

UNANNOTATED

CHAPTER 48 Liens and Mortgages

ARTICLE 1 Uniform Federal Lien Registration Act

48-1-1. Federal lien; place of filing.

A. Notices of liens upon real property for taxes and other obligations payable to the United States and certificates and notices affecting the liens shall be recorded in the office of the county clerk of the county in which the real property subject to a federal lien is situated.

B. Notices of liens upon personal property for taxes and other obligations payable to the United States and certificates and notices affecting the liens shall be recorded in the office of the county clerk of the county where the property owner resides at the time of recording the notice of lien.

History: 1953 Comp., § 61-1-8, enacted by Laws 1967, ch. 253, § 1; 1988, ch. 44, § 1.

48-1-2. Execution of notices and certificates.

Certification, by the secretary of the treasury of the United States, his delegate or any official or entity of the United States responsible for filing or certification, of notices of liens, certificates, notices of compromise or notices affecting federal liens entitles them to be filed, and no other attestation, certification or acknowledgment is necessary.

History: 1953 Comp., § 61-1-9, enacted by Laws 1967, ch. 253, § 2; 1988, ch. 44, § 2.

48-1-3. Duties of filing officer.

A. If a notice of federal lien, notice of compromise or notice of revocation of any certificate described in Subsection B of this section is presented to the recording officer, he shall endorse the certificate with his identification and the date and time of receipt, and immediately file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total amount of tax or other obligation, interest, penalties and costs.

B. If a certificate of release, nonattachment, discharge or subordination of any federal lien is presented to the recording officer specified in Section 48-1-1 NMSA 1978, he shall record the certificate and shall enter the certificate or notice with the date of recording in any alphabetical federal lien index on the line where the notice of lien is entered.

C. Upon request of any person, the recording officer shall issue his certificate showing whether there is recorded, on the date and hour stated on it, any presently effective notice of federal lien or certificate or notice affecting the lien, recorded on or after July 1, 1988 naming a particular person, and if a notice or certificate is recorded, giving the date and hour of its recording. The fee for a certificate is two dollars (\$2.00). Upon request, the recording officer shall furnish a copy of any notice of federal lien or notice or certificate affecting a federal lien for a fee of one dollar (\$1.00) per page.

History: 1953 Comp., § 61-1-10, enacted by Laws 1967, ch. 253, § 3; 1988, ch. 44, § 3.

48-1-4. Repealed.

48-1-5. Uniformity of interpretation.

The Uniform Federal Lien Registration Act shall be so interpreted and construed as to effectuate its general purpose: to make uniform the law of those states which enact it.

History: 1953 Comp., § 61-1-12, enacted by Laws 1967, ch. 253, § 5; 1988, ch. 44, § 4.

48-1-6. Short title.

Sections 48-1-1 through 48-1-7 NMSA 1978 may be cited as the "Uniform Federal Lien Registration Act".

History: 1953 Comp., § 61-1-13, enacted by Laws 1967, ch. 253, § 6; 1988, ch. 44, § 5.

48-1-7. Federal liens and notices filed before the effective date of act.

Recording officers with whom notices of federal liens, certificates and notices affecting the liens have been recorded on or before July 1, 1988 shall, after that date, continue to maintain a file labeled "federal lien notices recorded prior to July 1, 1988" containing notices and certificates filed in numerical order of receipt.

History: 1953 Comp., § 61-1-14, enacted by Laws 1967, ch. 253, § 9; 1988, ch. 44, § 6.

ARTICLE 1A

Lien Protection Efficiency

48-1A-1. Short title.

This act [48-1A-1 to 48-1A-9 NMSA 1978] may be cited as the "Lien Protection Efficiency Act".

History: Laws 1999, ch. 144, § 1.

48-1A-2. Findings; purpose.

A. The legislature finds:

(1) that there is a problem with the presentation for filing or recording of invalid instruments that purport to affect the real or personal property interests of persons, including elected or appointed officials and employees of state, local and federal government. These instruments, which have no basis in fact or law, have serious disruptive effects on property interests and title, appear on title searches and other disclosures based on public records and are costly and time-consuming to expunge. These instruments have serious disruptive effects on the conduct of government business and are costly and time-consuming to both government entities and individual officials and employees;

(2) that officials and employees authorized by law to accept for filing or recording liens, deeds, instruments, judgments or other documents purporting to establish nonconsensual common law liens do not have discretionary authority or mechanisms to prevent the filing, recording or disclosure of frivolous lien claims if the documents comply with certain minimum format requirements. It would be inefficient and would require substantial government expenditure to have the legal sufficiency of documents submitted for filing or recording determined in advance of acceptance; and

(3) that it is necessary and in the best interest of New Mexico and its citizens to provide a means to relieve this problem, to prevent the filing, recording or disclosure of frivolous lien claims and to authorize actions to void frivolous lien claims.

B. The purpose of the Lien Protection Efficiency Act is to provide for the efficient filing and recording of documents and the protection of public officials and employees and the citizens of the state against nonconsensual common law liens by imposing limitations on the circumstances in which nonconsensual common law liens may be recognized in the state.

History: Laws 1999, ch. 144, § 2.

48-1A-3. Definitions.

As used in the Lien Protection Efficiency Act:

A. "court" means:

(1) a court created by the constitution of the United States or pursuant to federal law, including the United States supreme court, the United States courts of appeals, the United States district or administrative courts or other federal courts of inferior jurisdiction, but does not include administrative adjudicative bodies;

(2) a court created by the constitution of New Mexico or pursuant to New Mexico law, including the supreme court, the court of appeals, district courts, magistrate courts, metropolitan courts and municipal courts, but does not include administrative adjudicative bodies; and

(3) a court comparable to any of those listed in Paragraph (2) of this subsection that is created by the constitution of another state or pursuant to the state law of another state;

B. "federal official or employee" means an appointed or elected official or an employee of a federal agency, board, commission or department in a branch of the federal government;

C. "filing officer" means the secretary of state; the clerk of a county or court; or a state, local or federal official or employee authorized by law to accept for filing as a public record a lien, deed, instrument, judgment or other document, whether paper, electronic or in another form;

D. "lien" means an encumbrance on property as security for the payment of a debt;

E. "nonconsensual common law lien" means a document, regardless of self-description, that purports to assert a lien against the assets, real or personal, of a person that:

(1) is not expressly provided for by a specific state or federal statute;

(2) does not depend upon the consent of the owner of the property affected or the existence of a contract for its existence; or

(3) is not an equitable or constructive lien imposed by a court of competent jurisdiction; and

F. "state or local official or employee" means an appointed or elected official or an employee of a state agency, board, commission, department in any branch of state government, or state institution of higher education, or a school district, political subdivision or unit of local government of this state.

History: Laws 1999, ch. 144, § 3.

48-1A-4. Construction.

A. The Lien Protection Efficiency Act shall not be construed to create a lien or interest in property not otherwise existing under state or federal law.

B. The Lien Protection Efficiency Act is not intended to affect a lien provided for by statute, a consensual lien now or hereafter recognized under common law of the state or the ability of the courts to impose equitable or constructive liens.

History: Laws 1999, ch. 144, § 4.

48-1A-5. Non-enforceability of nonconsensual common law liens.

Nonconsensual common law liens against real property shall not be recognized or be enforceable. Nonconsensual common law liens claimed against personal property shall not be recognized or be enforceable if, at the time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property.

History: Laws 1999, ch. 144, § 5.

48-1A-6. Invalidity of claim of lien against a state or local official or employee or a federal official or employee; filing of notice of invalid lien.

A. A claim of lien against a state or local official or employee or a federal official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid, unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien, or unless a specific statute authorizes the filing of the lien.

B. If a claim of lien, as described in Subsection A of this section, has been accepted for filing, the filing officer shall accept for filing a notice of invalid lien signed and submitted by an assistant attorney general representing the state agency, board, commission or department of which the individual is an official or employee; an attorney representing the state institution of higher education, school district, political subdivision or unit of local government of this state of which the individual is an official or employee; or an assistant United States attorney representing the federal agency of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at that person's last known address.

History: Laws 1999, ch. 144, § 6.

48-1A-7. No duty to accept or to disclose a nonconsensual common law lien; immunity from liability.

A. A filing officer does not have a duty to accept for filing or recording a claim of lien, unless the lien is authorized by statute or imposed by a court of competent jurisdiction having jurisdiction over property affected by the lien.

B. A filing officer does not have a duty to accept for filing or recording a claim of lien against a state or local official or employee or a federal official or employee based on the performance or nonperformance of that official's or employee's duties, unless accompanied by a specific order from a court of competent jurisdiction having jurisdiction over property affected by the lien, authorizing the filing of the lien.

C. A filing officer does not have a duty to disclose an instrument of record or filing that attempts to give notice of a nonconsensual common law lien. This subsection does not relieve a filing officer of a duty that otherwise may exist to disclose a claim of a lien authorized by statute or imposed by order of a court of competent jurisdiction having jurisdiction over property affected by the lien. The existence of a claim of a nonconsensual common law lien in the public record does not constitute a defect in the title of or an encumbrance on the real property described and does not affect the marketability of the title to the real property.

D. A filing officer shall not be liable for damages arising from a refusal to record or file or a failure to disclose any claim of a nonconsensual common law lien of record pursuant to this section.

E. A filing officer shall not be liable for damages arising from the acceptance for filing of a claim of lien as described in Subsection B of this section, or for the acceptance for filing of a notice of invalid lien pursuant to Subsection B of Section 6 [48-1A-6 NMSA 1978] of the Lien Protection Efficiency Act.

F. Except as otherwise provided by law, a filing officer shall not be required to defend decisions to accept or reject documents pursuant to Section 6 of the Lien Protection Efficiency Act.

History: Laws 1999, ch. 144, § 7.

48-1A-8. Action to void lien; order to show cause; service of process.

A. A person whose real or personal property is subject to a recorded claim of a nonconsensual common law lien and who believes the claim of lien is invalid may petition the district court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the district court, at a time no earlier than six days nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by Section 9 [48-1A-9 NMSA 1978] of the Lien Protection Efficiency Act should not be granted. The petition shall state the grounds upon which relief is requested and shall be

supported by the affidavit of the petitioner or petitioner's attorney setting forth a concise statement of the facts upon which the claim for relief is based.

B. An order rendered pursuant to the petition and directing the lien claimant to appear shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of the lien shall be declared void ab initio and released and that the lien claimant shall be ordered to pay the costs incurred by the petitioner or any other party to the proceeding, including reasonable attorney fees, and damages as set forth in Section 9 of the Lien Protection Efficiency Act.

C. The petition and order shall be served upon the lien claimant by personal service, or, when the district court determines that service by mail is likely to give actual notice, the district court may order that service be made by a person over eighteen years of age who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant's last known address or any other address determined by the district court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes shall bear the return address of the sender.

History: Laws 1999, ch. 144, § 8.

48-1A-9. Orders; liability for costs and attorney fees; damages.

A. If, in proceedings pursuant to Section 8 [48-1A-8 NMSA 1978] of the Lien Protection Efficiency Act, the lien claimant fails to appear at the time and place noted or if the lien claimant appears and the district court determines that the claim of lien is invalid, the district court shall issue an order declaring the lien void ab initio, releasing the lien, refunding any court docketing or filing fee to the petitioner and awarding other costs and reasonable attorney fees and damages as set forth in this section to the petitioner or any other party to the proceeding, to be paid by the lien claimant.

B. If the district court determines that the claim of lien is valid, the district court shall issue an order so stating and may award costs and reasonable attorney fees to the lien claimant to be paid by the petitioner.

C. A person who offers to have filed and recorded in the office of a filing officer a document purporting to create a nonconsensual common law lien against real or personal property, knowing or having reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid, shall be liable to the owner of the property affected for actual damages or five thousand dollars (\$5,000), whichever is greater, plus costs and reasonable attorney fees as provided in this section.

D. A grantee or other person purportedly benefited by a filed or recorded document that creates a nonconsensual common law lien against real or personal property,

knowing or having reason to know that the filed or recorded document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid, who willfully refuses to release the filed or recorded document upon request of the owner of the property affected, shall be liable to the owner for actual damages or five thousand dollars (\$5,000), whichever is greater, plus costs and reasonable attorney fees as provided in this section.

E. A certified copy of an order rendered pursuant to this section shall be filed by the clerk of the district court in the office of the appropriate filing officer.

History: Laws 1999, ch. 144, § 9.

ARTICLE 2

Mechanics' and Materialmen's Liens

48-2-1. ["Lien" defined.]

A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

History: Laws 1880, ch. 16, § 1; C.L. 1884, § 1519; C.L. 1897, § 2216; Code 1915, § 3318; C.S. 1929, § 82-201; 1941 Comp., § 63-201; 1953 Comp., § 61-2-1.

48-2-2. Mechanics and materialmen; lien; labor, equipment and materials furnished; definition of agent of owner.

Every person performing labor upon, providing or hauling equipment, tools or machinery for or furnishing materials to be used in the construction, alteration or repair of any mine, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, road or aqueduct to create hydraulic power or any other structure, who performs labor in any mine or is a registered surveyor or who surveys real property has a lien upon the same for the work or labor done, for the specific contract or agreed upon charge for the surveying or equipment, tools or machinery hauled or provided or materials furnished by each respectively, whether done, provided, hauled or furnished at the instance of the owner of the building or other improvement or his agent. Every contractor, subcontractor, architect, builder or other person having charge of any mining or of the construction, alteration or repair, either in whole or in part, of any building or other improvement shall be held to be the agent of the owner for the purposes of this section.

History: Laws 1880, ch. 16, § 2; C.L. 1884, § 1520; C.L. 1897, § 2217; Code 1915, § 3319; C.S. 1929, § 82-202; 1941 Comp., § 63-202; 1953 Comp., § 61-2-2; Laws 1965, ch. 184, § 1; 1991, ch. 43, § 1; 1993, ch. 252, § 1.

48-2-2.1. Procedure for perfecting certain mechanics' and materialmen's liens.

A. The provisions of Subsections B through D of this section do not apply to claims of liens made on residential property containing four or fewer dwelling units, to claims of liens made by an original contractor or to claims of liens made by mechanics or materialmen who contract directly with the original contractor. For purposes of this section, "original contractor" means a contractor that contracts directly with the owner.

B. No lien of a mechanic or a materialman claimed in an amount of more than five thousand dollars (\$5,000) may be enforced by action or otherwise unless the lien claimant has given notice in writing of the claimant's right to claim a lien in the event of nonpayment and that notice was given not more than sixty days after initially furnishing work or materials, or both, by either certified mail, return receipt requested, facsimile with acknowledgement or personal delivery to:

- (1) the owner or reputed owner of the property upon which the improvements are being constructed; or
- (2) the original contractor, if any.

C. If the owner or the original contractor claims lack of notice as a defense to the enforcement of a lien described in Subsection B of this section, the owner or contractor shall show that upon the request of the mechanic or materialman that the owner or contractor furnished to the lien claimant not more than five days after such request was made:

- (1) the original contractor's name, address and license number, if there is an original contractor on the project;
- (2) the owner's name and address;
- (3) a description of the property or a description sufficiently specific for actual identification of the property; and
- (4) the name and address of any bonding company or other surety that is providing either a payment or performance bond for the project.

D. The notice required to be given by the claimant pursuant to the provisions of Subsection B of this section shall contain:

- (1) a description of the property or a description sufficiently specific for actual identification of the property;
- (2) the name, address and phone number, if any, of the claimant; and

(3) the name and address of the person with whom the claimant contracted or to whom the claimant furnished labor or materials, or both.

E. A person required by the provisions of Subsection B of this section to give notice to enforce the person's claim of lien may elect not to give the notice, but may give the required notice at a later time. If the person elects to do so, the lien shall apply only to the work performed or materials furnished on or after the date thirty days prior to the date the notice was given. The provisions of Subsections C and D of this section apply to any notice given under this subsection.

History: Laws 1990, ch. 92, § 2; 1993, ch. 252, § 2; 2007, ch. 212, § 1.

48-2-3. [Improvement of city or town lot or street; lien on lot.]

Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in or otherwise improves the same, or the street in front of, or adjoining the same, has a lien upon such lot for his work done and materials furnished.

History: Laws 1880, ch. 16, § 3; C.L. 1884, § 1521; C.L. 1897, § 2218; Code 1915, § 3320; C.S. 1929, § 82-203; 1941 Comp., § 63-203; 1953 Comp., § 61-2-3.

48-2-4. [Lien covers improvements and land.]

The land upon which any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing the materials for the same, the land belonged to the person who caused said building, improvement or structure to be constructed, altered or repaired, but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

History: Laws 1880, ch. 16, § 4; C.L. 1884, § 1522; C.L. 1897, § 2219; Code 1915, § 3321; C.S. 1929, § 82-204; 1941 Comp., § 63-204; 1953 Comp., § 61-2-4.

48-2-5. Preference over other encumbrances.

A. The liens provided for in Sections 48-2-1 through 48-2-17 NMSA 1978 are preferred to any lien, mortgage or other encumbrance which may have attached subsequent to the time when the building, improvement or structure was commenced, work done or materials were commenced to be furnished; also to any lien, mortgage or other encumbrance of which the lienholder had no notice and which was unrecorded at the time the building, improvement or structure was commenced, work done or the materials were commenced to be furnished.

B. Liens filed by registered surveyors shall have priority equal with other mechanics' and materialmen's liens, but work performed by registered surveyors shall not constitute the commencement of construction.

History: Laws 1880, ch. 16, § 5; C.L. 1884, § 1523; C.L. 1897, § 2220; Code 1915, § 3322; C.S. 1929, § 82-205; 1941 Comp., § 63-205; Laws 1947, ch. 8, § 1; 1949, ch. 18, § 1; 1953 Comp., § 61-2-5; Laws 1991, ch. 43, § 2.

48-2-6. Time for filing lien claim; contents; notice of lien.

A. Every original contractor, within one hundred twenty days after the completion of a contract, and every person, except the original contractor, desiring to claim a lien pursuant to Sections 48-2-1 through 48-2-17 NMSA 1978 shall, within ninety days after the completion of any building, improvement or structure or after the completion of the alteration or repair of the building, improvement or structure or the performance of any labor in a mining claim, file for record with the county clerk of the county in which the property or some part of it is situated a claim containing a statement of demands, after deducting all just credits and offsets. The claim shall state the name of the owner or reputed owner, if known, and also the name of the person by whom the claimant was employed or to whom the claimant furnished the materials, and shall include a statement of the terms, time given and the conditions of the contract, and also a description of the property to be charged with the lien, sufficient for identification. The claim shall be verified by the oath of the claimant or of some other person.

B. A person filing a claim for a lien with a county clerk pursuant to Subsection A of this section shall mail, email, send by certified mail with return receipt requested or hand deliver a copy of the filed claim for a lien to the owner or reputed owner, if known, stated in the claim within fifteen days of filing the claim with the county clerk. The copy of the filed claim for a lien shall be sent or delivered to the owner or reputed owner at the owner or reputed owner's last known address. If the owner or reputed owner's address is not known, the copy of the filed claim for a lien shall be sent to the address of the owner of the property as listed in the county assessor's files. The failure of the claimant to serve the notice may preclude the recovery of interest, attorney's fees or costs.

History: Laws 1880, ch. 16, § 6; C.L. 1884, § 1524; C.L. 1897, § 2221; Code 1915, § 3323; Laws 1921, ch. 108, § 1; C.S. 1929, § 82-206; 1941 Comp., § 63-206; 1953 Comp., § 61-2-6; Laws 1979, ch. 168, § 1; 1978 Comp., § 48-2-6; 2023, ch. 61, § 1.

