



OLD REPUBLIC

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Bulletin

To: All Agents, Direct Operations and Attorneys for the State of
New Mexico
From: David W. Rhodes
Date: June 19, 2003
Re: Recent Legislation

There were several Bills enacted by the New Mexico legislature this year that affect the title insurance and real estate industry. A summary of each Bill is included in this review and where appropriate, Underwriter Guidelines are set out.

SB 570: Release by Title Insurance

This new act allows a title insurer to record a release of an unreleased mortgage. The title insurer (the Underwriter) may prepare and record a release of a mortgage or Deed of Trust if 90 days after payment has been made no release is recorded. As a prerequisite to the recording of the insurer's release, the insurer must mail notice of intent to record to the last known address of the mortgagee, the trustee and the beneficiary of a Deed of Trust or the assignee of record of the debt, no later than 10 days prior to the recording of the release. The requirements of the Notice include setting out the name of the Mortgagee or trustee and beneficiary, the mortgagor or trustor, a recording reference, a recital that the mortgage has been paid in full and the date and amount of payment.

The act also imposes liability for damages to a mortgagee or beneficiary under the Deed of Trust by reason of the wrongful recording of the release. It also gives the title insurer the right to charge a reasonable fee to the

mortgagee for the preparation and recording of the mortgage. The fee will probably not be a collectable item.

This legislation is effective June 20, 2003.

HB 612: Notary Public Act

Certain existing sections of the Notary Public Act were repealed and new sections enacted which affect the notary public and the witnessing of signatures. The new act makes it clear that a person may make an "affirmation" rather than an oath that his identity is correct and that statements made are also true and correct. The act also prohibits a notarial act where the principal is not in the presence of the notary at the time of the act.

The act outlines how a notary public may certify the use of a "mark" rather than a signature and allows the notary to sign the name of a person physically unable to sign. Both situations are to be handled by using 2 witnesses and a modified form of acknowledgement. The act prohibits a notary public from notarizing a signature on a blank or incomplete document. Maximum fees for performing a notarial act are set. It also prohibits a notary public from using the term "Notario Publico" or any equivalent non-English term in any advertisement, business card, notice or sign.

The act is effective July 1, 2003.

HB 299: Property Transfer Affidavit

This act creates a new section 7-38-12.1 NMSA effective January 1, 2004. This new section requires that as of January 1, 2004, any person recording a Deed and real estate contract or memorandum of real estate contract must file with the county assessor a property transfer affidavit within 30 days of the recording of one of these documents.

The form of the affidavit will be developed by the property tax division to be available no later than November 1, 2003. This affidavit will identify the parties to the property transfer, the legal description of the realty and the full consideration paid or exchanged for the transfer. The County Assessor will retain the original affidavit in a confidential manner.

There are certain exemptions from the requirement to provide a property transfer affidavit. The exemptions include a deed from a real estate contract; a deed from the U. S., State of New Mexico or any political subdivision of the state; a correction deed; a tax deed; a deed from a person to a trustee where there is only nominal consideration. Failure to provide the affidavit bears a \$1,000 fine.

HB 153: Soil and Water Conservation District

This Act, effective June 20, 2003, allows the creation of a Soil and Water Conservation Commission composed of seven appointed members and five ex-officio members. This Commission is to assist districts to develop a soil and water conservation program; provide information to the districts and render assistance where it may.

It also allows 25 or more landowners whose land lies within a proposed district area to petition the Commission and organize a district. A hearing is held and if the Commission approves, then the proposed district is submitted to the voters for approval. If approved by the voters, the district may then organize and begin conservation. These districts will have the power to tax and their taxes will be collected by the County Treasurer just as ad volorem taxes are collected.

SB 315: Funds Available at Closing

Also effective June 20, 2003, is a Bill requiring available funds at closing. The Act defines "available funds" as funds subject to immediate withdrawal by cash or check in a depository account with a financial institution, held in the name and subject to the control of a third-party fiduciary (title agent) conducting the closing. This definition of available funds is different than the definition outlined in your New Mexico Title Insurance Rules at 13.14.17(D) as it is not broad in its definition.

SB 631: Amending the Property Tax Code:

This Act amends the Property Tax Code and is effective June 20, 2003. It allows a property owner to protest a value or classification of his property and outlines the procedure to use when making a protest. The Bill also amends Section. 7-38-42 NSMA 1978 to require any tax payments to be applied first to the oldest outstanding unpaid property taxes.

You need to be sure you understand which unpaid taxes your check will be applied to if you have split payments with more than one year of delinquent taxes.

HB 48: Uniform Trust Code

This Act puts the Uniform Trust Code in place in New Mexico and is effective July 1, 2003. It is very similar to the current statutes and should not change much of what we do to close and issue title insurance. It outlines the obligations and responsibilities of the Beneficiary, the Trustee and the Settler. This Uniform Trust Code does give the Trustee the power of sale as to real property, however, you will still need to review your particular Trust Agreement to be sure there are no restrictions or requirements set out in your particular Trust.

The Trustee may provide a certification of trust in recordable form to validate the Trust without the necessity of furnishing a full copy of the Agreement. This is a very lengthy bill, so if you have any questions about the Trust Agreement and the property you are working on, please call your underwriter.