Introduction

Oil and gas law in New Mexico is not unlike oil and gas law in our neighbor state to the east, Texas. New Mexico has extensive statutes on many subjects concerning oil and gas exploration, development and production. In addition, the New Mexico Oil Conservation Commission has developed extensive regulations controlling oil and gas activities. The oil and gas common or case law in New Mexico is fairly limited. The lack of case law may be indicative of the small population in the state and the significant acreage held by the federal and state governments. It may also be indicative of the detail in the state statutes and regulations that have avoided many of the issues courts have had to face in other states.

Oil and gas law for the most part is a combination of real property law and contract law. Oil and gas in place in New Mexico is deemed to be real property. An oil and gas lease conveys an estate in real property and contains numerous contractual provisions that run with the estate created. This chapter explores some of the basic concepts of oil and gas law in New Mexico. It is by no means an exhaustive treatise, but it should provide a good overview of common issues encountered.

Elements of the mineral estate

In New Mexico, the severance of the mineral estate from the surface creates a separate estate in the land and is real property. The mineral estate includes the following attributes:

- the right to explore for, develop, produce, sever, and sell the minerals located in and under the land;
- the right to execute oil, gas, and mineral leases (executive or executor rights);
- the right to receive bonuses;
- the right to receive delay rentals.

The mineral estate may be stripped of one or more of these attributes by execution of a deed granting a portion of these rights or a reserving a portion unto the grantor, according to the language in the deed. For example, a deed may grant a "non-participating mineral interest" which gives the grantee the right to share in the gross production, but not to share in bonuses, delay rentals, executive rights, or development rights.

A lease of the mineral estate is a conveyance of a real property interest and vests the lessee with ownership of the mineral estate. The lessee is thus granted the mineral estate in fee simple determinable. As such, the lessee will retain ownership of the mineral estate for the primary term of the lease and as long thereafter as the stated minerals are produced. Theoretically, this could last forever, i.e. a fee estate. It is determinable because it terminates upon the happening of a stated event.

Oil and gas leases

The oil and gas lease forms the basis of most relationships among parties in oil and gas ventures. Oil and gas are not generally produced by the owner of the mineral estate. An oil and gas lease is generally acquired from the owner of the minerals. Many leases are acquired by speculators who do not intend to develop the leased acreage themselves. Others are acquired by an exploration company specifically interested exploring, drilling or developing promptly. The lease

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1 Terry v. Humphreys, 27 N.M. 564, 289 P. 303 (1922); Duvall v. Stone, 54 N.M. 27, 213 P.2d 212 (1949); Kaye v. Cooper Grocery Co., 63 N.M. 36, 312 P.2d 798 (1957)

3 Terry v. Humphreys, 27 N.M. 564, 203 P. 539 (1922)
4 Bolack v. Hedges, 56 N.M. 92, 240 P.2d 844 (1952)
may be assigned in whole or in part a number of times before the lease is actually drilled, or the lease may be traded or sold among production companies following substantial production. The lessee of the lease generally reflects the party that owns the oil and gas production attributable to the leased premises. There are exceptions, particularly with respect to federal oil and gas leases. This discussion primarily focuses upon fee oil and gas leases.

**Standard Forms.** There is no standard oil and gas lease form in New Mexico, although there are standard lease forms for federal and state lands and common forms on fee lands. An oil and gas lease partakes of both a contract and a conveyance, as it contains both *covenants* and *conditions*. As with all legal forms, as circumstances change, the forms have continued to evolve to address new concerns and reflect changing market conditions. Federal forms are set by the Secretary of the Interior and are changed to meet political changes and amendments to the Mineral Leasing Act of 1920. The state oil and gas lease forms are statutory, but the Commissioner of Public Lands has some discretion to use one of the three statutory forms based upon the circumstances involved.5 Private minerals are leased utilizing many different forms. There is a series of common forms printed by Hall-Poorbaugh Press in Roswell, New Mexico that have received wide acceptance in Southeastern New Mexico. The following are some of the common attributes of fee oil and gas leases in New Mexico:

**Unless Lease Forms:** This is the most common form and derives its name from how the lease is perpetuated. This form creates the determinable fee estate.6