48-2-7. [Claims against two or more buildings or improvements; statement of amount due; loss of preference.]

In every case in which one claim is filed against two or more buildings, mining claims or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims or other improvements, otherwise the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated as

against other creditors having liens, by judgment, mortgage or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

History: Laws 1880, ch. 16, § 7; C.L. 1884, § 1525; C.L. 1897, § 2222; Code 1915, § 3324; C.S. 1929, § 82-207; 1941 Comp., § 63-207; 1953 Comp., § 61-2-7.

48-2-8. Recording of liens; indexing; fees.

The county clerk shall make a record of a claim that shall be indexed as deeds and other conveyances are required by law to be indexed and for which the county clerk may receive the same fees as are allowed by law for recording deeds and other instruments. Any claim, the form of which complies with the requirements of Chapter 48, Article 2 NMSA 1978, shall be entitled to be filed of record.

History: Laws 1880, ch. 16, § 8; C.L. 1884, § 1526; C.L. 1897, § 2223; Code 1915, § 3325; C.S. 1929, § 82-208; 1941 Comp., § 63-208; 1953 Comp., § 61-2-8; 1981, ch. 351, § 1; 2011, ch. 134, § 19.

48-2-9. Petition to cancel lien; security.

A. The owner of any building, mining claim, improvement or structure subject to a lien under Sections 48-2-1 through 48-2-17 NMSA 1978 or an original contractor having a contract with that owner may petition the district court for the county in which the property or a part of it is located for an order canceling the lien.

B. Upon the filing of the petition, the district court judge shall examine the lien claimant's recorded demands and determine an amount sufficient to satisfy the recorded demands and any other damages, court costs or attorney fees that may be recovered by the lien claimant. Security, in the amount set by the judge and of a type approved by the judge, shall be deposited by the owner of the property or original contractor with the district court conditioned on the payment of any sum found to be validly due to the lien claimant. An owner or original contractor may not provide a single security for the cancellation of the lien of more than one claimant.

C. When the security is deposited under this section, the judge of the district court shall immediately issue an order canceling the lien and shall notify the county clerk with whom the lien was filed. Upon the recording of the order, the county clerk shall mark the filed lien as canceled. When an order is issued under this subsection, the claimant's lien attaches to the security and is enforceable as to the security in the district court in which it is deposited to the same extent as any other lien provided for in Sections 48-2-1 through 48-2-17 NMSA 1978.

History: 1953 Comp., § 61-2-8.1, enacted by Laws 1975, ch. 68, § 1; 2007, ch. 212, § 2.

48-2-10. Limitation of action to enforce.

No lien provided for in Sections 48-2-1 through 48-2-17 NMSA 1978 remains valid for a longer period than two years after the claim of lien has been filed unless proceedings have been commenced in a court of competent jurisdiction or in binding arbitration within that time to enforce the lien. A contingent payment clause in a contract shall not be construed as a waiver of the right to file and enforce a mechanic's or materialman's lien pursuant to Sections 48-2-1 through 48-2-17 NMSA 1978.

History: Laws 1880, ch. 16, § 9; C.L. 1884, § 1527; C.L. 1897, § 2224; Code 1915, § 3326; C.S. 1929, § 82-209; 1941 Comp., § 63-209; 1953 Comp., § 61-2-9; Laws 1979, ch. 168, § 2; 1990, ch. 92, § 1; 2007, ch. 212, § 3.

48-2-10.1. Repealed.

48-2-11. [Construction with knowledge of owner subjects land to lien; notice by owner of nonresponsibility.]

Every building or other improvement mentioned in the second section [48-2-2 NMSA 1978] of this article, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein, and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this article, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration or repair, or the intended construction, alteration or repair, give notice that he will not be responsible for the same, by posting a notice in writing to the effect, in some conspicuous place upon said land, or upon the building or other improvement situated thereon.

History: Laws 1880, ch. 16, § 11; C.L. 1884, § 1529; C.L. 1897, § 2226; Code 1915, § 3327; C.S. 1929, § 82-210; 1941 Comp., § 63-210; 1953 Comp., § 61-2-10.

48-2-12. Contractor liable for liens of subcontractors.

The contractor shall be entitled to recover upon a lien filed by the contractor only such amount as may be due to the contractor according to the terms of the contract, after deducting all claims of subcontractors under the contractor who have filed liens for work done and materials furnished, and during the pendency of the action, the owner may withhold from the contractor the amount of money for which the lien is filed unless the lien was asserted as a result of the owner's failure to pay the contractor for work done and materials furnished, and in case of judgment against the owner or the owner's property upon the lien, the owner shall be entitled to deduct from any amount due or to become due by the owner to the contractor the amount of the judgment. If the amount of the judgment exceeds the amount due by the owner to the contractor, or if the owner

settles with the contractor in full, the owner shall be entitled to recover back from the contractor any amount paid by the owner, in excess of the contract price, and for which the contractor was originally the party liable.

History: Laws 1880, ch. 16, § 12; C.L. 1884, § 1530; C.L. 1897, § 2227; Code 1915, § 3328; C.S. 1929, § 82-211; 1941 Comp., § 63-211; 1953 Comp., § 61-2-11; 2007, ch. 212, § 4.

48-2-13. [Rank of liens; order of payment.]

In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz:

- A. all persons other than the original contractors and subcontractor;
- B. the subcontractors;
- C. the original contractors.

And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank, and whenever, on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner, and with like effect as in actions for the foreclosure of mortgages.

History: Laws 1880, ch. 16, § 13; C.L. 1884, § 1531; C.L. 1897, § 2228; Code 1915, § 3329; C.S. 1929, § 82-212; 1941 Comp., § 63-212; 1953 Comp., § 61-2-12.

48-2-14. Joinder of actions; attorney fees; costs.

Any number of persons claiming liens may join in the same action, and when separate actions are commenced, the court may consolidate them. A prevailing party in a dispute arising out of or relating to a lien action is entitled to recover from the other party the reasonable attorney fees, costs and expenses incurred by the prevailing party.

History: Laws 1880, ch. 16, § 14; C.L. 1884, § 1532; C.L. 1897, § 2229; Code 1915, § 3330; C.S. 1929, § 82-213; 1941 Comp., § 63-213; 1953 Comp., § 61-2-13; 2005, ch. 120, § 1; 2007, ch. 212, § 5.

48-2-15. [Materials exempt from attachment or execution for purchaser's debts.]

Whenever materials shall have been furnished for use in the construction, alteration or repair of any building or other improvement, such materials shall not be subject to attachment, execution or other legal process, to enforce any debt due by the purchaser

of such materials, except a debt due for the purchase-money thereof, so long as in good faith the same are about to be applied to the construction, alteration or repair of such building, mining claim or other improvement.

History: Laws 1880, ch. 16, § 15; C.L. 1884, § 1533; C.L. 1897, § 2230; Code 1915, § 3331; C.S. 1929, § 82-214; 1941 Comp., § 63-214; 1953 Comp., § 61-2-14.

48-2-16. [Personal action for recovery of debt not affected.]

Nothing contained in this article shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished to maintain a personal action to recover such debt against the person liable therefor.

History: Laws 1880, ch. 16, § 16; C.L. 1884, § 1534; C.L. 1897, § 2231; Code 1915, § 3332; C.S. 1929, § 82-215; 1941 Comp., § 63-215; 1953 Comp., § 61-2-15.

48-2-17. Contractors; workmen's compensation insurance premiums; rights against performance bond.

Unpaid premiums or charges for the furnishing of workmen's compensation insurance furnished to any contractor or subcontractor, who is required by the terms of his contract or by law to obtain and carry such insurance, shall be and is hereby defined to be material furnished to the contractor or subcontractor for use in the performance of the contract, and the person, firm or corporation so furnishing the same shall have the same rights and remedies against any performance bond given in connection with such contract as if the workmen's compensation insurance so furnished were physical property, and as though a lien had been filed against the improved premises, but shall have no lien against the improved premises.

History: 1953 Comp., § 61-2-17, enacted by Laws 1967, ch. 127, § 1.

48-2-18, 48-2-19. Repealed.

ARTICLE 2A Stop Notice Act

48-2A-1. Short title.

This act [48-2A-1 to 48-2A-12 NMSA 1978] may be cited as the "Stop Notice Act".

History: Laws 1989, ch. 301, § 1.

48-2A-2. Purpose.

The legislature finds there are practices within the industry of constructing residential properties containing not more than four dwelling units resulting in certain financial inequities and, therefore, declares that the purpose of the Stop Notice Act is to: provide for timely payment by an original contractor to persons contracted with to furnish labor or materials incorporated or to be incorporated in residential construction; define stop notices and their legal usage; encourage construction lenders to assert reasonable supervision, monitoring and control of funds disbursed to the original contractor for the timely payment of labor or materials; restrain and bar diversion of funds for purposes not directly involved with construction of the residential site improvement; and provide for criminal penalties.

History: Laws 1989, ch. 301, § 2.

48-2A-3. Definitions.

As used in the Stop Notice Act:

A. "bond" means good and sufficient sureties executed by a corporate surety entity or cash collateral;

B. "claimant" means any person entitled under the Stop Notice Act to give a stop notice for labor or materials furnished in connection with site improvement;

C. "claim satisfied notice" means a notice from the subcontractor or the materialman to the construction lender, if any, and the owner that the claim stated in the stop notice has been satisfied;

D. "completion of construction" means the earlier of the dates when any of the following occur:

(1) issuance of a certificate of occupancy;

(2) acceptance by construction lender of the final appraisal of value of the improvement on the residential site; or

(3) approval of final inspection by the insuring abstract or title entity;

E. "construction lender" means any financial institution lending funds for the purposes of contracting for construction or for materials to be incorporated for site improvements or any other person lending or holding funds to pay for construction costs or materials that were incorporated in site improvements;

F. "labor" means the performance of work or furnishing of skills or other necessary services to a site improvement;

G. "materialman" means any person who furnishes materials or supplies to a subcontractor or an original contractor, incorporated or to be incorporated into a site improvement;

H. "original contractor" means any contractor who has an express contractual relationship with the owner or in the case when the owner is the contractor, the owner;

I. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or political subdivision;

J. "preliminary notice" means a notice which notifies the owner or the construction lender that the labor furnished or material incorporated or to be incorporated may be subject to a stop notice if the subcontractor or materialman is not paid timely;

K. "residential site" means the real property upon which the construction labor is furnished or the materials were incorporated or are to be incorporated for the site improvement;

L. "site improvement" means the construction on a residential site of no more than four dwelling units;

M. "stop notice" means a written instrument, signed and verified by the claimant or his agent that provides the claimant with a procedure to make and enforce a claim against the construction lender, or owner if there is no construction lender; and

N. "subcontractor" means any person performing labor upon or providing or hauling equipment, tools or machinery to the site.

History: Laws 1989, ch. 301, § 3.

48-2A-4. Requirements for disclosure; owners and construction lenders.

A. In every instance where an original contractor proposes to contract with a subcontractor or materialman or both for any site improvement, the original contractor shall inform the subcontractor and materialman of:

(1) the name and address of the owner of the residential site;

(2) the name and address of the construction lender lending the funds, if any, and the loan officer who actually made the construction loan, if any, for the site improvement; and

(3) the accurate legal description of the residential site, if available, however in all cases a description of the residential site sufficient for identification.

B. Where a subcontractor contracts with another subcontractor for labor or a materialman to provide materials for any site improvement, he shall, upon request, inform the contractor or materialman of:

(1) the name and address of the owner of the residential site;

(2) the name and address of the construction lender lending the funds, if any, and the loan officer who actually made the construction loan, if any, for the site improvement; and

(3) the accurate legal description of the residential site.

History: Laws 1989, ch. 301, § 4.

48-2A-5. Stop notices; contents.

A stop notice shall not be effective unless:

A. it is signed and verified by the claimant or his agent, accompanied with a bond as provided for in Section 7 [48-2A-7 NMSA 1978] of the Stop Notice Act, is served pursuant to Section 6 [48-2A-6 NMSA 1978] of the Stop Notice Act and states in general terms all of the following:

(1) the name of the claimant;

(2) the date the claimant files the preliminary notice;

(3) the date the claimant presented his request for payment to the original contractors;

(4) the name of the owner and original contractor of the residential site;

(5) a description of the kind of labor or materials furnished, or agreed to be furnished, for the residential site;

(6) the name of the person who ordered the labor or who accepted the materials;

(7) the total cost of all the labor or materials to be furnished to the residential site;

(8) the cost of the labor furnished or materials already furnished;

(9) the balance of the money due; and

(10) a demand that the construction lender, if any, or the owner, if there is no construction lender, withhold a sufficient amount of money from the construction loan funds to satisfy the demand of the claimant;

B. a preliminary notice was given by the claimant, in accordance with Section 6 of the Stop Notice Act, within twenty days after the claimant first began to furnish work or materials to the residential site;

C. if the claimant does not deliver the preliminary notice within twenty days after the claimant first began to furnish work or material to the site improvement, he may still deliver a preliminary notice but he shall lose his stop notice rights for all work performed or materials furnished more than twenty days before the preliminary notice actually is given; and

D. it is delivered, pursuant to Section 6 of the Stop Notice Act, no earlier than twenty days or later than thirty days from the date the subcontractor or materialman presented his request for payment to the original contractor.

History: Laws 1989, ch. 301, § 5.

48-2A-6. Notices.

A. Any preliminary notice given under the Stop Notice Act shall be effective notice if the preliminary notice is:

(1) hand-delivered or mailed, return receipt requested, to the construction lender, if applicable for the purposes of the Stop Notice Act, or the manager or other responsible person at the address of the construction loan's origination or, if the address of origination has changed, then to the last known address of the construction lender; and

(2) hand-delivered to the owner or mailed, return receipt requested, to the owner's last known residential or business address.

B. The stop notice shall be effective notice if the stop notice was hand-delivered by a small package express carrier addressed to the manager of the real estate lending department of the construction lender if the construction lender is a financial institution. If the construction lender is not a financial institution, the stop notice shall be delivered to the manager or other responsible person at the address where the construction loan originated.

History: Laws 1989, ch. 301, § 6.

48-2A-7. Stop notices; bonds.

A. A stop notice shall not be effective unless it is accompanied by a bond equal to one and one-quarter of the amount of the claim stated in the stop notice. The claimant shall be the principal on the bond, and the bond shall have good and sufficient sureties executed by a corporate surety entity.

B. Requirements of posting bond set forth in this section shall be satisfied when the claimant posts cash collateral with the recipient of the stop notice, one and one-quarter times the amount of the payment or payments claimed.

C. The bond shall protect the owner, the original contractor and the construction lender against any damages that may be incurred by them because of the delivery of the stop notice.

History: Laws 1989, ch. 301, § 7.

48-2A-8. Distribution of construction funds; liability.

A. Upon receipt of a claim stated in a stop notice, the construction lender, if any, or the owner, if applicable, shall withhold an amount of construction funds equal to the amount claimed in the stop notice from the original contractor until the claim has been satisfied or adjudicated by a court of competent jurisdiction, unless the remaining construction funds are insufficient to completely satisfy the claim due to the prior disbursement or prior amounts being withheld due to previously received stop notices. In these instances, only the remaining unclaimed portion of the construction loan shall be withheld.

B. All funds not disbursed or unclaimed by a stop notice may be disbursed by the construction lender to the original contractor without liability to the construction lender; provided, that if the construction lender disburses construction funds to the original contractor which are subject to an unsatisfied stop notice that is later adjudicated by a court of competent jurisdiction in favor of the claimant, the construction lender shall be liable for the amount of the claim stated in the stop notice. In any action adjudicating a claim stated in the stop notice or adjudicating a claim made pursuant to this section, the prevailing party may be awarded reasonable attorneys' fees.

History: Laws 1989, ch. 301, § 8.

48-2A-9. Limitations for filing suit by claimant.

A. Suit for satisfaction of the stop notice shall be filed not earlier than thirty days after delivery of the stop notice and within sixty days after delivery of the stop notice, and written notice of such suit shall be mailed to the recipient of the stop notice within five days after the date the suit was filed.

B. While the stop notice suit for satisfaction is being litigated, the claimant shall not file a lien for payment of money claimed by the stop notice.

History: Laws 1989, ch. 301, § 9.

48-2A-10. Claim satisfied notice; procedure; contents; penalty.

A. A stop notice shall be discharged when:

(1) the claim has been satisfied and the claimant has notified the construction lender, if any, and the owner, if applicable, that the claim has been satisfied pursuant to Subsection C of this section; or

(2) time for filing pursuant to Subsection A of Section 9 [48-2A-9 NMSA 1978] of the Stop Notice Act has expired without suit being filed; or

(3) the original contractor gives the construction lender, if any, or the owner, if applicable, a bond one and one-quarter times the amount of the claim stated in the stop notice. The original contractor shall be the principal on the bond, and the bond shall have good and sufficient sureties executed by a corporate surety company. The bond shall protect the subcontractor or the materialman against damages that may be incurred by them by reason of nonpayment of a claim as adjudicated by a court of competent jurisdiction.

B. If a claim has been satisfied pursuant to this section then the claimant shall give notice of the satisfaction to the construction lender, if any, and the owner, if applicable.

C. A claim satisfied notice shall not be effective unless it contains at least the same information as required in the stop notice including a statement signed by the claimant stating that the claim has been satisfied and the claimant agrees to discharge the stop notice.

D. A claimant is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978 if he fails to deliver a claim satisfied notice to all persons who received a bonded stop notice, in accordance with this section, within ten days from the date the claim was satisfied.

History: Laws 1989, ch. 301, § 10.

48-2A-11. Discharge; penalty.

A. Payment by the owner or his successor in interest to any person entitled to payment of all and any amounts due and owing for any labor or materials furnished or other actions the performance of which could give rise to a lien pursuant to Section 48-2-2 NMSA 1978 to be performed upon a residential site shall discharge all such liens unless prior to payment any person who is entitled to such lien has filed for record his lien pursuant to Section 48-2-6 NMSA 1978. For the purposes of this section, the original contractor shall not be the agent of the owner.

B. Any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction described in Subsection A of this section and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1989, ch. 301, § 11.

48-2A-12. Purchase closing; penalty.

A. The original contractor, upon accomplishing completion of construction and upon acceptance of final payment from the owner, his successor in interest or his agent, shall sign an affidavit that all invoices of charges and costs received by the original contractor and related to the residential site have been paid. In lieu of such an affidavit, at the time of accomplishing completion of construction and upon acceptance of final payment from the owner, his successor in interest or his agent, the original contractor shall sign an affidavit stating:

(1) the names and addresses of persons to whom he has paid in full those invoices of charges and costs arising from furnishing labor or materials incorporated in the residential site;

(2) the names and addresses of those subcontractors and materialmen who have presented to the contractor invoices of charges and costs of labor or materials incorporated or to be incorporated in the residential site which have not been paid, accompanied by a waiver of lien for the invoices properly signed by each subcontractor or materialman; and

(3) the names and addresses of those subcontractors and materialmen who have presented the contractor invoices of charges and costs of labor or materials incorporated or to be incorporated in the site improvement and which have not been paid and which have not been accompanied by a waiver of lien.

