall

promptly forward a copy of the notice to the last known address of each construction professional that the seller reasonably believes is responsible for an alleged defect specified in the notice. The seller's notice to each construction professional may be delivered by electronic means.

B. Once a seller receives notice pursuant to this section, the notice does not constitute notice of a claim or occurrence as defined by the New Mexico Insurance Code or an insurance policy to trigger notice requirements to the seller's liability carrier, as the notice is intended to allow the purchaser and seller an opportunity to amicably resolve any claimed defect issues without the need for formal arbitration or legal proceedings.

C. After receipt of the notice described in Subsection A of this section, the seller and the seller's construction professional may inspect the dwelling to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each alleged construction defect. The purchaser shall ensure the dwelling is made available for inspection during normal working hours not later than ten days after the purchaser receives the seller's and the seller's construction professional's request for an inspection. The seller and the seller's construction professional shall provide reasonable notice to the purchaser before conducting the inspection. The inspection shall be conducted at a reasonable time. The seller and the seller's construction professional may use reasonable measures, including testing, to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each alleged construction defect. The seller's construction professional shall restore the dwelling within sixty days of the testing.

D. Within sixty days after receipt of the notice provided for in Subsection A of this section, the seller shall send to the purchaser, by certified mail, return receipt requested, a written response to the purchaser's notice. The response may:

(1) offer to repair or replace each alleged construction defect or to have each alleged construction defect repaired or replaced by another construction professional chosen by the seller at the seller's or seller's construction professional's expense;

(2) offer to provide monetary compensation to the purchaser; or

(3) invoke any remedies provided in the construction contract between the seller and the purchaser.

E. A written offer to repair or replace pursuant to Paragraph (1) of Subsection D of this section shall describe in reasonable detail all repairs or replacements that the seller and the seller's construction professional intend to make or provide to the dwelling and a reasonable estimate of the date by which the repairs or replacements will be made. This subsection does not prohibit the seller from offering monetary compensation or other consideration instead of or in addition to a repair or replacement.

F. The purchaser shall allow the seller or the seller's construction professional the opportunity to make repairs or replacements of each alleged construction defect unless the purchaser has rejected in writing or by electronic means the seller's offer to repair or replace. If the purchaser reasonably rejects the seller's offer, the purchaser has complied with the requirements of this section and may initiate a dwelling action.

G. The purchaser and seller may negotiate for a release of claims regarding the noticed construction defect if an offer involving monetary compensation or other consideration is accepted or the purchaser is satisfied with the repairs or replacements.

H. If the response provided pursuant to Subsection D of this section includes a notice of intent to repair or replace each alleged construction defect, and such offer to repair or replace has not been rejected by the purchaser, the purchaser shall allow the seller and the seller's construction professional a reasonable opportunity to repair or replace each alleged construction defect or cause each alleged construction defect to be repaired or replaced as follows:

(1) the purchaser and the seller or the seller's construction professional shall coordinate repairs or replacements within thirty days after the seller's notice of intent to repair or replace was sent pursuant to Subsection D of this section. A construction professional that was not involved in the construction of the dwelling resulting in each alleged construction defect and that performs any repair or replacement of the alleged construction defect pursuant to this section is liable to the seller or purchaser who contracted for the contractor's or subcontractor's services only for that construction professional's scope of work;

(2) repairs or replacements shall begin as agreed by the purchaser and the seller or the seller's construction professional, with reasonable efforts to begin repairs or replacements within thirty days after the seller's notice of intent to repair or replace was sent pursuant to Subsection D of this section. If a permit is required to perform the repair or replacement, reasonable efforts shall be made to begin repairs or replacements within ten days after receipt of the permit or thirty days after the seller's notice of intent to repair or replace was sent pursuant to Subsection D of this section, whichever is later;

(3) all repairs or replacements shall be completed using reasonable care under the circumstances and within a commercially reasonable time frame considering the nature of the repair or replacement, any access issues or unforeseen events that are not caused by the seller or the seller's construction professional;

(4) the purchaser shall provide reasonable access during normal working hours for the repairs or replacements;

(5) the purchaser and seller may negotiate a release or waiver upon the satisfaction of the purchaser or in exchange for monetary compensation or other consideration in lieu of repair; and

(6) at the conclusion of any repairs or replacements, the purchaser may reinitiate the process set forth in this section regarding any claim for inadequate repair or replacement.

I. A purchaser may send a new notice pursuant to Subsection A of this section to include each alleged construction defect identified after submission of the original notice. The seller and the seller's construction professional shall have a reasonable period of time to conduct an inspection, if requested, and thereafter the parties shall comply with the requirements of Subsections B through H of this section for each additional alleged construction defect identified in reasonable detail in the notice.

J. The time periods provided for in this section shall be reasonably extended for delays that are beyond the control of seller and otherwise by written agreement of the seller and purchaser.

K. If the seller does not comply with the requirements of this section and the failure is not due to any fault of the purchaser or a result of delays that are beyond the control of seller, including weather conditions or government delay, the purchaser shall follow any remedy provided for in the construction contract or file a complaint in court if no dispute resolution mechanism is provided for in the contract with the seller.

L. Nothing in the Right to Repair Act negates or supersedes the existence of any remedy provided for in the construction contract.

M. The statute of repose pursuant to Section 37-1-27 NMSA 1978 or other applicable statute of limitation shall be tolled during the repair and replacement process for items specified in the notice.

History: Laws 2023, ch. 200, § 3.