**Drill or Pay Lease Forms:** The lease is characterized by the right of termination vested in the lessor due to noncompliance with a condition subsequent.7

**Minerals Covered.** In New Mexico an oil, gas and mineral lease generally will cover all minerals, while an oil and gas lease is often limited to the oil and gas minerals that may be located on the lands covered. Inclusion of language indicating other minerals are covered has led to an interpretation that sulfur, uranium, and thorium are leased by an oil, gas and other minerals lease.8

**Date.** The date of the lease, whether it be the execution date or the effective date, is critical in determining many of the rights granted. First, it provides the information necessary to determine the beginning and end of the primary term. Second, it provides the anniversary date on which annual rental payments are due in the absence of drilling operations or production. Third, it provides necessary information in the event there is a conflict created by an unscrupulous lessor who has executed multiple leases to different lessees of the same interest in the land. Generally, the date is set out in the very first sentence of the lease. The *habendum clause* refers to the date of the lease or the "date hereof." It is becoming more common to see leases with an effective date different from the execution date. Care should be taken to make sure the proper date is referred to in the habendum clause. Also common are leases with a date different from the date of the lessor's acknowledgment. The date of the lease controls.9 An undated lease is not void, but takes effect upon execution and delivery.10

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5 See NMSA 1978, Sections 19-10-4.1 to .3 (1985)
6 *Terry*, 27 N.M. at 576. Failure of the condition results in the automatic termination of the lease.
9 *Green v. Stanolind Oil & Gas Co.*, 200 F.2d 920 (10th Cir. 1952)
An oil and gas lease is not effective until delivery and payment of valid consideration.11

**Parties.** The parties to the lease must be set forth and are generally identified in the first paragraph of the lease. The lessor may be any owner who has a presently vested interest in the mineral estate, has not previously executed a currently existing lease, and has the capacity to execute the lease. The lessor should include the address where annual rentals, shut-in royalty and royalty payments are to be paid. The address of the lessee should also be identified. The following parties are proper lessors of a lease:

- **Conservator:** A court appointed conservator on behalf of a minor or incompetent owner.12
- **Trustees:** The trustee of a trust should be listed and identified as the lessor and not merely the trust.13
- **Personal Representative:** The personal representative of a decedent's estate may execute a lease of an interest formerly owned by the decedent and not distributed to the heirs and/or devisees.14
- **Executive Right Owners:** Owners of the executive rights if severed from other interests.
- **Attorney-in-Fact:** Attorneys-in-fact may execute a lease on behalf of the principal only if the power of attorney includes authority to lease minerals. Power of sale does not include or imply a power to execute oil and gas leases.15

**Married Persons:** As discussed in more detail below, a married lessor should be joined by his or her spouse unless the record is clear that the interest of the lessor is separate property.16

**Business Entities:** Partnerships, corporations, and limited liability companies may be identified as the lessor since these business entities are entitled to hold title to real property.

**Habendum Clause.** Generally, a lease conveys the oil and gas interest for a set number of years, the primary term, and as long thereafter as oil, gas or other mineral is produced from the land or lands pooled therewith, the secondary term. Thus, the habendum clause sets the term of the interest granted. During the primary term, the lessee perpetuates the lease by paying delay rentals or commencement of drilling operations and continually prosecuting such operations. The lease continues into the secondary term by actual production of oil and gas in paying quantities or by the utilization of a savings provision in the lease. Several issues impacting the habendum clause and thus determining the continued validity of the lease are delay rentals, production in "paying quantities," gas royalty calculation and payment of interest, and shut-in gas royalties, which are discussed below. Most oil and gas leases in New Mexico are commence form leases requiring the commencement of drilling operations within the primary term. The lease will generally provide that the lease will automatically expire at the end of the primary term unless drilling operations are then being conducted, which shall extend the lease for so long as the operations are diligently prosecuted with no cessation of more than a stated number of days. The term of most oil and gas leases in the state are for a specified term of years, being the primary term, and for so long thereafter as oil or gas is produced. In

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12 NMSA 1978, Section 45-5-424 C(11) (1975)
14 NMSA 1978, Section 45-3-715A(9) (1975)
15 *See Bean v. Bean*, 79 S.W.2d 652 (Tex. Civ. App. 1935)
16 NMSA 1978, Section 40-3-13 (1973)
addition to the commence clause, there are other contractual substitutes for production allowing the lease to be extended even in the absence of actual production on the expiration date of the primary term.