B. The approximate amount of money represented by the total unpaid invoices of charges and costs, and not accompanied by a signed waiver of lien, as provided in this section, may be withheld at the discretion of the owner, his successor in interest or his agent. This money shall be placed in an escrow account pending disbursement of the money upon the signed approval of the contractor.

C. Any contractor who knowingly and intentionally signs an affidavit stating that all charges and costs arising from the furnishing of labor or materials for incorporation in the residential site have been paid when in fact all charges and costs have not been paid, or knowingly and intentionally fails to provide the names of persons who have presented invoices for costs and charges for labor or materials but who have not been paid for their labor or materials furnished as provided in this section, is guilty of a fourth

degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1989, ch. 301, § 12.

ARTICLE 3

Liens on Personal Property

48-3-1. Liens for manufacture or repairs; motor vehicles.

A. All artisans and mechanics shall have a lien on things made or repaired by them for the amount due for their work, and may retain possession thereof until said amount is paid. Any person or corporation who repairs any motor vehicle or furnishes parts therefor, at the request or with the consent of any person lawfully in possession of any such motor vehicle, shall have a lien upon such motor vehicle or any part or parts thereof for the sum due for repairing the same, and for labor furnished thereon and for all costs incurred in enforcing such lien and may detain such motor vehicle in possession until such lien be paid.

B. While the artisan or mechanic retains possession of a motor vehicle, the possessory lien has priority over any other liens, including recorded liens on the motor vehicle. If the artisan or mechanic releases possession of the motor vehicle due to the acceptance or receipt of a check, draft or written order for payment of the indebtedness due thereon, but the check, draft or written order for payment is returned because of insufficient funds, no account, closed account or issuance of a stop-payment order, the possessory lien on the motor vehicle shall continue for a period of thirty days from the date actual possession was relinquished. At the expiration of such period, the artisan's or mechanic's lien shall continue but shall be subordinate to prior recorded liens on the motor vehicle. The lien shall not be applicable to a bona fide purchaser for value without notice of an artisan's or mechanic's lien or to a bona fide encumbrancer for value without notice of the artisan's or mechanic's lien, if the sale or encumbrance occurs subsequent to the artisan or mechanic releasing possession.

C. At any time the artisan or mechanic may repossess the motor vehicle upon which a lien is claimed.

D. In the event of a lawsuit relating to the possession of a motor vehicle and the indebtedness due thereon, a court may, in its discretion, award reasonable attorney's fees to the prevailing party.

History: Laws 1851-1852, p. 241; C.L. 1865, ch. 77(2d), § 13; C.L. 1884, § 1536; C.L. 1897, § 2233; Code 1915, § 3333; Laws 1917, ch. 65, § 1 (3333); 1923, ch. 24, § 1 (3333); C.S. 1929, § 82-401; 1941 Comp., § 63-301; 1953 Comp., § 61-3-1; Laws 1977, ch. 46, § 1.

48-3-2. [Labor liens on horse-drawn vehicles.]

Any person who shall perform any labor upon any wagon, buggy or other vehicle or furnish material for repairing the same shall have a lien upon such wagon, buggy or other vehicle for the amount due for such labor performed and materials furnished, and for all costs incurred in enforcing such a lien, and may detain such buggy, wagon or other vehicle in his possession until such sum is paid.

History: Code 1915, § 3334, enacted by Laws 1917, ch. 65, § 1 (3334); 1923, ch. 24, § 1 (3334); C.S. 1929, § 82-402; 1941 Comp., § 63-302; 1953 Comp., § 61-3-2.

48-3-3. Penalty.

Any person removing or attempting to remove any property from the possession of a person that possesses a lien as provided in Sections 48-3-1 and 48-3-2 NMSA 1978, without the written consent of the possessor of the lien, is guilty of a misdemeanor and shall be punished by a fine of not more than fifty dollars (\$50.00), or by imprisonment for not more than thirty days, or both.

History: 1953 Comp., § 61-3-2.1, enacted by Laws 1965, ch. 215, § 1.

48-3-4. [Blacksmith's lien.]

Any person who shall shoe or cause to be shod by his employees any horse, mule, ox or other animal, shall have a lien upon such animal for the amount due or to become due for such labor or services, and for all costs incurred in enforcing such lien, and may detain such animal in his possession until such sum is paid.

History: Code 1915, § 3335, enacted by Laws 1917, ch. 65, § 1 (3335); 1923, ch. 24, § 1 (3335); C.S. 1929, § 82-403; 1941 Comp., § 63-303; 1953 Comp., § 61-3-3.

48-3-5. Landlords' liens.

A. Landlords have a lien on the property of their tenants that remains in or about the premises rented, for the rent due by the terms of any lease or other agreement in writing, and the property shall not be removed from the premises without the consent of the landlord until the rent is paid or secured. A lien does not attach if the premises rented is a dwelling unit.

B. For purposes of this section, "dwelling unit" means a structure, mobile home and a leased parcel of land upon which it is located, or a part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

History: Laws 1851-1852, p. 243; C.L. 1865, ch. 77(2d), § 14; C.L. 1884, § 1537; C.L. 1897, § 2234; Code 1915, § 3334; Laws 1917, ch. 65, § 1 (3336); 1923, ch. 24, § 1 (3336); C.S. 1929, § 82-404; 1941 Comp., § 63-304; 1953 Comp., § 61-3-4; Laws 1995, ch. 195, § 25; 1997, ch. 39, § 4.

48-3-6. Landlord's preference in bankruptcy or insolvency proceedings.

In all cases where a tenant becomes insolvent and any assignment for the benefit of creditors is executed, or a receiver is legally appointed, or bankruptcy or other insolvency proceedings are instituted, either by or against the tenant, covering property upon the demised premises which is liable to distress by the landlord for rent, the landlord shall be first entitled to receive, out of the proceeds of the sale of the property by the legal representative of the tenant, any sum due the landlord for rent of the premises at the time of the institution of the receivership, bankruptcy or insolvency proceedings, not exceeding six months' rent. If the proceeds of the sale by the legal representative of the tenant are insufficient to pay the landlord and the costs of the insolvency proceedings, the landlord shall be entitled to receive the proceeds of the sale after deducting an amount equal to such costs as the landlord would be liable to pay in case of a sale under distress. Nothing in this act [section] shall be construed to deprive any person of preference for wages now provided by law in any insolvency or receivership proceedings.

History: 1953 Comp., § 61-3-4.1, enacted by Laws 1969, ch. 83, § 1.

48-3-7. Liens for board, feed, shelter or pasture; priority.

A. Innkeepers, livery stable keepers, lessors and agistors and those who board others for pay or furnish feed, shelter or pasture for the property and stock of others shall have a lien on the property and stock of such guest or guests and lessees or of those to whom feed or shelter has been furnished until the same is paid, and shall have the right to take and retain possession of such property and stock until the indebtedness is paid.

B. It shall be unlawful for a lessee or owner to remove livestock from the leased premises, feedlot or pasture without the consent of the lessor feedlot operator or agistor unless the amount due for pasturage or feed be paid.

C. The liens provided for in this section shall not take precedence over prior filed or recorded chattel mortgages, duly filed or recorded as provided by law, unless the holder of such mortgage shall expressly so consent in writing; provided that the giving of such written consent shall not affect the rights or priority under a prior mortgage as against a subsequent mortgage but the rights, liens and priorities of all such mortgages shall be and remain the same as if no such written consent had been given.

D. An agistor shall retain his lien, notwithstanding the fact that he has relinquished possession of the livestock, if prior to relinquishment, he has filed for record with the clerk of the county in which the livestock are situate a statement declaring his intention to retain the lien and containing a description of the livestock in [on] which the lien is claimed.

E. For the purposes of this section, "agistor" means a person or entity whose primary business is to board, feed and care for livestock of others for a fee.

F. The notice which an agistor is required to file to protect his lien claim under this section shall contain the following:

- (1) name of the agistor;
- (2) location by general description and county of the feedlot in which the livestock are boarded;
- (3) identification of livestock by quantity, owner and other identifying information to permit an identification as to which livestock the lien applies; and
- (4) signature of the agistor and the date on which the notice was served.

G. Within fifteen days after the agistor releases the lien he shall file a release of lien in the manner provided for filing of termination statements under the Uniform Commercial Code [Chapter 55 NMSA 1978].

History: Laws 1851-1852, p. 243; C.L. 1865, ch. 77(2d), § 15; Laws 1884, ch. 17, § 1; C.L. 1884, § 1542; C.L. 1897, § 2239; Code 1915, § 3339; Laws 1917, ch. 65, § 1 (3337); 1923, ch. 24, § 1 (3337); C.S. 1929, § 82-405; 1941 Comp., § 63-305; 1953 Comp., § 61-3-5; Laws 1961, ch. 96, § 11-115; 1967, ch. 219, § 1; 1981, ch. 103, § 1.

48-3-8. [Common carriers' liens.]

Common carriers shall have a lien on the things carried for the freight due, if payment of freight was to have been made on delivery of the things carried, and all persons carrying goods for another for hire or pay shall be deemed common carriers within the provisions of this article.

History: Laws 1851-1852, p. 243; C.L. 1865, ch. 77(2d), §§ 16, 17; C.L. 1884, §§ 1547, 1548; C.L. 1897, §§ 2244, 2245; Code 1915, §§ 3344, 3345; Laws 1917, ch. 65, § 1 (3338); 1923, ch. 24, § 1 (3338); C.S. 1929, § 82-406; 1941 Comp., § 63-306; 1953 Comp., § 61-3-6.

48-3-9. [Loss of lien.]

Any lien acquired under the provisions of this law [48-3-1 to 48-3-15 NMSA 1978] except those provided in Sections 48-3-5 and 48-3-7 NMSA 1978 hereof shall become void, if the person entitled to the same shall consent that the property subject thereto be removed from his control or possession, except as against the person at whose request the repairs or parts were furnished and the labor performed. In the case of the liens provided in Sections 48-3-5 and 48-3-7 NMSA 1978, if the person or persons entitled to the lien consent to a removal of the property subject to the lien from the leased premises the lien shall become void.

History: Code 1915, § 3339, enacted by Laws 1917, ch. 65, § 1 (3339); 1923, ch. 24, § 1 (3339); C.S. 1929, § 82-407; 1941 Comp., § 63-307; 1953 Comp., § 61-3-7.

48-3-10. [Priorities between liens.]

The priorities of liens provided for by this act shall be fixed as to several lien claimants as of the time of serving notice or of filing suit as provided in Section 48-3-13 NMSA 1978.

History: Laws 1851-1852, p. 243; C.L. 1865, ch. 77(2d), § 8; C.L. 1884, § 1541; C.L. 1897, § 2238; Code 1915, § 3338; Laws 1917, ch. 65, § 1 (3340); 1923, ch. 24, § 1 (3340); C.S. 1929, § 82-408; 1941 Comp., § 63-308; 1953 Comp., § 61-3-8.

48-3-11. [Acceptance of collateral security waives lien.]

No person shall be entitled to a lien under this article who has taken collateral security for the payment of the sum due him.

History: Laws 1851-1852, p. 243; C.L. 1865, ch. 77(2d), § 5; C.L. 1884, § 1538; C.L. 1897, § 2235; Code 1915, § 3335; Laws 1917, ch. 65, § 1 (3341); 1923, ch. 24, § 1 (3341); C.S. 1929, § 82-409; 1941 Comp., § 63-309; 1953 Comp., § 61-3-9.

48-3-12. [Assignability of liens.]

Liens provided under this act shall be assignable.

History: Code 1915, § 3342, enacted by Laws 1917, ch. 65, § 1 (3342); 1923, ch. 24, § 1 (3342); C.S. 1929, § 82-410; 1941 Comp., § 63-310; 1953 Comp., § 61-3-10.

48-3-13. Enforcement of liens; optional methods.

A. In order to enforce any lien under Sections 48-3-1 through 48-3-20 NMSA 1978, the procedure shall be the same as in the case of the foreclosure of a chattel mortgage if suit is filed in court. The lien claimant when the property subject to the lien is under his control or in his possession may, after the debt for which the lien is claimed becomes due and payable, serve the person against whom the lien is sought to be enforced with

a written notice or forward to the last known address of the person, by certified or registered mail, return receipt requested, a written statement, setting forth an itemized statement of the amount of the indebtedness. If the indebtedness is not paid within ten days after the service or mailing of the notice, the property may be advertised by posting or publication as provided in Section 48-3-14 NMSA 1978 and sold to satisfy the indebtedness.

B. Where the property involved is a motor vehicle upon which a lien exists under Sections 48-3-19 and 48-3-20 NMSA 1978, then in addition to the ten-day notice of the debt under this section and the twenty-day notice of sale under Section 48-3-14 NMSA 1978, the motor vehicle shall be held for the following periods:

- (1) for fourteen days where the vehicle is registered in this state; or
- (2) for forty days where the vehicle is registered in a foreign jurisdiction or where the registration cannot be found in the records of this state.

C. Where the property on which the lien exists is a motor vehicle, the time periods referred to in Subsection B of this section are to be used for the purpose of establishing ownership and the names and addresses of lienholders so that they may be given notice of the sale. The time periods shall be in lieu of the time period referred to in Section 66-3-203 NMSA 1978, but the provisions of giving notice to the state police of unclaimed vehicles shall still apply, and the lien claimant shall give such notice within five days after the expiration of the ten-day notice period referred to in Subsection A of this section.

History: Laws 1851-1852, p. 243; C.L. 1865, ch. 77(2d), § 6; Laws 1884, ch. 17, § 2; C.L. 1884, §§ 1539, 1543; C.L. 1897, §§ 2236, 2240; Code 1915, §§ 3336, 3340; Laws 1917, ch. 65, § 1 (3343); 1923, ch. 24, § 1 (3343); C.S. 1929, § 82-411; 1941 Comp., § 63-311; 1953 Comp., § 61-3-11; Laws 1955, ch. 67, § 1; 1967, ch. 183, § 1; 1989, ch. 34, § 1.

48-3-14. Advertisement and sale of property.

If default be made in the payment of the debt, after such notice, it shall be lawful for the lien claimant or creditor, as provided in this article (48-3-1 to 48-3-15 NMSA 1978), to advertise and sell such property at public auction to the highest bidder for cash after giving at least twenty days' notice of such sale by:

- A. at least six handbills posted up in public places in the county in which such sale is to be made; or
- B. by publishing once each week for two successive weeks in some newspaper of general circulation in the county; such notices of sale shall set forth the time and place of sale and a description of the property to be sold, and the amount of indebtedness claimed under such lien.

History: Laws 1884, ch. 17, § 3; C.L. 1884, § 1544; C.L. 1897, § 2241; Code 1915, § 3341; Laws 1917, ch. 65, § 1 (3344); 1923, ch. 24, § 1 (3344); C.S. 1929, § 82-412; 1941 Comp., § 63-312; 1953 Comp., § 61-3-12; Laws 1955, ch. 67, § 2.

48-3-15. [Disposition of proceeds of sale; purchase by lien claimant.]

After sale made as provided in the preceding section [48-3-14 NMSA 1978], the proceeds of such sale shall be applied to the payment of the costs of advertising and making the sale and the satisfaction of the demand of the lien claimant, and the residue, if any, shall be refunded to the lien debtor; provided, that the lien claimant shall not be precluded from bidding on or purchasing the property at such sale.

History: Laws 1884, ch. 17, § 4; C.L. 1884, § 1545; C.L. 1897, § 2242; Code 1915, § 3342; Laws 1917, ch. 65, § 1 (3345); 1923, ch. 24, § 1 (3345); C.S. 1929, § 82-413; 1941 Comp., § 63-313; 1953 Comp., § 61-3-13.

48-3-16. Liens of owners and operators of public accommodations.

A. The owner or operator of any hotel, motel, trailer court or campground shall have a lien upon the baggage, personal effects, trailer house, trailer, automobile, motor vehicle and other property placed in or upon the premises of the hotel, motel, trailer court or campground of the owner or operator for the payment of any services and accommodations offered by the owner or operator to the person for transient occupancy, including gas, water, electricity or other things furnished to the person or at the request of the person.

B. For purposes of this section, "transient occupancy" means occupancy of the premises for which rent is paid on less than a weekly basis or by a person who has not manifested an intent to make the occupied premises a residence or to maintain a household on the premises.

History: 1941 Comp., § 63-304a, enacted by Laws 1951, ch. 51, § 1; 1953 Comp., § 61-3-14; Laws 1995, ch. 195, § 26.

48-3-17. [Priority and enforcement of lien.]

The lien provided for under this act [48-3-16 to 48-3-18 NMSA 1978] is subject to such priorities of liens as are otherwise provided by law, and may be enforced in the same manner and through the same procedure as now provided by law for the enforcement of liens on personal property and as provided in Section 48-3-13 NMSA 1978.

History: 1941 Comp., § 63-304b, enacted by Laws 1951, ch. 51, § 2; 1953 Comp., § 61-3-15.

48-3-18. [Penalty for removal of property on which lien has attached.]

Any person removing or attempting to remove any property on which the owner or operator of any hotel, rooming house, apartment house, rental dwellings, auto court, trailer court or campground has a lien for any sum due such owner or operator for rent, services or accommodations as provided in this act [48-3-16 to 48-3-18 NMSA 1978], without the written consent of such owner or operator; shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than \$50.00 or by imprisonment in the county jail for a period not to exceed 30 days or by both such fine and imprisonment.

History: 1941 Comp., § 63-304c, enacted by Laws 1951, ch. 51, § 3; 1953 Comp., § 61-3-16.

48-3-19. Lien for towing, storage or wrecker service for automobiles.

All garage owners and persons engaged in the business of towing automobiles, storing automobiles or furnishing wrecker service shall have a lien on all automobiles towed, stored or upon which wrecker service is performed when such towing, storage or wrecker service is furnished or performed at the request or with the consent of any person lawfully in possession of such automobile, for the reasonable value of such services and for costs incurred in enforcing the lien. A peace officer who requests towing, storage or wrecker service for a wrecked, abandoned or stolen vehicle shall be deemed a person lawfully in possession of such vehicle within the meaning of this section. The lien created under this section shall be perfected under Sections 48-3-13 and 48-3-14 NMSA 1978.

History: Laws 1937, ch. 150, § 1; 1941 Comp., § 63-314; 1953 Comp., § 61-3-17; Laws 1963, ch. 99, § 1; 1967, ch. 183, § 2.

48-3-20. [Rights of holder of lien for automobile service.]

The person entitled to a lien hereunder may retain such automobile in his possession until such lien is paid. Such lien may be enforced in the manner now or hereafter provided for the enforcement of mechanics' liens in this state; or in the manner now provided under Sections 48-3-13 and 48-3-14 NMSA 1978, or hereafter provided by any amendments thereof or any laws of New Mexico in substitution therefor.

History: Laws 1937, ch. 150, § 2; 1941 Comp., § 63-315; 1953 Comp., § 61-3-18.

48-3-21. Definitions.

As used in Sections 48-3-1 through 48-3-20 NMSA 1978:

A. "automobile" includes trucks, trailers and motor vehicles of all classes and kinds; and

B. "motor vehicle" means every self-propelled device in, upon or by which, any person or property is, or may be, transported upon land, in water or in the air.

History: Laws 1937, ch. 150, § 3; 1941 Comp., § 63-316; 1953 Comp., § 61-3-19; Laws 1965, ch. 140, § 1.

48-3-22. Lien for work or services by retaining possession.

A. A person or firm, which, at the request of the owner or person lawfully in possession:

(1) repairs, cleans, adjusts or otherwise services jewelry, timing apparatus, watches, clocks, radios, home appliances, electrical equipment, musical instruments;

(2) repairs, cleans, adjusts or otherwise services sporting equipment including guns; or

(3) enhances the value of personal property, shall, by retaining possession of the articles upon which the work or service was performed, have a lien for unpaid charges for the work or services.

B. A person or firm, to qualify under the provisions of this act [48-3-22 to 48-3-27 NMSA 1978], must have posted a notice at each place of business at the time such work is authorized, which reads:

"All articles left for (state the type of work or service provided) and not called for in 3 months will be sold for charges pursuant to Sections 48-3-22 through 48-3-27 NMSA 1978."

C. The provisions of this act do not extend to a person or firm that performs any of the functions described in Subsection A of this section on a wholesale basis or as a subcontractor.

History: 1941 Comp., § 63-317, enacted by Laws 1953, ch. 125, § 1; 1953 Comp., § 61-3-20; Laws 1971, ch. 157, § 1.

48-3-23. Possession; when lien shall not exist.

The possession required under this act [48-3-22 to 48-3-27 NMSA 1978] shall be physical custody. No lien shall exist where:

A. the article has not been delivered to the physical custody of the person or firm claiming the lien;

B. without fraud or false representation, the physical custody of the article has been surrendered by the person or firm performing the work or service;

C. the person or firm performing the work or service has accepted collateral security for payment of the amount due.

History: 1941 Comp., § 63-318, enacted by Laws 1953, ch. 125, § 2; 1953 Comp., § 61-3-21.

48-3-24. Lien not exclusive.

The lien provided for by this act [48-3-22 to 48-3-27 NMSA 1978] shall be a cumulative remedy and shall not be construed to limit the remedies otherwise provided by law to a creditor against his debtor. The lien provided for by this act and the method and procedure for enforcement thereof is in addition to and not a substitution for any other lien and procedure for enforcement otherwise provided by law.

History: 1941 Comp., § 63-319, enacted by Laws 1953, ch. 125, § 3; 1953 Comp., § 61-3-22.

48-3-25. Enforcement of lien.

Three (3) months after the debt for which the lien is claimed becomes due, the lien claimant may enforce such lien by either a suit to foreclose the lien or by a sale as hereinafter provided.

History: 1941 Comp., § 63-320, enacted by Laws 1953, ch. 125, § 4; 1953 Comp., § 61-3-23.

48-3-26. Sale to enforce lien.

A. Six (6) months after the debt for which the lien is claimed becomes due, the lien claimant may serve written notice upon the person against whom the lien is sought to be enforced. Such notice shall itemize the amount of the indebtedness and demand payment thereof. Notice sent by registered mail to the address given at the time the work or service was authorized shall be sufficient notice under the provisions of this paragraph. If no address was given at time work or service was authorized, notice of sale shall be by one publication in a legal newspaper circulated in the community where the work was originally authorized, or by posting two (2) notices in the community, provided that one notice is posted at the place of business where the work or service was authorized, and the other notice is posted at the county courthouse, or village, town or city hall. This notice may include the sale of more than one lien debtor's property, provided the property of each debtor and the amount due for service thereon is listed in separate paragraphs.

B. If payment is not made within ten (10) days after service of notice as provided in Paragraph A of this section, the lien claimant may sell such property at public sale, for cash, after the elapse of at least twenty (20) days following the giving of notice of sale. Notice of sale shall be given pursuant to the procedures for notices prescribed in Paragraph A above. Such notice shall state the time and place of sale, describe the property to be sold and state the amount of indebtedness claimed under the lien.

C. Storage charges may be charged beginning thirty (30) days after articles are left for service.

D. Costs of serving notice on person authorizing work and of advertising sale of unclaimed property shall become part of lien.

E. Bailments having replacement value not exceeding five dollars (\$5.00) may be given to charity, utilized by the servicing agency or sold for charges without compliance to the provisions of this section.

F. The lien claimant may bid and may be a purchaser at such sale.

History: 1941 Comp., § 63-321, enacted by Laws 1953, ch. 125, § 5; 1953 Comp., § 61-3-24.

48-3-27. Disposition of proceeds of sale.

The proceeds of such sale shall be applied first to the payment of costs in giving notice of sale and conducting the sale, and second to the indebtedness claimed under the lien.

Any amount of the proceeds then remaining shall be paid to the lien debtor, after first deducting any other amounts due by lien debtor to lien claimant. If the whereabouts of the lien debtor are unknown and are not discovered within six (6) months from the date of the sale after reasonable search and inquiry, any remaining proceeds due such lien debtor shall be paid to the county treasurer for the benefit of the common school fund of the county.

History: 1941 Comp., § 63-322, enacted by Laws 1953, ch. 125, § 6; 1953 Comp., § 61-3-25.

48-3-28. Lien for laundering, dry cleaning or renovating by retaining possession; possession; sale.

A. Any person or firm that, at the request of the owner or person lawfully in possession, launders, dry cleans, presses, mends or renovates clothing, hats, furs, shoes, rugs, curtains, household linens, window shades or blinds and other similar articles shall have a lien, for unpaid charges arising from such work, by retaining the articles on which the work was done.

B. To qualify under this section, a person or firm shall have posted a notice conspicuously in each place of business at the time such work is authorized, which reads:

"All articles left for (state the type of work) and not called for within 30 days will be sold for charges pursuant to Section 48-3-28 NMSA 1978. Please leave your name and address."

C. The provisions of this section do not extend to any person or firm that performs the work specified in Subsection A of this section wholesale or as a subcontractor.

D. The possession required by this act [section] consists of physical custody. No lien exists if:

(1) the article has not been delivered into the physical custody of the person or firm doing the work; or

(2) collateral security for payment of the amount due has been accepted by the person or firm doing the work.

E. The lien claimant may enforce the lien by a sale:

(1) thirty days after the debt for which the lien is claimed becomes due, the lien claimant may serve written notice upon the person against whom the lien is sought to be enforced. The notice shall itemize the amount of indebtedness and demand its payment. Notice sent by registered or certified mail to the address given when the work was authorized is sufficient notice under this subsection. If no address was given at the time the work was authorized, notice of sale shall be given by publication once in a newspaper of general circulation in the community where the work was authorized or by posting one notice at the place of business where the work was authorized and another notice at the county courthouse or municipal building. The notice shall state the time and place of the sale, describe the property to be sold and state the amount of indebtedness claimed under the lien. This notice may include the sale of more than one lien debtor's property, but each debtor's property and the amount due for work on it shall be listed in separate paragraphs;

(2) if payment is not made prior thereto, the lien claimant may sell the property at public sale for cash after twenty days have elapsed following the giving notice of the sale;

(3) costs of serving notice on the person authorizing the work and of advertising the sale become part of the lien;

(4) the lien claimant may bid and be a purchaser at the sale;

(5) the proceeds of the sale shall be applied first to the payment of costs of giving notice of and conducting the sale, and second to the indebtedness claimed under the lien. Any remaining proceeds shall be paid to the lien debtor after first deducting any other of his indebtedness to the lien claimant. If the lien debtor cannot be found after reasonably diligent search within three months after the sale, any remaining proceeds due him shall be subject to the Uniform Disposition of the Unclaimed Property Act [repealed].

History: 1953 Comp., § 61-3-26, enacted by Laws 1971, ch. 157, § 2.

48-3-29. Lien for repair or service to aircraft; detention; priority; enforcement.

A. Any person engaged in the business of operating an airport, hangar or place for maintenance or repair of aircraft who stores, maintains or repairs any aircraft accessories or furnishes materials for an aircraft at the request or with the consent of the owner or his representative, agent or lessee, whether the owner is a conditional vendee or a mortgagor or in possession or not, shall have a lien upon the aircraft or any part thereof for the sum due for storing, maintaining or repairing the aircraft for labor furnished, for accessories or materials and for all costs incurred in enforcing the lien and may detain the aircraft until the sum due is paid. The possessory lien shall have priority over all other liens, including recorded liens on the aircraft, except liens for taxes, and the operator of the aircraft shall be deemed the agent of any owner, mortgagee, conditional vendor or other lienor of the aircraft for the establishment of that lien.

B. If the person who provides the services provided in Subsection A of this section relinquishes possession of the aircraft due to the acceptance or receipt of a check, draft or written order for payment of the indebtedness due on the aircraft, but the check, draft or written order for payment is returned because of insufficient funds, no account, closed account or issuance of a stop-payment order, or if possession is lost due to the illegal acts of the owner or his agent, the possessory lien on the aircraft shall continue for a period of thirty days from the date actual possession was relinquished or lost. At the expiration of the thirty days, the lien shall continue but shall be subordinate to prior recorded liens on the aircraft. The lien shall not be applicable to a bona fide purchaser for value without notice of an aircraft lien or to a bona fide encumbrancer for value without notice of the aircraft lien, if the sale or encumbrance occurs subsequent to the relinquishment or loss of possession.

C. At any time, the aircraft upon which a lien is claimed may be repossessed.

D. Any person entitled to a lien pursuant to Subsection A of this section shall, within ninety days after the date on which labor was last performed or materials, supplies or services [were] last furnished, file in the office of the county clerk of the county in which the aircraft is based, or where the labor was performed or materials, supplies or services [were] furnished, a statement verified by oath. The statement shall include the name of the person entitled to the lien, the name of the owner of the aircraft, a

description of the aircraft, and the sum due for labor performed or materials, supplies or services furnished.

E. The lien perfected pursuant to Subsection D of this section may be enforced against the aircraft, whether or not in the possession of the lienholder, by judgment of the court having jurisdiction in the county where the lien is filed and a writ of execution pursuant to that judgment. The court may, in its discretion, award reasonable attorney's fees to the prevailing party.

History: 1978 Comp., § 48-3-29, enacted by Laws 1985, ch. 92, § 1.

ARTICLE 4

Abstracters' Liens

48-4-1. Lien on real estate.

Every bonded abstractor or abstract company, doing business in compliance with the provisions contained in Sections 51-1301 and 51-1302, 1941 Comp. Statutes, who shall hereafter compile and furnish any abstract or continuation of abstract, of title to any real estate at the request of the owner thereof, or his authorized agent, shall have a lien on said real estate for the amount due for compiling and furnishing such abstract of title and for all costs incurred in enforcing such lien, including cost of the preparation of claim of lien.

History: 1941 Comp., § 51-1305, enacted by Laws 1949, ch. 15, § 1; 1953 Comp., § 61-4-1.

48-4-2. Time for filing claim; contents of claim.

Every abstractor claiming the benefit of this act [48-4-1 to 48-4-4 NMSA 1978] must, within ninety (90) days after the date of the certificate in the abstract for which lien is claimed, file for record with the county clerk of the county or counties in which the property, or any part thereof, covered by said abstract, is situated, a claim containing a statement of his demands, after deducting all just credits and offsets, the name of the owner, and also the name of the person by whom he was employed, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of claimant or of some other person.

History: 1941 Comp., § 51-1306, enacted by Laws 1949, ch. 15, § 2; 1953 Comp., § 61-4-2.

48-4-3. Recording of liens; indexing; fees.

The county clerk must record the claim of lien in a book kept for that purpose, which record must be indexed as deeds and other conveyances are required by law to be

indexed, and for which he may receive the same fees as are allowed by law for recording deeds.

History: 1941 Comp., § 51-1307, enacted by Laws 1949, ch. 15, § 3; 1953 Comp., § 61-4-3.

48-4-4. Limitation on enforcement of liens; manner of enforcement.

No lien provided for in this act [48-4-1 to 48-4-4 NMSA 1978] shall bind any real estate for a longer period than one (1) year after the same has been filed, unless proceedings be commenced in the district court in and for the county in which the real estate or any of it, described in said lien, is located within that time, to enforce the lien. The proceedings for enforcement of said claims of lien shall be under the rules of pleading, practice and procedure in the district courts and such proceedings shall be had as in the case of the foreclosure of mortgages upon real estates [estate]; and the court may allow as part of the costs of foreclosure, the moneys [monies] paid for the preparation of the claim of lien and for the filing and recording thereof, and reasonable attorney's fees in the district and supreme courts.

History: 1941 Comp., § 51-1308, enacted by Laws 1949, ch. 15, § 4; 1953 Comp., § 61-4-4.

ARTICLE 5 Threshing Liens

48-5-1. Who may have.

Any owner or lessee of a threshing machine who threshes grain for another, therewith shall, upon filing the statement provided for in the next section [48-5-2 NMSA 1978], have a lien upon such grain for the value of his services in threshing the same from the date of commencement of the threshing.

History: Laws 1923, ch. 102, § 1; C.S. 1929, § 82-501; 1941 Comp., § 48-1403; 1953 Comp., § 61-5-3.

48-5-2. Procedure to obtain lien.

Any person entitled to a lien under this chapter [48-5-1 to 48-5-3 NMSA 1978], shall within ten days after the threshing is completed, file in the office of the county clerk of the county in which the grain was grown a statement in writing, verified by oath, showing the amount and quantity of grain threshed, the price agreed upon for threshing the same, the name of the person for whom the threshing was done and a description of the land upon which the grain was grown. Unless the person entitled to the lien shall file such statement within the time aforesaid he shall be deemed to have waived his right thereto.

History: Laws 1923, ch. 102, § 2; C.S. 1929, § 82-502; 1941 Comp., § 48-1404; 1953 Comp., § 61-5-4.

48-5-3. Priority.

Such lien shall have priority over all other liens and incumbrances [encumbrances] upon such grain.

History: Laws 1923, ch. 102, § 3; C.S. 1929, § 82-503; 1941 Comp., § 48-1405; 1953 Comp., § 61-5-5.

ARTICLE 5A Harvester's Liens

48-5A-1. Who may have a lien.

Any individual or company who harvests any crop for another, either manually or by the use of a machine, shall, upon filing the statement provided for in Section 2 [48-5A-2 NMSA 1978] of this act, have a lien upon the crop for the value of his services in harvesting the crop. The lien shall exist from the date of the harvest.

History: Laws 1989, ch. 89, § 1.

48-5A-2. Procedure to obtain lien.

Any person or company entitled to a lien under this act [48-5A-1 to 48-5A-3 NMSA 1978] shall, within twenty-one days after the harvest is completed, file in the office of the county clerk of the county in which the crop was grown a statement in writing, verified by oath, showing the amount and quantity of the crop harvested, the price agreed upon for harvesting it, the name of the person for whom the harvest was done and a description of the land upon which the crop was grown. Unless the person entitled to the lien files that statement within the twenty-one day time limit, he shall be deemed to have waived his right to the lien.

History: Laws 1989, ch. 89, § 2.

48-5A-3. Petition to cancel lien; security.

A. The owner of any crop subject to a harvester's lien may petition the district court in the county in which the crop was grown for an order canceling the lien.

B. Upon a filing of a petition, the district court judge shall examine the lien claimant's recorded demands and determine an amount sufficient to satisfy the recorded demands and any other damages, court costs or attorneys' fees which may be recovered by the

lien claimant. Security, in an amount set by the judge and of a type approved by him, shall be deposited by the owner of the crop with the district court conditioned on the payment of any sum found to be validly due the lien claimant.

C. When the security is deposited, the district court shall immediately issue an order canceling the lien and shall notify the county clerk with whom the lien was filed. Upon the recording of the order, the county clerk shall mark the filed lien canceled. When an order is issued pursuant to this subsection, the claimant's lien attaches to the security.

History: Laws 1989, ch. 89, § 3.

ARTICLE 5B

Producers' Liens (Repealed.)

48-5B-1 to 48-5B-14. Repealed.

ARTICLE 6

Agricultural Landlord Liens

48-6-1. Landlords shall have preference lien.

All persons leasing or renting agricultural lands, at will or for a term, shall have a preference lien upon the property of the tenant hereinafter indicated, upon such premises, for any rent that may become due and for all money and the value of all animals, tools, provisions and supplies furnished by the landlord to the tenant to enable the tenant to make a crop on such premises, and to gather, secure, house and put the same in condition for market, the money, animals, tools, provisions and supplies so furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products or other property; and this lien shall apply only to animals, tools and other property furnished by the landlord to the tenant, and to the crop raised on such rented premises.

History: Laws 1921, ch. 182, § 1; C.S. 1929, § 82-101; 1941 Comp., § 48-1501; 1953 Comp., § 61-6-1.

48-6-2. Tenants not to remove property subject [to lien].

It shall not be lawful for the tenant, while the rent and such advances remain unpaid, to remove, or permit to be removed, from the premises so leased or rented any agricultural products produced thereon, or any of the animals, tools or property furnished as aforesaid, without the consent of the landlord.

History: Laws 1921, ch. 182, § 2; C.S. 1929, § 82-102; 1941 Comp., § 48-1502; 1953 Comp., § 61-6-2.

48-6-3. When lien expires.

Such preference lien shall continue as to such agricultural products and as to the animals, tools and other property furnished to the tenant as aforesaid, so long as they remain on such rented or leased premises and for one month thereafter; and such lien, as to agricultural products and as to animals and tools furnished as aforesaid, shall be superior to all exemptions.

History: Laws 1921, ch. 182, § 3; C.S. 1929, § 82-103; 1941 Comp., § 48-1503; 1953 Comp., § 61-6-3.

48-6-4. Do not apply to, etc.

Such lien shall not attach to the goods, wares and merchandise of a merchant, trader or mechanic, sold and delivered in good faith in the regular course of business to the tenant.

History: Laws 1921, ch. 182, § 4; C.S. 1929, § 82-104; 1941 Comp., § 48-1504; 1953 Comp., § 61-6-4.

48-6-5. Distress warrant.

When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, it shall be lawful for the person to whom the rent or advances are payable, his agent, attorney, assigns, heirs or legal representatives, to apply to a justice of the peace [magistrate] of the precinct where the premises are situated, or in which the property upon which a lien for rents or advances exist, may be found, or to any justice [magistrate] having jurisdiction of the cause of action, for a warrant to seize the property of such tenant; provided, that when a distress warrant shall be issued by any justice [magistrate], other than the justice of the peace [magistrate] of the precinct in which the rented premises may be situated, or in which the defendant may reside, such warrant shall be made returnable to, and the affidavit and bond upon which it is issued shall be transmitted by, the justice [magistrate] issuing such distress warrant, to the justice [magistrate] of the precinct in which the rented premises may be situated, or in which the defendant may reside.

History: Laws 1921, ch. 182, § 5; C.S. 1929, § 82-105; 1941 Comp., § 48-1505; 1953 Comp., § 61-6-5.

48-6-6. Oath and bond.

The plaintiff, his agent or attorney, shall make oath that the amount sued for is for rent or advances, such as are mentioned in the first section [48-6-1 NMSA 1978] of this act, or shall produce a writing signed by such tenant to that effect, and shall further

swear that such warrant is not sued out for the purpose of vexing and harrassing [harassing] the defendant; and the person applying for such warrant shall execute a bond with two or more good and sufficient sureties, to be approved by the justice of the peace [magistrate], payable to the defendant, conditioned that the plaintiff will pay the defendant such damages as he may sustain in case such warrant has been illegally and unjustly sued out, which bond shall be filed among the papers of the cause; and, in case the suit be finally decided in favor of the defendant, he may bring suit against the plaintiff and his sureties on such bond, and shall recover such damages as may be awarded to him by the proper tribunal.

History: Laws 1921, ch. 182, § 6; C.S. 1929, § 82-106; 1941 Comp., § 48-1506; 1953 Comp., § 61-6-6.

48-6-7. Distress warrant, issued by whom.

Upon the filing of such oath and bond, it shall be the duty of such justice of the peace [magistrate] to issue his warrant to the sheriff or any constable of the county, commanding him to seize the property of the defendant, or so much as will satisfy the demand, which warrant shall be returnable to said justice [magistrate].

History: Laws 1921, ch. 182, § 7; C.S. 1929, § 82-107; 1941 Comp., § 48-1507; 1953 Comp., § 61-6-7.

48-6-8. Duty of officer.

It shall be the duty of the officer to whom such warrant is directed to seize the property of such tenant, or so much thereof as shall be of value sufficient to satisfy such debts and costs, and the same in his possession safely keep, unless the same is replevied as herein provided, and make due return thereof to the court to which said warrant is returnable.

History: Laws 1921, ch. 182, § 8; C.S. 1929, § 82-108; 1941 Comp., § 48-1508; 1953 Comp., § 61-6-8.

48-6-9. Defendant may replevy.

The defendant shall have the right at any time within ten days from the date of said levy to replevy the property seized, by giving bond payable to the plaintiff, with two or more good and sufficient sureties in double the amount of the debt, or, at his election, for the value of the property so seized, conditioned that if the defendant be cast in the action he shall satisfy the judgment that may be rendered against him or pay the estimated value of the property, with lawful interest thereon from the date of the bond.

History: Laws 1921, ch. 182, § 9; C.S. 1929, § 82-109; 1941 Comp., § 48-1509; 1953 Comp., § 61-6-9.

48-6-10. Judgment against sureties.

When the property levied on has been replevied as provided in the preceding section [48-6-9 NMSA 1978] and final judgment shall be rendered against the defendant, such judgment shall be also against him and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such bond.

History: Laws 1921, ch. 182, § 10; C.S. 1929, § 82-110; 1941 Comp., § 48-1510; 1953 Comp., § 61-6-10.

48-6-11. Perishable property sold.

If the property is of a perishable or wasting kind, and the defendant fails to replevy as herein provided, the officer making the levy, or the plaintiff, or the defendant, may apply to the court, or judge thereof, to which the warrant is returnable, either in term time or vacation, for an order to sell such property; and if any person other than the defendant shall apply for such order of sale, the court shall not grant such order, unless the person applying shall file with such court an obligation, payable to the defendant, with two or more good and sufficient sureties, to be approved by said court, that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made, which sale shall be conducted as sales under execution.

History: Laws 1921, ch. 182, § 11; C.S. 1929, § 82-111; 1941 Comp., § 48-1511; 1953 Comp., § 61-6-11.

48-6-12. Summons for defendant.

It shall be the duty of the justice of the peace [magistrate], at the time he issues the warrant to issue a summons to the defendant requiring him to answer before such justice [magistrate], if he has jurisdiction to finally try the cause, and, upon it being returned served, to proceed to judgment as in ordinary cases. If such justice of the peace [magistrate] has not jurisdiction to finally try the case, by reason of any provisions herein contained, he shall forthwith transfer all papers to the justice of the peace [magistrate] having jurisdiction to finally try said cause, who shall without delay issue summons to defendant, giving him notice of the suit and the time of the setting as provided by law; provided, that if the defendant has removed from the county without service, notice of suit shall be given him, as now provided by law, in attachment suit in justice of the peace [magistrate] court in this state, when the defendant is absent from the county or cannot be found in the county.

History: Laws 1921, ch. 182, § 12; C.S. 1929, § 82-112; 1941 Comp., § 48-1512; 1953 Comp., § 61-6-12.

48-6-13. Rights of tenant.

Nothing in this act [48-6-1 to 48-6-16 NMSA 1978] shall be so construed as to prevent landlords and tenants from entering into such stipulations or contracts in regard to rents and advances as they may think proper; and, should the landlord, without any default on the part of the tenant or lessees [lessee], fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and to secure such damages to such tenant or lessee, he shall have a lien on all the property in his possession not exempt from forced sale, as well as upon all rents due to said landlord under said contract.

History: Laws 1921, ch. 182, § 13; C.S. 1929, § 82-113; 1941 Comp., § 48-1513; 1953 Comp., § 61-6-13.

48-6-14. Tenants shall not sublet without consent, etc.

If lands are rented by the landlord to any person or persons, such person or persons shall not assign their lease or sublet said lands, or any part thereof, during the term of said lease to any other person without first obtaining the consent of the landlord, his agent or attorney.

History: Laws 1921, ch. 182, § 14; C.S. 1929, § 82-114; 1941 Comp., § 48-1514; 1953 Comp., § 61-6-14.

48-6-15. Suit in district court.

When the amount in controversy is in excess of two hundred dollars [\$200], suit may be instituted in the district court in the county in which the premises is [are] situated, or in which the defendant resides or may be found, by the filing in said court of complaint, affidavit and bond, with the clerk of said court as are required by this act [48-6-1 to 48-6-16 NMSA 1978] to be filed in the justice of the peace [magistrate] court, and notice of suit and trial thereof shall be had according to law and the rules of said court in civil cases.

History: Laws 1921, ch. 182, § 15; C.S. 1929, § 82-115; 1941 Comp., § 48-1515; 1953 Comp., § 61-6-15.

48-6-16. [Construction of act.]

This act [48-6-1 to 48-6-16 NMSA 1978] shall not be construed to repeal, amend or modify Section 19 [48-3-5 NMSA 1978] of Chapter 65 of the Session Laws of 1917.

History: Laws 1921, ch. 182, § 16; C.S. 1929, § 82-116; 1941 Comp., § 48-1516; 1953 Comp., § 61-6-16.

ARTICLE 7

Mortgages

48-7-1. Right of possession.

In the absence of stipulation to the contrary, the mortgagor of real property [property] shall have the right of possession.

History: Laws 1876, ch. 36, § 8; C.L. 1884, § 1593; C.L. 1897, § 2365; Code 1915, § 571; 1941 Comp., § 63-401; 1953 Comp., § 61-7-1; Laws 1961, ch. 96, § 11-116.

48-7-2. Repealed.

History: Laws 1927, ch. 43, § 1; C.S. 1929, § 117-201; 1941 Comp., § 63-402; 1953 Comp., § 61-7-2; repealed by Laws 2009, ch. 234, § 18.

48-7-3. Repealed.

History: Laws 1927, ch. 43, § 2; C.S. 1929, § 117-202; 1941 Comp., § 63-403; 1953 Comp., § 61-7-3; repealed by Laws 2009, ch. 234, § 18.

48-7-4. Release on record upon satisfaction of mortgage.

A. When any debt or evidence of debt secured by a mortgage or deed of trust upon any real estate in the state has been fully satisfied, it is the duty of the mortgagee, trustee or the assignee of the debt or evidence of debt, as the case may be, to cause the full satisfaction of it to be entered of record in the office of the county clerk of the county where the mortgage or deed of trust is recorded.

B. The debt or evidence of debt secured by a mortgage or deed of trust shall not have been fully satisfied for purposes of Subsection A of this section, even if all sums due thereunder have been paid in full, if the written agreement between the mortgagor or trustor and the mortgagee or beneficiary provides for the securing of a series of loans or a line of credit by a mortgage or deed of trust and the notation "Line of credit mortgage" is prominently placed on the mortgage or deed of trust that is filed with the county clerk in the county or counties in which the property is located.

C. If, at any time the obligation secured by the mortgage or deed of trust described in Subsection B of this section is fulfilled, and the balance is zero, the mortgagee or beneficiary shall cause the mortgage or deed of trust to be released of record upon written demand of the mortgagor, trustor or the successor or assignee thereof. In the event of the death or incompetence of the mortgagor or trustor, the heirs, personal representative, conservator or guardian of the mortgagor or trustor as appropriate may make the demand for release described in this subsection.

History: Laws 1909, ch. 51, § 1; Code 1915, § 4776; C.S. 1929, § 117-120; 1941 Comp., § 63-404; 1953 Comp., § 61-7-4; Laws 1991, ch. 59, § 1.

48-7-4.1. Alternative form of release of mortgage; filing by title insurer.

A. If, within ninety days after full satisfaction of a debt or evidence of debt secured by a mortgage or deed of trust upon any real estate, evidence of the full satisfaction has not been recorded pursuant to the provisions of Section 48-7-4 NMSA 1978, a title insurer may prepare and record a release of the mortgage or deed of trust; provided, however, no release shall be recorded by the title insurer unless the insurer has, no later than ten days prior to the date of recording, mailed notice of the intent to record to the last known address of the mortgagee, the trustee and beneficiary of a deed of trust or the assignee of record of the debt or evidence of debt.

B. A release recorded pursuant to this section shall include:

- (1) the name of the mortgagee or trustee and beneficiary;
- (2) the name of the mortgagor or trustor;
- (3) the recording reference to the mortgage or deed of trust;
- (4) a recital that the obligation secured by the mortgage or deed of trust has been paid in full; and
- (5) the date and amount of payment.

C. A release recorded pursuant to this section shall be deemed to be the equivalent of a release recorded pursuant to Section 48-7-4 NMSA 1978.

D. In addition to any other remedy, a title insurer recording a release pursuant to this section shall be liable to any mortgagee or beneficiary of a deed of trust for damages, including attorney fees, that the mortgagee or beneficiary of a deed of trust may sustain by reason of the wrongful recording of a release of mortgage or deed of trust.

E. Nothing in this section relieves a person from an obligation to record a full satisfaction or release pursuant to Section 48-7-4 NMSA 1978 or from the imposition of a penalty for failure to record a full satisfaction or release pursuant to Section 48-7-5 NMSA 1978.

F. A title insurer may charge a reasonable fee to the mortgagee for the preparation and recording of the release of mortgage.

History: Laws 2003, ch. 245, § 1.

48-7-5. [Failure to release; penalty; civil liability.]

Any person who shall be guilty of violating the preceding section [48-7-4 NMSA 1978], upon conviction before any justice of the peace [magistrate] or district court having jurisdiction of the same shall be punished by a fine of not less than ten [(\$10.00)] nor more than twenty-five dollars [(\$25.00)], and shall be liable in a civil action to the owner of such real estate for all costs of clearing the title to said property including a reasonable attorney's fee.

History: Laws 1909, ch. 51, § 2; Code 1915, § 4777; C.S. 1929, § 117-121; 1941 Comp., § 63-405; 1953 Comp., § 61-7-5.

48-7-6. [Release by administrator or executor of deceased mortgagee.]

When the mortgagee of any land or tenements shall die leaving minor heirs, the executors or administrators of such mortgagee shall be and are hereby authorized, on receiving the amount due the estate of such deceased mortgage [mortgagee], to release to the mortgagor the legal title of the said mortgaged premises, and such deed of release shall be valid.

History: Laws 1884, ch. 29, § 30; C.L. 1884, § 2255; C.L. 1897, § 2092; Code 1915, § 4778; C.S. 1929, § 117-122; 1941 Comp., § 63-406; 1953 Comp., § 61-7-6.

48-7-7. Sale of real property under power of sale; allowed if trustor agrees.

Except as specifically provided in the Deed of Trust Act [48-10-1 to 48-10-21 NMSA 1978], no real property or any interest in it shall be sold under any power of sale contained in any mortgage, mortgage deed, trust deed or any other written instrument having the effect of a mortgage, which has been executed subsequent to the effective date of Laws 1929, Chapter 139, Section 1.

History: Laws 1929, ch. 139, § 1; C.S. 1929, § 117-301; 1941 Comp., § 63-407; 1953 Comp., § 61-7-7; Laws 1987, ch. 61, § 23.

48-7-8. Mortgage escrow funds; limitation; credit against principal.

A. A monthly charge may be held in escrow by a mortgagee for the payment of taxes, insurance premiums and other charges required by the terms of a mortgage subject to the restrictions in Subsection B of this section.

B. Any balance in the escrow fund, exceeding two months' total escrow charges for future taxes, insurance premiums or other required charges, plus the pro rata accrual for such taxes, premiums and other charges, upon the demand of the mortgagor but not

more than once each year, shall be credited to the principal amount of the mortgage as provided in Subsection B, or as provided by the contractual agreement, within sixty days of the demand.

C. Failure of a mortgagee to credit upon demand any excess accumulation of escrow funds as provided in Subsection B of this section shall cause [a] penalty at the rate of six percent per year to run on the amount of such excess accumulation of escrow funds which penalty shall be payable to the mortgagor.

History: 1953 Comp., § 61-7-8, enacted by Laws 1971, ch. 175, § 1.

48-7-9. Mortgages; future advances; lien.

Every mortgage or other instrument securing a loan upon real estate and constituting a lien, or the full equivalent thereof, upon the real estate securing such loan, may secure future advances and the lien of such mortgage shall attach upon its execution and have priority from the time of recording as to all advances, whether obligatory or discretionary, made thereunder until such mortgage is released of record; provided, that the lien of such mortgage shall not exceed at any one time the maximum amount stated in the mortgage.

History: 1953 Comp., § 61-7-9, enacted by Laws 1975, ch. 61, § 1.

48-7-10. Mortgages; insurance proceeds.

Where there is a mortgage of a single family residence securing a loan and where there are no federal regulations to the contrary, the mortgagor may require the proceeds of any insurance policy, which are payable by reason of damage to or destruction of the mortgaged property and which would otherwise be payable to the mortgagee, to be held jointly by the mortgagor and the mortgagee in an escrow account and to be applied toward the repair or replacement of the damaged property. Provided that it shall first be reasonably established to the satisfaction of the mortgagee that such repair or replacement will restore the mortgaged property to a value at least equal to the balance remaining on the obligation, at the time the damage or destruction occurred, secured by the mortgage.

History: 1953 Comp., § 61-7-10, enacted by Laws 1975, ch. 184, § 1.

48-7-10.1. Repealed.

History: Laws 2003, ch. 200, § 1; 2005, ch. 191, § 4; repealed by Laws 2005, ch. 191, § 4.

48-7-11 to 48-7-14. Repealed.

48-7-15. Purpose [of "due-on-sale" law].

A. The legislature finds that the congress of the United States by an act entitled the Garn - St. Germain Depository Institutions Act of 1982 has preempted New Mexico law restricting the enforcement of due-on-sale clauses, except as provided in Section 341(c)(1) of that act as to loans made or assumed during the period March 15, 1979 through October 15, 1982. For real property loans made by lenders subject to state regulation, made or assumed during that period of time, the legislature may provide for restrictions on the enforcement of due-on-sale clauses. It is the intent of the legislature by this act [48-7-15 to 48-7-24 NMSA 1978] to provide legislation regulating due-on-sale clauses in contracts either made or assumed from March 15, 1979 through October 15, 1982.

B. The legislature further finds that the Garn - St. Germain Depository Institutions Act of 1982 gives the legislature the authority, during a three-year period commencing on October 15, 1982, to act regarding state restrictions on due-on-sale clauses contained in real property loans, which loans were made by lenders subject to state regulations. It is the intent of the legislature to affect by legislation such loans made or assumed between March 15, 1979 and October 15, 1982. Federally regulated federal savings and loan associations are the only lenders that are immune from state regulation of due-on-sale clauses. If the legislature fails to act during this three-year period, then due-on-sale clauses on any loan made by any lender may be escalated to any rate the lender desires upon assumption by another party.

C. The legislature finds that:

(1) the federally chartered savings and loan associations being permitted to enforce due-on-sale clauses and state chartered savings and loan associations being restricted in doing so creates a competitive advantage for federally chartered associations. This advantage will lead to a continued weakening of state chartered associations;

(2) a blended rate, as contained in this act, for real property loans which are assumed is the best approach for both the consumer and the lender. The consumer is assured of a predictable, fair interest rate and the lender a fair rate of return more reflective of its cost of money; and

(3) continuation of the current prohibition on enforcement of due-on-sale clauses will discourage investors from investing through mortgage bankers in New Mexico real property loans; whereas, a blended rate on assumptions will permit the sale of New Mexico real property loans and thereby attract additional capital to New Mexico.

History: Laws 1983, ch. 314, § 1.

48-7-16. Definitions.

As used in this act [48-7-15 to 48-7-24 NMSA 1978]:

A. "due-on-sale clause" means a provision in a contract involving a real property loan which authorizes a lender, at its option, to accelerate an indebtedness and declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest therein, is sold or transferred or, in the alternative, to demand an increase in the interest rate as a condition of approving an assumption of the loan;

B. "lender" means a person or government agency making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency;

C. "mobile home" means a movable accommodation with not less than four hundred square feet of floor space used or designed for use as living quarters; and

D. "real property loan" means a loan, mortgage, advance or credit sale secured by a lien on real property, the stock allocated to a dwelling unit in a cooperative housing corporation, or a mobile home, whether real or personal property.

History: Laws 1983, ch. 314, § 2.

48-7-17. Due-on-sale generally enforceable.

Notwithstanding any provision of the statutory or common laws of this state to the contrary, a lender may enter into or enforce a contract containing a due-on-sale clause with respect to a real property loan, except as provided in Sections 5 and 6 [48-7-19, 48-7-20 NMSA 1978] of this act.

History: Laws 1983, ch. 314, § 3.

48-7-18. Real property loan contract controls.

Except as otherwise provided in Sections 5 and 6 [48-7-19, 48-7-20 NMSA 1978] of this act, the exercise by the lender of its option pursuant to a due-on-sale clause shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by the contract.

History: Laws 1983, ch. 314, § 4.

48-7-19. Limitation of enforcement of regulated due-on-sale clauses.

A. In the exercise of its options under a due-on-sale clause, in a real property loan made or assumed between March 15, 1979 and October 15, 1982, a lender shall be prohibited from accelerating the indebtedness and declaring the loan due and payable

and shall be limited in increasing the interest rate upon an assumption of the loan upon the transfer of the real property to the existing contract rate of interest plus an increase in the rate of interest not greater than two percentage points and a fee to transfer the real property loan of not greater than one percentage point of the unpaid principal balance of the real property loan at the time of the transfer. On each succeeding assumption of the real property loan on the same property, the lender may increase the contract rate of interest and charge the transfer fee as provided in the previous sentence. There shall be no enforcement of a prepayment penalty in said mortgages.

B. In no case shall the rate of interest charged on an assumption as provided in Subsection A of this section exceed one percent above the most recent federal national mortgage association auction rate of interest at which bids were made, rounded to the nearest one-fourth of one percent. Upon closing, the lender shall disclose in writing to the party assuming the real property loan the most recent federal national mortgage association auction rate of interest referred to in this subsection.

History: Laws 1983, ch. 314, § 5.

48-7-20. Limitation of exercise of all due-on-sale [options].

A lender may not exercise its option pursuant to a due-on-sale clause upon:

A. the creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

B. the creation of a purchase money security interest for household appliances;

C. a transfer by devise, descent or operation of law on the death of a joint tenant or tenant by the entirety;

D. the granting of a leasehold interest of three years or less not containing an option to purchase;

E. a transfer to a relative resulting from the death of a borrower;

F. a transfer where the spouse or children of the borrower become an owner of the property;

G. a transfer resulting from a decree of a dissolution of marriage, legal separation agreement or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or

H. a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

History: Laws 1983, ch. 314, § 6.

48-7-21. Security; safeguard.

Any lender who feels the security interest is endangered by the transfer of a real property loan may proceed by foreclosure; provided that the lender shall, as a condition to such foreclosure, prove that the security interest in the property would be substantially impaired.

History: Laws 1983, ch. 314, § 7.

48-7-22. Due-on-sale policy on nonregulated contracts.

In the exercise of its option under a due-on-sale clause, a lender is encouraged to permit an assumption of a real property loan at the existing contract rate or at a rate which is at or below the average between the contract and market rates, and nothing in this act [48-7-15 to 48-7-24 NMSA 1978] shall be interpreted to prohibit any such assumption.

History: Laws 1983, ch. 314, § 8.

48-7-23. Governmental entity limitation of act.

The provisions of Section 5 [48-7-19 NMSA 1978] of this act shall not apply to the transfer of a real property loan where the funds for the real property loans were provided through the issuance by a governmental entity or instrumentality of bonds the interest on which is exempt from federal income taxation and the transfer fails to conform to state and federal law governing the bonds.

History: Laws 1983, ch. 314, § 9.

48-7-24. Attorney fees.

Attorney's fees shall be awarded to the prevailing party in any action brought under this act [48-7-15 to 48-7-24 NMSA 1978].

History: Laws 1983, ch. 314, § 10.

ARTICLE 8

Hospital Liens

48-8-1. Liens upon personal injury damages recovered by patients; creation; exception.

A. Every hospital located within the state that furnishes emergency, medical or other service to any patient injured by reason of an accident not covered by the state workmen's compensation laws is entitled to assert a lien upon that part of the judgment, settlement or compromise going, or belonging to such patient, less the amount paid for attorneys' fees, court costs and other expenses necessary thereto in obtaining the judgment, settlement or compromise, based upon injuries suffered by the patient or a claim maintained by the heirs or personal representatives of the injured party in the case of the patient's death.

B. A hospital lien may be filed upon damages recovered, or to be recovered, either as a result of a judgment, or upon a contract of settlement or compromise, for the amount of the reasonable, usual and necessary hospital charges for treatment, care and maintenance of the injured party in the hospital and to the date of payment of the damages.

History: 1953 Comp., § 61-9-1, enacted by Laws 1961, ch. 227, § 1.

48-8-2. Filing and notice of hospital liens.

No hospital lien is effective upon damages recovered for personal injuries unless:

A. a written notice is filed in the office of the county clerk of the county in which the hospital asserting the lien is located containing the following information:

- (1) an itemized statement of all claims certified as correct by an agent of such hospital;
- (2) the date of the accident;
- (3) the name and location of the hospital; and
- (4) the name of the person, firm or corporation alleged to be liable to the injured party for the injuries received; and

B. the hospital sends by certified mail with return receipt requested, prior to the payment of any money to the injured person or his attorneys or legal representative as compensation for the patient's injuries, a copy of the written notice, together with a statement of the date of filing, to the person, firm or corporation alleged to be liable to the injured party for the injuries sustained. The person, firm or corporation alleged to be liable to the injured person shall, upon request of the hospital, disclose the name of the insurance carrier that has insured the person, firm or corporation against liability; and

C. the hospital mails a copy of the written notice by certified mail with return receipt requested to the home office of any insurance carrier that has insured the person, firm or corporation against liability, if the name and address is known.

History: 1953 Comp., § 61-9-2, enacted by Laws 1961, ch. 227, § 2.

48-8-3. Persons liable for payment of lien; limitation of actions.

A. Any person, firm or corporation, including an insurance carrier, making any payment to a patient or to his attorney, heirs or legal representative as compensation for the injury sustained, after the filing and receipt of written notice of the lien, as aforesaid, and without paying the hospital asserting the lien the amount of its lien or that portion of the lien which can be satisfied out of the money due under any final judgment or contract of compromise or settlement, less payment of the amount of any prior liens, shall be liable to the hospital for the amount that the hospital was entitled to receive.

B. Liability of the person, firm or corporation for the satisfaction of the hospital lien shall continue for a period of one year after the date of any payment of any money to the patient, his heirs or legal representatives as damages or under a contract of compromise or settlement. Any hospital may enforce its lien by a suit at law against the person, firm or corporation making the payment. In the event of a suit to enforce a lien the hospital may recover a reasonable attorney's fee and the costs of filing and recording the lien.

History: 1953 Comp., § 61-9-3, enacted by Laws 1961, ch. 227, § 3.

48-8-4. County clerk to maintain hospital lien records.

Every county clerk shall maintain a proper index of all hospital liens under the name of the injured person.

History: 1953 Comp., § 61-9-4, enacted by Laws 1961, ch. 227, § 4; 1995, ch. 78, § 1.

48-8-5. Release of lien.

The hospital shall, upon receipt of payment of the lien or the part recoverable under the lien, execute and file, at the expense of the hospital, a release of lien.

History: 1953 Comp., § 61-9-5, enacted by Laws 1961, ch. 227, § 5.

48-8-6. Repealed.

48-8-7. [Hospital's interest in settlement restricted to lien rights.]

Nothing in this act [48-8-1 to 48-8-7 NMSA 1978] shall be construed to permit any hospital to be a party to or to have any interest in the amount or manner of any settlement of any claim on which a lien has been filed other than the lien rights as provided in this act.

History: 1953 Comp., § 61-9-7, enacted by Laws 1961, ch. 227, § 7.

ARTICLE 9

Oil and Gas Products Lien Act

48-9-1. Short title.

Sections 48-9-1 through 48-9-8 NMSA 1978 may be cited as the "Oil and Gas Products Lien Act."

History: 1953 Comp., § 61-10-1, enacted by Laws 1973, ch. 100, § 1.

48-9-2. Definitions.

As used in the Oil and Gas Products Lien Act:

- A. "commission" means the oil and gas accounting commission [oil and gas accounting division of the taxation and revenue department];
- B. "product" or "products" means severed oil, natural gas, liquid hydrocarbons, individually or in any combination thereof;
- C. "severed" means the taking, extraction or production from the soil of any product in any manner;
- D. "production unit" means a unit of property designated by the commission from which products of common ownership are severed;
- E. "person" means any individual, executor, administrator, estate, agent, trust, trustee, institution, receiver, business trust, firm, corporation, partnership, cooperative, joint venture, governmental entity or agency, association or any other group or combination acting as a unit;
- F. "interest owner" means a person owning an entire or fractional interest of any kind or nature in the products at the time they are severed from a production unit, or a person who has a right, either express or implied, to receive a monetary payment determined by the value of the products;
- G. "operator" means any person engaged in the severance of products from a production unit for himself, for himself and other persons or for other persons;
- H. "first purchaser" means the first person who takes, receives or purchases products from an interest owner at or after the time the products are severed from a production unit; and

I. "purchaser" means a person who takes, receives or purchases products from a first purchaser or another person other than an interest owner.

History: 1953 Comp., § 61-10-2, enacted by Laws 1973, ch. 100, § 2.

48-9-3. Security interest; lien; payment.

A. To secure payment from the first purchaser of the purchase price of the product, state royalty and all taxes which are required to be or are withheld and paid or to be paid by the first purchaser, an interest owner, subject to Section 48-9-5 NMSA 1978, shall have a continuing purchase money security interest in and a lien upon his interest in or share of the unpaid for product severed from a production unit in which he owns an interest or the proceeds of product if such unpaid for product has been sold by the first purchaser, until the purchase price, state royalty and taxes have been paid to the person entitled to receive payment therefor.

B. In the event of a bona fide dispute as to the amount due the interest owner, the purchase money security interest and the lien herein provided shall not accrue if the first purchaser tenders to the interest owner the amount which the first purchaser in good faith believes to be due and payable.

C. Any purchaser who pays the purchase price for products to the person from whom the products are acquired or to a person who is authorized to receive payment for an interest owner shall be deemed a buyer in ordinary course of business, as defined in Section 55-1-201(9) NMSA 1978, and take the products free of the purchase money security interest and lien of the interest owner, and the purchaser who makes such payment and all of his property shall be free from and not subject to the claims or purchase money security interest and lien of an interest owner.

History: 1953 Comp., § 61-10-3, enacted by Laws 1973, ch. 100, § 3.

48-9-4. Validity of security interest and lien; possession.

The validity of the purchase money security interest and lien granted to an interest owner under the provisions of the Oil and Gas Products Lien Act shall not be dependent upon possession of the product by an interest owner or operator and no such purchase money security interest or lien shall become or be deemed to be void or expired by reason of a change or transfer of the actual or constructive possession or title of the product from the interest owner or an operator to an operator or purchaser.

History: 1953 Comp., § 61-10-4, enacted by Laws 1973, ch. 100, § 4.

48-9-5. Perfection of security interest and lien; filing notice.

A. If the purchase price for products, state royalty and the taxes which are required to be or are withheld and paid or to be paid are not paid to the person entitled to receive

payment therefor after fifteen days and within forty-five days after payment is due by terms of agreement, the interest owner or operator may perfect the purchase money security interest and lien by filing for record in the office of the county clerk of the county in which the production unit is located a notice of lien in substantially the following form:

"NOTICE OF LIEN

Notice is hereby given that (name of interest owner for whom notice is filed) whose address is (address of named interest owner) owns an (fractional or decimal interest) interest in the products severed from the (name of well) by (name and address of operator), which well is designated as production unit No. (number) by the oil and gas accounting commission [oil and gas accounting division of the taxation and revenue department] and is located on the following described land in (name of county) county, New Mexico:

(description of land)

Products severed from said production unit have been and are now or may be taken, received and purchased by (name of first purchaser); and the above named interest owner has a purchase money security interest in and lien upon such products and the proceeds thereof to secure payment of the purchase price, state royalty and taxes for the months of (list months and year for which payment was not received) under the provisions of the Oil and Gas Products Lien Act.

Dated: (date)

(signature of interest owner or operator)";

If the notice of lien is not filed for record within the time limit specified in this section, the purchase money security interest and lien shall terminate at the expiration of that time limit.

B. All instruments which are presented to a county clerk for filing in accordance with Subsection A of this section shall be deemed to be and filed as financing statements under the Uniform Commercial Code [Chapter 55 NMSA 1978], even though the signature of the first purchaser may not appear thereon. All such instruments may be terminated in the same manner as financing statements under the provisions of the Uniform Commercial Code. Filing of a notice of lien or termination statement by an operator shall inure to the benefit of and be binding upon all named interest owners.

C. Upon perfection by filing, the purchase money security interest and lien of the interest owner shall relate back to and be effective as of the date on which the first purchaser took, received or purchased product unpaid for and shall take priority over the rights of all persons whose rights or claims arise or attach to the product unpaid for

or the proceeds of product if such product has been sold by the first purchaser, including those which arise or attach between the time the purchase money security interest and lien attaches and the time of filing.

History: 1953 Comp., § 61-10-5, enacted by Laws 1973, ch. 100, § 5.

48-9-6. Effect of act and filing; title; purchaser's rights; collateral security.

A. Neither the provisions of the Oil and Gas Products Lien Act nor the filing of any instrument permitted under that act shall affect the time at which legal title to the products from a production unit may pass from an interest owner or operator to a purchaser by agreement or operation of law subject to the purchase money security interest and lien granted under the provisions of that act, the ownership of the products before severed from a production unit as reflected by the records affecting real property or the right of a purchaser to take or receive products from a production unit under the terms of a division order or similar agreement for the sale and purchase of products and a purchaser shall be free to transport products out of the state notwithstanding the provisions of the Oil and Gas Products Lien Act.

B. No person entitled to a purchase money security interest and lien under the provisions of the Oil and Gas Products Lien Act shall be deemed to have waived or relinquished such purchase money security interest and lien by taking or receiving collateral security for payment of the purchase price for or taxes measured by the value of the product unless he expressly agrees thereto in writing.

History: 1953 Comp., § 61-10-6, enacted by Laws 1973, ch. 100, § 6.

48-9-7. Enforcement; actions and costs; cumulative remedies.

A. The purchase money security interest and lien granted to an interest owner under the provisions of the Oil and Gas Products Lien Act shall follow the product unpaid for or the proceeds of the product if such product has been sold by the first purchaser and the purchase money security interest and lien shall expire one year after the date of the filing of the notice of lien unless proper action to enforce the lien is commenced within a one-year period in the district court of the county in which the production unit, or any part thereof, is located, or wherever the product unpaid for or the proceeds of product sold may be found. Any number of persons claiming purchase money security interests and liens with respect to the products from the same production unit may join in the same action and where separate actions are commenced, the court may consolidate them. The court shall allow as part of the costs of the action any monies paid for filing and recording instruments under the provisions of Subsection A of Section 48-9-5 NMSA 1978 and reasonable attorneys' fees for the prevailing party in the trial and appellate courts. If an action is commenced after the filing of an instrument as provided in Subsection A of Section 48-9-5 NMSA 1978, said instrument shall be considered as a lien upon all product [products] unpaid for and all

accounts receivable of or debts due the first purchaser from subsequent purchasers for payment of the price of the products, state royalty payments and the taxes measured by the value of the product, and the purchase money security interest and lien of the claimant may be enforced against such property of the first purchaser in the manner provided by law.

B. Nothing in the Oil and Gas Products Lien Act shall be construed to impair or affect the right of any person to whom any debt may be due for the purchase price of product, state royalty or taxes to maintain a personal action to recover the debt against the person liable for payment thereof.

C. Nothing in the Oil and Gas Products Lien Act shall be construed to impair or affect the rights and remedies of any person under the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978] and the provisions of the Oil and Gas Products Lien Act shall be deemed cumulative to and not a limitation on or a substitution for any rights or remedies otherwise provided by law to a creditor against his debtor. The claimant of a purchase money security interest and lien granted under the terms of the Oil and Gas Products [Lien] Act may utilize the remedies of replevin, attachment and garnishment.

D. Nothing contained in the Oil and Gas Products Lien Act shall alter or restrict any other remedies in favor of the state of New Mexico, including the cancellation of state oil and gas leases for nonpayment of oil or gas in kind sold by the state or nonpayment of state royalty money due and unpaid, and the provision [provisions] of this act shall be deemed cumulative to and not an amendment to, a limitation on or a substitution for any rights or remedies provided by Section 19-10-11 NMSA 1978.

History: 1953 Comp., § 61-10-7, enacted by Laws 1973, ch. 100, § 7.

48-9-8. Priority; assignment; representation.

A. Liens or claims for taxes measured by the value of product and royalty payments due the state, whether under the Oil and Gas Products Lien Act or other acts, shall have a first, superior and paramount priority. The purchase money security interest and lien provided by the Oil and Gas Products Lien Act shall then and thereafter be preferred to and have priority over any other lien, mortgage, security interest or other encumbrance [encumbrance] which may attach to or be asserted against the unpaid for products severed from a production unit or the proceeds of product if such product has been sold by the first purchaser, except liens under the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] and perfected liens of common carriers provided by Sections 48-3-8, 65-2-51 [repealed] and 63-3-12 NMSA 1978 or under published tariff schedules.

B. The purchase money security interest and lien granted to an interest owner under the provisions of the Oil and Gas Products Lien Act may be assigned, in whole or in part; provided, however, that the rights of any assignee shall be the same as those of the assignor; and, provided further, however, that any deed of trust, mortgage or

security agreement executed by an interest owner in favor of another and covering products severed or to be severed from a production unit shall also be deemed an assignment of the interest owner's rights under this act.

C. Any first purchaser who takes, receives or purchases products severed or to be severed from a production unit shall be deemed to make a continuing representation that he will not take, receive or purchase products while insolvent.

History: 1953 Comp., § 61-10-8, enacted by Laws 1973, ch. 100, § 8.

ARTICLE 10

Deeds of Trust

48-10-1. Short title.

Sections 1 through 21 [48-10-1 to 48-10-21 NMSA 1978] of this act may be cited as the "Deed of Trust Act".

History: Laws 1987, ch. 61, § 1.

48-10-2. Repealed.

History: Laws 1987, ch. 61, § 2; 1993, ch. 145, § 1; repealed by Laws 2006, ch. 32, § 8.

48-10-3. Definitions.

As used in the Deed of Trust Act, unless the context otherwise requires:

A. "beneficiary" means the person named or otherwise designated in a deed of trust as the person for whose benefit a deed of trust is given or the person's successor in interest;

B. "contract" means an agreement between or among two or more persons, including, without limitation, a note, promissory note, guarantee or the terms of any deed of trust;

C. "credit bid" means a bid made by the beneficiary in full or partial satisfaction of the contract that is secured by the deed of trust. A credit bid may only include an amount owing on a contract with interest secured by liens, mortgages, deeds of trust or encumbrances that are superior in priority to the deed of trust and which liens, mortgages or encumbrances, whether recourse or nonrecourse, are outstanding as provided in the contract or as provided in the deed of trust, together with the amount of other obligations provided in or secured by the deed of trust and the costs of exercising

the power of sale and the trustee's sale, including the fees of the trustee and reasonable attorney fees actually incurred by the trustee and the beneficiary;

D. "parent corporation" means a corporation that owns eighty percent or more of each class of the issued and outstanding stock of another corporation or, in the case of a savings and loan association, eighty percent or more of the issued and outstanding guaranty capital of the savings and loan association;

E. "person" means an individual or organization;

F. "deed of trust" means a document by way of mortgage in substance executed in conformity with the Deed of Trust Act and in conformity with Section 47-1-39 NMSA 1978 granting or mortgaging trust real estate to a trustee qualified under the Deed of Trust Act to secure the performance of a contract;

G. "junior encumbrancer" means a person holding a lien, mortgage or other encumbrance of record evidencing an interest in the trust real estate that is subordinate in priority to the deed of trust and includes a lienholder, a mortgagee, a seller and a purchaser as provided in a real estate contract and, where the context is applicable, escrow agents as provided in a real estate contract;

H. "trust real estate" means any legal, equitable, leasehold or other interest in real estate, including the term "real estate" as defined in Section 47-1-1 NMSA 1978 and any improvements and fixtures, which is capable of being transferred whether or not the interest is subject to any prior mortgages, deeds of trust, contracts for conveyance of real estate, real estate contracts or other liens or encumbrances; provided, however, trust real estate shall not include:

(1) any real estate used by the trustor for farming operations, including farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry or livestock, and production of poultry or livestock products in an unmanufactured state; or

(2) oil and other liquid hydrocarbons, or gas, including casinghead gas, condensates and other gaseous petroleum substances, or coal or other minerals in, on or under real estate, including patented and unpatented mining claims, unless such minerals have not been severed from and are included with the surface estate.

The character of trust real estate shall be determined as of the date of the deed of trust covering the trust real estate;

I. "trustee" means a person qualified as provided in the Deed of Trust Act. The obligations of a trustee to the trustor, beneficiary and other persons are as provided in the Deed of Trust Act, together with any other obligations specified in the deed of trust. Both the beneficiary and the trustee have all the powers of a mortgagee as provided by law; and

J. "trustor" means the person or the person's successor in interest granting or mortgaging trust real estate by a deed of trust as security for the performance of a contract and is the same as a mortgagor granting or mortgaging real estate by way of mortgage as provided by law.

History: Laws 1987, ch. 61, § 3; 1993, ch. 145, § 2; 1998, ch. 63, § 5; 2006, ch. 32, § 1.

48-10-4. Repealed.

History: Laws 1987, ch. 61, § 4; 1993, ch. 145, § 3; repealed by Laws 2006, ch. 32, § 8.

48-10-5. Description of trust real estate; mailing address of trustor, beneficiary and trustee.

A. In deeds of trust the legal description of trust real estate shall be given by one of the following methods:

- (1) by the use of lot, block, tract or parcel as provided in a recorded subdivision plat;
- (2) by the use of a metes and bounds or course and distance survey;
- (3) by the use of the governmental rectangular survey system with specific identification of the location within any section or sections, tract or tracts, of a township and range; or
- (4) by the use of any other method of description provided by law.

B. If the trust real estate is the subject of a recorded subdivision plat, the legal description of the trust real estate shall be given by the use of lot, block, tract or parcel as shown on the recorded subdivision plat.

C. The mailing address of each trustor, beneficiary and trustee shall be specified in each deed of trust.

History: Laws 1987, ch. 61, § 5.

48-10-6. Trustee of deed of trust; qualification.

A. Except as provided in Subsection B of this section, the trustee of a deed of trust shall be:

(1) an organization doing business under the laws of New Mexico as a bank, trust company, savings and loan association, escrow company or title insurance company including an agent or underwriter;

(2) an individual who is a member of the state bar of New Mexico;

(3) an organization which is licensed, chartered or regulated by the federal deposit insurance corporation, the comptroller of the currency, the federal savings and loan insurance corporation, the federal home loan bank, the bureau of federal credit unions or any successors; or

(4) the parent corporation of any association or corporation referred to in this subsection or any subsidiary corporation all the stock of which is owned by or held solely for the benefit of any such association or corporation referred to in this subsection.

B. No trustee of a deed of trust or parent corporation or subsidiary corporation of a corporate trustee which is a trustee of a deed of trust shall be the beneficiary of the deed of trust.

History: Laws 1987, ch. 61, § 6.

48-10-7. Appointment of successor trustee by beneficiary.

A. If a person appointed as trustee fails to qualify, is unwilling, unqualified or unable to serve or resigns as trustee, the beneficiary may appoint a successor trustee and the appointment shall constitute a substitution of trustee.

B. The beneficiary may remove a trustee at any time for any reason or cause and appoint a successor trustee, and the appointment shall constitute a substitution of trustee.

C. Substitutions shall be made by recording notice of the substitution in the office of the county clerk of each county in which all or any part of the trust real estate is situated at the time of the substitution. The beneficiary shall give written notice through registered or certified mail, postage prepaid, to the trustor, the trustee and the successor trustee. A notice of substitution of trustee shall be sufficient if acknowledged by all beneficiaries as provided in the deed of trust and prepared in substantially the following form:

"NOTICE OF SUBSTITUTION OF TRUSTEE

The undersigned beneficiary hereby appoints _____
successor trustee under the deed of trust executed by _____ as
trustor, in which _____ is named beneficiary and
_____ as trustee, and recorded _____,

20 _____, in _____ County, New Mexico, in book _____, page _____, and legally describing the trust real estate as:

(legal description of trust real estate)

Dated this _____ day of _____, 20_____.

Signature of Beneficiary

(Here add Acknowledgment)."

D. A notice of substitution of trustee is effective immediately on execution as provided in Subsection C of this section.

E. A person appointed as a trustee under a deed of trust may resign as trustee at any time. The resignation shall be without liability, provided the person has not agreed in writing to be appointed trustee or has not acted in the capacity of trustee. The trustee may only resign as provided in the deed of trust and the Deed of Trust Act. If a trustee fails to qualify or is unwilling or unable to serve or resigns, the validity of the deed of trust shall not be affected, except that no action required to be performed by the trustee as provided in the Deed of Trust Act or as provided in the deed of trust may be taken until a successor trustee is appointed by the beneficiary as provided in this section. If the beneficiary fails or refuses to appoint a successor trustee, the terms of Section 47-1-42 NMSA 1978 shall be applicable. Resignation by a trustee is made by recordation of a notice of resignation in the office of the county clerk of each county in which all or any part of the trust real estate is situated at the time of the resignation. Written notice shall be given through registered or certified mail, postage prepaid, to the trustor and the beneficiary. A notice of resignation of trustee is sufficient if acknowledged by the trustee and prepared in substantially the following form:

"NOTICE OF RESIGNATION OF TRUSTEE

The undersigned trustee hereby resigns as trustee under the deed of trust executed by _____, as trustor, in which _____ is named beneficiary, and recorded _____, 20_____, in _____ County, New Mexico, in book _____, page _____, and legally describing the trust real estate as:

(legal description of trust real estate)

Dated this _____ day of _____, 20_____.

Signature of Trustee

(Here add Acknowledgment)."

History: Laws 1987, ch. 61, § 7; 2006, ch. 32, § 2.

48-10-8. Deed of trust as security.

Deeds of trust may be executed as security for the performance of a contract. The laws of New Mexico which refer to mortgages as security instruments are deemed to also include deeds of trust unless the context otherwise requires. The lien theory of mortgages in New Mexico shall continue to apply to deeds of trust executed as provided in the Deed of Trust Act.

History: Laws 1987, ch. 61, § 8.

48-10-9. Grants in trust of real estate; uses.

Grants or mortgages of trust real estate may be made to secure the performance of a contract of the trustor or any other person. Unless otherwise specifically provided in the deed of trust or otherwise specifically agreed in writing by the trustor and the beneficiary at the time of acquisition, an interest in the trust real estate acquired by the trustor after the execution of the deed of trust shall run to the benefit of the trustee and beneficiary as security for the contract for which the trust real estate is granted or mortgaged as if the interest had been acquired before execution of the deed of trust.

History: Laws 1987, ch. 61, § 9.

48-10-10. Sale of trust real estate; power of trustee; foreclosure of deed of trust.

A. By virtue of the trustee's position, a power of sale is conferred upon the trustee of a deed of trust under which the trust real estate may be sold as provided in the Deed of Trust Act after a breach or default in performance of the contract for which the trust real estate is granted or mortgaged as security or a breach or default in performance of the deed of trust. Except as specifically provided in the Deed of Trust Act, the trustee shall not delegate the duties of the trustee as provided in the Deed of Trust Act. At the option of the beneficiary, a deed of trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real estate. Either the beneficiary or the trustee shall constitute the proper and complete party plaintiff in any action to foreclose a deed of trust.

B. The trustee or beneficiary may commence an action to foreclose a deed of trust at any time before the trust real estate has been sold as provided in the power of sale. A

sale of trust real estate as provided in a power of sale in a deed of trust shall not be held after an action to foreclose the deed of trust has been commenced unless the foreclosure action has been dismissed.

C. The power of sale of trust real estate conferred upon the trustee shall not be exercised before the expiration of ninety days from the recording of the notice of the sale.

D. The trustee need only be joined as a party in separate civil actions pertaining to a breach of an obligation of a trustee as provided in the Deed of Trust Act or as provided in the deed of trust. Any order of the court entered against the beneficiary is binding upon the trustee with respect to any actions that the trustee is authorized to take by the deed of trust or by the Deed of Trust Act. If the trustee is joined as a party in any other separate civil action, other than an action in which the trustee is an indispensable or necessary party, the trustee is entitled to be immediately dismissed and to recover the costs and reasonable attorney fees actually incurred by the trustee from the person joining the trustee and from the beneficiary, jointly and severally.

History: Laws 1987, ch. 61, § 10; 1993, ch. 145, § 4; 2006, ch. 32, § 3.

48-10-11. Notice of trustee's sale.

A. The trustee shall give written notice of the time and place of sale, legally describing the trust real estate to be sold, by each of the following methods:

(1) publication of the notice as provided by law for foreclosure of mortgages on real estate;

(2) recording of the notice in the office of the clerk of each county in which the trust real estate is situated; and

(3) giving notice as provided in Section 48-10-12 NMSA 1978 to the extent applicable.

B. The sale shall be held at the time and place designated in the notice of sale on a day other than a Saturday, Sunday or legal holiday and at the time provided by law for the foreclosure sale of real estate under real estate mortgages on the front steps of the courthouse of the county in which the trust real estate is located. If the trust real estate is located in more than one county, the sale may be held in any county in which part of the trust real estate is located.

C. The notice of sale shall contain the street address, if any, or identifiable location as well as the legal description of the trust real estate. Failure to accurately describe within the notice either the street address or the identifiable location of the trust real estate to be sold shall not be grounds for invalidating the sale if the correct legal

description of the trust real estate to be sold was contained in the notice of sale. The notice of sale shall be sufficient if made in substantially the following form:

"NOTICE OF TRUSTEE'S SALE

The following legally described trust real estate will be sold, pursuant to the power of sale as provided in the deed of trust recorded in book _____ at page _____, _____ County, New Mexico, records, at public auction to the highest bidder on the front steps of the county courthouse in _____ County, New Mexico, in or near _____, New Mexico, on _____, 20____, at _____ o'clock ___m. of that day:

(street address, if any, or identifiable location of trust real estate and legal description of trust real estate)

Dated this _____ day of _____, 20_____.

(Name of Trustor)

(Name of Trustee)

Signature

(Here add Acknowledgment)."

History: Laws 1987, ch. 61, § 11; 2006, ch. 32, § 4; 2007, ch. 156, § 2.

48-10-12. Request for copies of notice of sale; mailing by trustee or beneficiary.

A. A person desiring a copy of a notice of sale as provided in a deed of trust shall, at any time after the recording of the deed of trust and before the recording of a notice of sale as provided in a deed of trust, record in the office of the county clerk in any county in which part of the trust real estate is situated an acknowledged request for a copy of the notice of sale. The request shall provide the name and address of the person requesting a copy of the notice and shall identify the deed of trust by providing the county book and page numbers of the recording data of the deed of trust and by stating the names of the original parties to the deed of trust, the date the deed of trust was recorded and the legal description of the trust real estate and shall be in substantially the following form:

REQUEST FOR NOTICE

Request is made that a copy of any notice of sale as provided in the deed of trust recorded in book _____ at page _____, _____ County, New Mexico records, on _____, 19 ____.

(legal description of trust real estate)

executed by _____ as trustor, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ at _____

Dated this _____ day of _____, 19 ____.

Signature

(Here add Acknowledgment)

B. Not later than thirty days after recording the notice of sale, the trustee or beneficiary shall mail by certified or registered mail with postage prepaid a copy of the notice of sale with the recording date shown on the notice of sale, together with any notice required to be given by Subsection C of this section, addressed as follows:

(1) to each person whose name and address are provided in a request for notice, which has been recorded before the recording of the notice of sale, directed to the address designated in the request; and

(2) to each person who, at the time of recording of the notice of sale, appears by a document recorded in the real estate records of the county clerk in the county in which any part of the trust real estate is situated to have an interest in any of the trust real estate including junior encumbrancers. The copy of the notice shall be addressed to the person whose interest so appears at the address provided in the document. If no address for the person is provided in the document, no notice need be mailed to the person. If the interest which appears on the records of the county clerk is a deed of trust, a copy of the notice need only be mailed to the beneficiary as provided in the deed of trust. If any person having such an interest, or the trustor, or any person who has recorded a request for notice wants to change the address to which notice shall be mailed, the change shall be accomplished by a request for notice as provided in this section.

C. The trustee or beneficiary shall, within five business days after the recordation of the notice of sale, mail by certified or registered mail, with postage prepaid, a copy of any notice of sale showing the recording date the notice was recorded to each of the persons who were parties to the deed of trust. The notice shall be addressed to the mailing address specified in the deed of trust. In addition, notice to each such party shall contain a statement that a breach or default in performance of the deed of trust or the contract secured by the deed of trust, or both, has occurred and shall provide the nature

of the breach or default in performance and of the election of the beneficiary to sell or cause to be sold the trust real estate as provided in the deed of trust and the additional notice shall be signed by the beneficiary or the agent of the beneficiary. A copy of the additional notice shall also be sent with the notice as provided in Paragraph (2) of Subsection B of this section to all junior encumbrancers together with a written statement that the interest of the junior encumbrancer may be subject to being terminated by the trustee's sale. The written statement may be provided in the statement of breach or default in performance.

D. No request for a copy of a notice recorded as provided in this section nor any statement or allegation in the request nor any record of the request shall affect the title to the trust real estate or be deemed notice to any person that a person requesting a copy of notice of sale has or claims any interest in, or claim upon, the trust real estate.

History: Laws 1987, ch. 61, § 12.

48-10-13. Sale by public auction; postponement of sale.

A. On the date and at the time and place designated in the notice of sale, the trustee shall sell the trust real estate at public auction for cash to the highest bidder. To determine the highest bidder, the trustor or beneficiary present at the sale may suggest the then existing and legally described and established lots, blocks, tracts or parcels of the trust real estate in which the trust real estate may be sold. The trustee shall ascertain all such suggestions, shall conditionally sell the trust real estate under each suggestion and, in addition, shall sell the trust real estate as a whole. The trustee shall determine which conditional sale results in the highest total price bid for all of the trust real estate. The lawyer for the trustee may conduct the sale and may act at the sale as the auctioneer for the trustee. Any person, including the trustee or beneficiary, may bid at the sale. Only the beneficiary may make a credit bid, instead of cash, at the sale. A junior encumbrancer may bid the amount or value of the obligation secured by the lien, mortgage, encumbrance or real estate contract, as the case may be, owed to the junior encumbrancer, less the amount or value of any prior deeds of trust, mortgages, liens, encumbrances or real estate contracts, if any, instead of cash, at the sale. In appropriate circumstances, the trustee may sell the trust real estate subject to prior deeds of trust, mortgages, liens, encumbrances or real estate contracts that are not being foreclosed. Every bid shall be deemed an irrevocable offer until the sale is completed and the sale shall not be deemed completed until the purchaser pays the price bid in immediately collectible or available federal funds. If the purchaser fails to pay the amount bid by the purchaser for the trust real estate struck off to the purchaser at the sale as provided in the Deed of Trust Act, the trustee may accept the next highest bid or proceed with the sale of the trust real estate to the highest bidder. The person who fails to make the payment shall be liable to any person who suffers loss or expenses, including reasonable attorney fees actually incurred by the trustee and beneficiary occasioned by the failure, and the trustee may subsequently in any postponed or continued sale of the trust real estate reject any bid of the person failing to pay the amount bid.

B. The person conducting the sale may, for the purpose of verifying the proper amount to be paid or the availability of immediately collectible federal funds, postpone or continue the sale for a reasonable period by giving notice of the new time by public declaration at the time and place last appointed for the sale. No other notice of the postponed or continued sale is required.

History: Laws 1987, ch. 61, § 13; 2006, ch. 32, § 5; 2007, ch. 156, § 3.

48-10-14. Payment of bid; trustee's deed.

A. The purchaser at the sale, other than the beneficiary or the beneficiary's personal representatives, successors or assigns, to the extent of the credit bid of the purchaser, shall immediately pay the price bid. Upon receipt of payment of the price bid by the trustee in collected federal funds, the trustee shall execute and deliver the trustee's deed to the purchaser. The trustee's deed shall raise the presumption of compliance with the requirements of the Deed of Trust Act relating to the exercise of the power of sale and the sale of the trust real estate, including recording, mailing, publishing and posting of notice of sale and the conduct of sale, in favor of subsequent purchasers, mortgagees or encumbrancers for value and without actual notice.

B. The trustee's deed shall operate to convey to the purchaser the title, interest and claim of the trustee, the trustor, the beneficiary, their respective successors in interest and of all persons claiming the trust real estate sold by or through them, including all interest or claim in the trust real estate acquired after the recording of the deed of trust and before delivery of the trustee's deed. The conveyance shall be clear of the interests of junior encumbrancers in the trust real estate whose interests have been effectively foreclosed by the proceeding.

History: Laws 1987, ch. 61, § 14; 2007, ch. 156, § 4.

48-10-15. Disposition of proceeds of sale.

A. The trustee shall apply the proceeds of the sale of the trust real estate by the trustee as follows:

(1) to the costs of exercising the power of sale and of sale, including the payment of the fees of the trustee and reasonable attorneys' fees actually incurred by the trustee and the beneficiary;

(2) to the payment of the contract secured by the deed of trust;

(3) to the payment of all other obligations provided in or secured by the deed of trust; and

(4) to the junior encumbrancers in order of their priority. After payment in full to all junior encumbrancers, payment shall be made to the trustor.

B. The trustee may, in the discretion of the trustee, instead of any one or more of the applications specified in Subsection A of this section elect to deposit the balance of the proceeds available for distribution to junior encumbrancers with the clerk of the district court in the county in which the sale took place. The trustee may deposit the balance of the proceeds in connection with a separate civil interpleader action. Upon deposit of the balance of the proceeds, the trustee shall be discharged from all responsibility for acts performed in good faith as provided in the Deed of Trust Act and the clerk shall hold the proceeds subject to the order of the district court upon the application, by separate civil action if necessary, of any interested party.

History: Laws 1987, ch. 61, § 15.

48-10-16. Redemption.

A. Except as otherwise provided in Subsection E of this section, the redemption period after a trustee's sale shall be nine months, or the period provided in the deed of trust, whichever is the lesser period, and shall begin to run from the date of the trustee's sale. In the deed of trust, the parties may shorten the redemption period to not less than one month.

B. After the sale of trust real estate pursuant to Section 48-10-13 NMSA 1978, the trust real estate may be redeemed by the trustor or any junior encumbrancer:

(1) by paying to the purchaser at any time within the redemption period, the amount paid at the sale, with interest from the date of sale at the rate of ten percent a year, together with all taxes, interest and penalties thereon, and all payments made to satisfy in whole or in part any prior lien or mortgage not foreclosed, paid by the purchaser after the date of sale, with interest on the taxes, interest, penalties and payments made on liens or mortgages at the rate of ten percent a year from the date of payment; or

(2) by filing a petition for redemption in the district court in the county where the trustee's sale was held and by making a deposit of the amount set forth in Paragraph (1) of this subsection in cash in the office of the clerk of that district court at any time within the redemption period. Copies of the petition for redemption shall be served upon the purchaser of real estate under a trustee's sale; and

(3) the trustor shall have the first priority to redeem the real estate sold under a trustee's sale. If the trustor does not redeem the real estate as provided in this section, each junior encumbrancer shall have a right to redeem the real estate. The order of priority of such redemption rights shall be the same priority as the underlying junior encumbrances, as agreed by the parties or as otherwise determined by the court. All redemptions must be made within the redemption period.

C. The purchaser of real estate under a trustee's sale, upon being served with the petition for redemption of the property, shall answer the petition within thirty days after service of the petition.

D. The hearing shall be governed by the rules of civil procedure. After the case is filed, the hearing shall be set upon the earlier of the filing of a petition for redemption by the trustor or the expiration of the redemption period. At the hearing, the judge shall determine the amount of money necessary for the redemption, which shall include the money paid at the sale and all taxes, interest, penalties and payments made in satisfaction of liens, mortgages and encumbrances. If more than one redemption is filed, the court shall also determine which redemption has priority pursuant to the provisions of Subsection B of this section and which party is therefore entitled to redeem the property. At the conclusion of the hearing, the district court may order the clerk of the court to issue the certificate of redemption upon such terms and conditions as the district court deems just.

E. A junior encumbrancer who does not have actual notice or knowledge of the trustee's sale and who has been otherwise omitted from the trustee's sale proceeding shall be entitled to redeem the trust real estate by petitioning the district court in the county where the trustee's sale was held and making a deposit of the amount set forth in Paragraph (1) of Subsection B of this section. The action shall proceed as provided in Subsections C and D of this section. The purchaser of the trust real estate at the trustee's sale may petition the district court to terminate the right of redemption of an omitted junior encumbrancer. In any action commenced pursuant to the provisions of this subsection by or against an omitted junior encumbrancer, the redemption period shall be the period provided in Subsection A of this section, except that the redemption period shall begin to run from the date the final judgment is filed in the action, or from such later date as may be ordered by a court having jurisdiction:

- (1) if enforcement of a judgment affecting the redemption is stayed on appeal;
- or
- (2) for other good cause shown.

F. As used in this section, the terms "trustor", "beneficiary", "junior encumbrancer" and "purchaser" include their respective personal representatives, heirs, successors and assigns.

History: Laws 1987, ch. 61, § 16; repealed and reenacted by Laws 2006, ch. 32, § 6; 2007, ch. 156, § 5.

48-10-17. Action to recover balance after sale or foreclosure on trust real estate as provided in deed of trust; action to recover balance prohibited on loans secured by low-income households.

A. Except as provided in Subsections D and E of this section, within six years after the date of a trustee's sale of trust real estate under a deed of trust as provided in the Deed of Trust Act, a separate civil action may be commenced to recover a deficiency judgment for the balance due on the contract for which the deed of trust was given as security. The deficiency judgment shall be for an amount equal to the sum of the total amount owing the beneficiary or the beneficiary's personal representatives, successors or assigns as of the date of the sale, as determined by the court, and, if applicable, the amount owing on all prior mortgages, deeds of trust, liens and encumbrances and real estate contracts with interest less the sale price at the sale by the trustee of the trust real estate. Any deficiency judgment recovered shall include interest on the amount of the deficiency from the date of the sale at the rate provided in the deed of trust or contract, together with any costs of the action.

B. If no action is commenced for a deficiency judgment as provided in Subsection A of this section, the proceeds of the sale, regardless of amount, shall be deemed to be in full satisfaction of the debt and no right to recover a deficiency in any separate civil action shall exist.

C. Except as provided in Subsections D and E of this section, the Deed of Trust Act does not preclude a beneficiary or a trustee or their respective personal representatives, successors or assigns from foreclosing a deed of trust in the same manner provided by law for the foreclosure of mortgages on real estate.

D. A deed of trust may prohibit the recovery of any balance due after the trust real estate is sold at a trustee's sale or after the deed of trust is foreclosed in the manner provided by law for the foreclosure of mortgages on real estate.

E. No deficiency judgment shall be sought or obtained under any deed of trust securing a residential loan made to a low-income household.

F. No deficiency in recovery of any balance due after the sale at a trustee's sale or a judicial foreclosure sale of trust real estate under a deed of trust securing a residential loan made to a low-income household shall be reported to any credit reporting agencies or disclosed to any person other than the trustor or the trustor's personal representatives, unless the disclosure is required by law.

G. For the purposes of Subsections D, E and F of this section:

(1) "low-income household" means a household in which the current annual income is at or below eighty percent of the area median income adjusted for family size as determined by the United States department of housing and urban development and calculated pursuant to the United States department of housing and urban development part 5 guidelines; and

(2) "residential loan" means a loan the primary purpose of which is the purchase or finance of a permanent dwelling located in New Mexico and which is

primarily secured by a deed of trust encumbering the dwelling and related trust real estate.

H. The determination of whether a household is a low-income household and whether a loan is a residential loan shall be made as of the time the loan is made on the basis of information obtained during the loan application process.

History: Laws 1987, ch. 61, § 17; 1993, ch. 145, § 5; 2006, ch. 32, § 7; 2007, ch. 156, § 6.

48-10-18. Method of indexing.

Every deed of trust, substitution of trustee, notice of resignation of trustee, request for notice, assignment of beneficial interest in a deed of trust, notice of sale, cancellation of notice of sale or release of deed of trust which is entitled to recordation as provided in the Deed of Trust Act shall be indexed in the real estate records of the county clerk in which only part of the trust real estate is located with the trustor indexed as mortgagor, and if the name of the beneficiary appears on the instrument being recorded, the name of the beneficiary or that of the successor of the beneficiary shall be indexed as mortgagee. If the name of the beneficiary does not appear on the instrument being recorded, the name of the trustee or the successor or the trustee shall be indexed as mortgagee.

History: Laws 1987, ch. 61, § 18.

48-10-19. Limitation on action or sale of trust real estate.

The sale of trust real estate by the trustee under a deed of trust shall be made or any action to foreclose a deed of trust as provided by law for the foreclosure of mortgages on real estate shall be commenced within the period prescribed by law for the commencement of an action on the contract secured by the deed of trust.

History: Laws 1987, ch. 61, § 19.

48-10-20. Notice from instruments recorded; assignment of a beneficial interest.

Except as otherwise provided in this section, a deed of trust, notice of resignation of trustee, assignment of a beneficial interest in a deed of trust, notice of sale, cancellation of notice of sale, trustee's deed, release of deed of trust and any instrument by which a deed of trust is subordinated or waived as to priority, if acknowledged as provided by law, shall from the time of being recorded impart notice of the content to all persons, including subsequent purchasers, mortgagees and encumbrancers for value. The recording of an assignment of the beneficial interest in a deed of trust shall not be deemed notice of the assignment to the trustor or the trustee so as to make ineffective

any payment made by the trustor or received by the trustee or to preclude the application of proper credit for the payment and shall not be deemed notice to the trustor or the trustee for any other purpose. Such assigned beneficial interest is not entitled to recognition by the trustor or the trustee until actual notice of the assignment is given to the trustor or the trustee.

History: Laws 1987, ch. 61, § 20.

48-10-21. Liberal interpretation.

The Deed of Trust Act shall be liberally construed to carry out its purpose.

History: Laws 1987, ch. 61, § 21.

ARTICLE 11

Self-Service Storage Liens

48-11-1. Short title.

This act [48-11-1 to 48-11-9 NMSA 1978] may be cited as the "Self-Service Storage Lien Act".

History: Laws 1987, ch. 314, § 1.

48-11-2. Definitions.

As used in the Self-Service Storage Lien Act:

A. "default" means the failure to perform in a timely manner any obligation or duty set forth in the Self-Service Storage Lien Act or in the rental agreement;

B. "electronic mail" means the transmission of information or a communication by the use of a computer or other electronic means sent to a person identified by a unique electronic address;

C. "last known address" means the postal address or electronic address provided to the owner by the occupant:

(1) for the purposes of the latest rental agreement; or

(2) in a written or electronic notice of a change of postal address or electronic address after the latest rental agreement;

D. "occupant" means a person or the person's sublessee, successor or assign who is entitled to the use of storage space, to the exclusion of others, at a self-service storage facility under a rental agreement;

E. "owner" means the owner or the owner's heirs, successors or assigns, the operator, the lessor or the sublessor of a self-service storage facility or the lessor's or sublessor's agent or any other person authorized by the lessor or sublessor to manage the facility or to receive rent from an occupant under a rental agreement;

F. "rental agreement" means any written agreement or lease between the owner and the occupant that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of a self-service storage facility;

G. "self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such facility for the purpose of storing and removing personal property; and

H. "verified mail" means any method of mailing that is offered by the United States postal service or private delivery service that provides evidence of mailing.

History: Laws 1987, ch. 314, § 2; 2015, ch. 118, § 1.

48-11-3. Rental agreement.

The rental agreement shall contain a notice stating that all articles stored under the terms of that agreement will be sold or otherwise disposed of under the terms and conditions of the Self-Service Storage Lien Act if the tenant is in default. The agreement shall contain a disclosure provision stating the name and address of any lienholder with an interest in the property that is or will be stored in the self-service storage facility. The agreement shall also contain the address of the tenant.

History: Laws 1987, ch. 314, § 3.

48-11-4. Self-service storage facility; exclusion.

A self-service storage facility is not a warehouse as that term is used in Sections 55-7-209 and 55-7-210 NMSA 1978; nor shall a self-service storage facility be used for residential purposes.

History: Laws 1987, ch. 314, § 4.

48-11-5. Lien established.

When an owner has a lien, it is on all personal property located at the self-service storage facility for rent, labor or other charges in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale

or other disposition pursuant to the provisions of the Self-Service Storage Lien Act. The lien attaches as of the date the occupant goes into default and continues as long as the owner retains possession of the personal property and until the default is corrected, or a sale is conducted, or the property is otherwise disposed of to satisfy the lien.

History: Laws 1987, ch. 314, § 5.

48-11-6. Perfected security interests; payment; possession.

Any person who has a perfected security interest under Chapter 55, Article 9 NMSA 1978 may claim any personal property subject to the security interest and subject to a lien arising under the Self-Service Storage Lien Act by paying the total amount due for the storage of the property as specified in the notice to the owner on behalf of the occupant as provided in Section 7 [48-11-7 NMSA 1978] of the Self-Service Storage Lien Act. Upon payment of the total amount due, the owner shall deliver possession of the particular property subject to the security interest to the person who paid the total amount due together with an affidavit setting forth his entitlement to the property. The owner shall not be liable for any action taken pursuant to the provisions of the Self-Service Storage Lien Act if the owner has fully complied with the provisions of [the] act.

History: Laws 1987, ch. 314, § 6.

48-11-7. Enforcement of lien.

A. An owner's lien, as provided under the Self-Service Storage Lien Act, for a claim that has become due may be satisfied as follows:

(1) after the occupant has been in default continuously for a period of five days, the owner may deny the occupant access to the occupant's space for storage;

(2) after the occupant has been in default continuously for a period of thirty days, the owner may enter the space and may remove the personal property within it to a safe place; provided that the owner has sent a notice of intent to enforce a lien, pursuant to Subsection B of this section, to the occupant at the occupant's last known address within five days of entering the space. The owner shall also give notice to all lienholders listed in the disclosure provision in the rental agreement; and

(3) no action to sell any property as provided in the Self-Service Storage Lien Act shall be taken by an owner until the occupant has been in default continuously for a period of ninety days.

B. The notice of intent to enforce a lien shall include:

(1) an itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

(2) a brief and general statement of the personal property subject to the lien. That description shall be reasonably adequate to permit the person notified to identify the property, except that any container, including a trunk, valise or box that is locked, fastened, sealed or tied in a manner that deters immediate access to its contents, may be so described without describing its contents;

(3) a notification of denial of access to the personal property. That notification shall provide the name, street address and telephone number of the owner or the owner's designated agent whom the occupant may contact to respond to that notification;

(4) a demand for payment within a specified time, not less than fifteen days after the delivery of the notice; and

(5) a conspicuous statement that unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of to satisfy the owner's lien.

C. All notices made pursuant to this section shall be by verified mail or electronic mail pursuant to the occupant's option at the time of entering into the current rental agreement.

D. An owner shall provide written notice by verified mail to the occupant's last known address or by electronic mail to the occupant's last known electronic address. If an owner sends a notice by electronic mail and does not receive a response, return receipt or delivery confirmation from the electronic address to which the notice was sent within three business days after the day on which the notice was sent, the owner shall deliver a one-time notice by verified mail to the occupant's last known address.

E. After the expiration of the time given in the notice of intent to enforce a lien, the owner shall publish an advertisement of the sale or other disposition of the property once a week for two consecutive weeks in a newspaper of general circulation in the county where the self-service storage facility is located. The advertisement shall include:

(1) a brief and general description of the personal property reasonably adequate to permit its identification as provided in Paragraph (2) of Subsection B of this section, the address of the self-service storage facility where the personal property is located and the name and last known address of the occupant; and

(2) the time, place and manner of the sale or other disposition. The sale or disposition shall take place not sooner than fifteen days after the first publication.

If there is no newspaper of general circulation in the county where the self-service storage facility is located, the owner shall post the advertisement at least ten days prior

to the sale or other disposition in at least six conspicuous places in the neighborhood where the self-service storage facility is located.

F. Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section.

G. Any sale or other disposition of the personal property shall be held at the self-service storage facility or at the nearest suitable place within the county to where the personal property is held or stored or may be conducted on a publicly accessible online website.

H. Before any sale or other disposition of personal property pursuant to this section is made, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the property. Upon receipt of the payment, the owner shall return the personal property and thereafter the owner shall have no liability to any person with regard to that personal property.

I. A good faith purchaser takes the property free of any rights of an unsecured lienholder and free of any rights of a secured lienholder who has received notice by owner as provided in this section.

J. In the event of a sale under this section, the owner may satisfy the owner's lien from the proceeds of the sale, subject to the rights of any prior lienholder who has not received notice. The lien rights of such prior lienholder are automatically transferred to the proceeds of the sale. If the sale was made in good faith and conducted in a reasonable manner, the owner shall not be subject to any surcharge for a deficiency in the amount of a prior secured lien, but shall hold the balance, if any, for delivery to the occupant, lienholder or other person in interest. If the occupant, lienholder or other person in interest does not claim the balance of the proceeds within two years of the date of sale, it shall become the property of the owner without further recourse by the occupant, lienholder or other person in interest.

K. Nothing in this section affects the rights and liabilities of the owner, occupant or any other person if there is a willful violation of any of the provisions of the Self-Service Storage Lien Act. If the property subject to a lien described in this section is a vehicle, watercraft or trailer, the occupant is in default for a continuous sixty-day period and the owner chose not to sell the vehicle, the owner may have the vehicle towed from the self-storage facility by an independent towing carrier that is licensed by the department of transportation pursuant to the Motor Carrier Act [Chapter 65, Article 2A NMSA 1978]. Within one day after the day on which a vehicle is towed, the owner shall send verified notice to the occupant's last known address or electronic address that states:

- (1) the date the vehicle was towed; and
- (2) the address and telephone number of the person that towed the vehicle.

History: Laws 1987, ch. 314, § 7; 2015, ch. 118, § 2; 2023, ch. 100, § 16.

48-11-8. Notice; posting.

Each owner shall post in a prominent place in his office at all times a notice which reads as follows:

"All articles stored under a rental agreement, which have incurred unpaid charges for thirty days, will be sold or otherwise disposed of to pay charges at the end of ninety days."

History: Laws 1987, ch. 314, § 8.

48-11-9. Criminal liability.

Any person who willfully fails to disclose any lienholder as required by the disclosure provision of the rental agreement defined in Section 3 [48-11-3 NMSA 1978] of the Self-Service Storage Lien Act is guilty of a petty misdemeanor.

History: Laws 1987, ch. 314, § 9.

ARTICLE 12 Commercial Real Estate Broker Liens

48-12-1. Short title.

This act [48-12-1 to 48-12-7 NMSA 1978] may be cited as the "Commercial Real Estate Broker Lien Act".

History: Laws 2014, ch. 38, § 1.

48-12-2. Definitions.

As used in the Commercial Real Estate Broker Lien Act:

A. "broker" means a person licensed as a qualifying broker under the provisions of Chapter 61, Article 29 NMSA 1978; and

B. "commercial real estate" means any real estate other than:

(1) real estate on which no buildings or structures are located and that is zoned for single-family residential use; or

(2) real estate containing one or more single-family residential units, including apartments, condominiums, town houses or homes in a subdivision when sold, leased or otherwise conveyed on a unit-by-unit basis.

History: Laws 2014, ch. 38, § 2.

48-12-3. Broker's lien for compensation for services; requirements.

A broker shall have a lien upon commercial real estate or any interest in commercial real estate in the amount that the broker is due for licensed services connected with the leasing of the commercial real estate, if the broker:

A. is entitled to a stated fee or commission provided in a written instrument that:

(1) identifies the commercial real estate;

(2) sets forth the fee or commission due and the date or dates or the circumstances under which the fee or commission is due; and

(3) is signed by the owner of the commercial real estate or the owner's authorized agent; and

B. records a notice of lien on the commercial real estate pursuant to Section 4 [48-12-4 NMSA 1978] of the Commercial Real Estate Broker Lien Act. Such lien shall only be valid against the commercial real estate identified in the written instrument described in Subsection A of this section and in the amount due for the fee or commission stated therein.

History: Laws 2014, ch. 38, § 3.

48-12-4. Notice of lien; attachment requirements; recording; contents; mailing.

A. A broker shall record a notice of lien within ninety days following the date on which payment is due as set forth in a written instrument as required by Section 3 [48-12-3 NMSA 1978] of the Commercial Real Estate Broker Lien Act. If compensation is to be paid in installments, a broker may elect to file a single claim of lien within ninety days following the date the first installment is due for all installments due under the written instrument or to file a lien for future installments within ninety days following the date the future installments are due. In the event a broker is due additional commission as a result of future actions related to a lease, including the exercise of an option to expand leased commercial real estate or to renew or extend a lease, the broker shall record a notice of lien no earlier than the occurrence of the act or event for which the broker's additional commission is earned and not later than ninety days after the occurrence of the act or event for which the broker's additional commission is earned.

B. A lien shall attach as of the date of the recording of the notice of lien pursuant to Subsection A of this section.

C. Nothing in the Commercial Real Estate Broker Lien Act shall limit or otherwise affect claims, defenses or other remedies that a broker, owner or any other party may have in law or equity.

D. A notice of lien shall be recorded in the county clerk's office of the county in which the commercial real estate is located and shall include:

- (1) the name, address and license number of the broker;
- (2) the amount for which the lien is claimed;
- (3) a legal description of the commercial real estate or a description sufficient to identify the commercial real estate; and
- (4) the name and last known address of the owner of the commercial real estate.

E. Within ten days of recording the notice of lien, the broker shall mail a copy of the notice of lien by certified mail, return receipt requested, to the last known address of the owner of the commercial real estate or the owner's authorized agent.

History: Laws 2014, ch. 38, § 4.

48-12-5. Commencement of action; recording satisfaction of lien.

A. A broker claiming a lien under the Commercial Real Estate Broker Lien Act shall, within two years after recording the notice of lien, bring suit to enforce the lien in the district court in the county where the commercial real estate is located. Failure to commence proceedings pursuant to this subsection shall extinguish the lien.

B. If a broker's lien has been recorded pursuant to Section 4 [48-12-4 NMSA 1978] of the Commercial Real Estate Broker Lien Act and the indebtedness has been paid in full or the lien has been extinguished or is otherwise not enforceable pursuant to law, within ten days after the indebtedness has been paid in full, the lien has been extinguished or becomes unenforceable pursuant to law, the broker shall:

- (1) record a written release or satisfaction of the lien in the county clerk's office of the county in which the commercial real estate is located; and
- (2) mail a copy of the recorded release or satisfaction by certified mail, return receipt requested, to the last known address of the owner of the commercial real estate or the owner's authorized agent.

History: Laws 2014, ch. 38, § 5.

48-12-6. Petition to cancel lien; security.

A. The owner of any commercial real estate upon which a lien has been filed pursuant to the Commercial Real Estate Broker Lien Act may petition the district court for the county in which the commercial real estate is located for an order canceling the lien.

B. Upon the filing of the petition, the district court judge shall examine the broker's recorded demands and determine an amount sufficient to satisfy the recorded demands and any other damages, court costs or attorney fees that may be recovered by the broker. Security, in the amount set by the judge and of a type approved by the judge, shall be deposited by the owner of the commercial real estate with the district court conditioned on the payment of any sum found to be validly due to the broker.

C. When the security is deposited under this section, the judge of the district court shall immediately issue an order canceling the lien and shall notify the county clerk with whom the lien was filed. Upon the recording of the order, the county clerk shall mark the filed lien as canceled. When an order is issued under this subsection, the broker's lien attaches to the security and is enforceable as to the security in the district court in which it is deposited.

History: Laws 2014, ch. 38, § 6.

48-12-7. Attorney fees.

The cost of proceedings, including trial and appellate court proceedings, brought pursuant to the Commercial Real Estate Broker Lien Act, including reasonable attorney fees, expenses of litigation and prejudgment interest, shall be awarded to the prevailing party or parties. When more than one party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court or tribunal among those responsible parties.

History: Laws 2014, ch. 38, § 7.