**Granting Clause.** The granting clause of the lease causes the conveyance of the estate from the lessor to the lessee. Generally it reads “...grants exclusively unto the lessee for the purpose of investigating, exploring, prospecting, drilling and operating for and producing oil and gas...”

The legal description of the property must be included sufficient to identify the land. New Mexico lease forms do not generally contain a “Mother Hubbard” clause common in other states. This is the result of the governmental survey system used in New Mexico.

The lease includes reference to surface and subsurface rights granted. In New Mexico the mineral estate is the dominant estate and the surface estate is subject to reasonable use by the mineral owner to explore for, mine, drill, produce and sever minerals.18

**Royalty Clause.** A royalty interest is also an interest in real property. The royalty clause is a covenant, not a condition. Failure to pay royalty does not result in the automatic termination of the lease.20 The covenant does run with the land. Most oil and gas leases separate the royalty on oil from royalty on gas, and they are calculated differently. If the lessor is fortunate, this clause will provide the greatest economic benefit.

**Oil Royalty.** Oil royalty is generally payable in kind or in cash at the option of the lessor and is free of costs of production, except its proportionate share of post production costs. These costs include transportation, production taxes, and severance taxes. The royalty is stated in a percentage or fraction of all oil produced and saved. Some federal oil and gas leases contain a royalty provision with a sliding scale or step scale royalty for which the royalty rate is dependent upon the quantity of oil or gas produced per well per month.

**Gas Royalty.** Gas royalty is generally payable based upon the market value at the well, when used off the premises or used in the manufacture of gasoline or other products, or on the amount realized from the sale when sold on or off the premises. This clause takes a number of forms and has been the subject of many controversies.

In determining "market value" and other royalty clause issues, primarily arising out of gas production from the leased premises, New Mexico would likely follow the Texas decisions. Often arising out of prices set in long-term gas contracts entered into by the lessees, Texas has determined that the "market value" for gas royalty payments is the fair market value at the time of production and delivery of the gas, rather than at the value at the time of the contracts. Thus, royalty owners may be entitled to royalties based on the current price even if the gas contract price is lower. In New Mexico the lease will often specifically provide that the price in gas sales contracts entered into in good faith will be the "amount realized" and "price" is the net amount received by lessee after giving effect to regulatory orders and adjustments. This provision is intended to offset the Texas decisions.

With respect to the payment of royalty where one or more lessees are not actually marketing gas, the rule in New Mexico may differ from Texas. The New Mexico Proceeds Payment Act22 requires timely payment of proceeds of

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19 Duvall v. Stone, 54 N.M. 27, 213 P.2d 212 (1949); Fullerton v. Kaune, 72 N.M. 201, 205, 382 P.2d 529, 533 (1963)

20 In re Antweil, 97 B.R. 65 (Bankr. D.N.M. 1989) (rev’d on other grounds)

21 See Exxon Corp. v. Middleton, 613 S.W.2d 240, 69 O&GR 115, 10 ALR 4th 712 (Tex. 1981); Texas Oil & Gas Corp. v. Vela, 429 S.W.2d 866 (Tex. 1968)

22 NMSA 1978, Sections 70-10-1 et. seq. (1985)
production to all persons entitled thereto. Unless the gas royalty provision is precisely tied to the value of production actually received by the lessee, the royalty is generally payable on all gas produced, saved and sold from the premises. Therefore royalty should be paid on the production to the lessor even though the lessee is not actually marketing his or her share of the gas.

Payment of Royalty: By statute, the "party who undertakes to distribute oil and gas proceeds to the parties entitled thereto", the payor, shall make such payments not later than six months after the first day of the month following the date of first sale and thereafter not later than forty-five days after the end of the calendar month within which payment is received by the payor.23 Payments not timely made accrue interest at the rate of eighteen percent, unless one of the following applies:

• the failure to pay is the result of good faith reliance upon a title opinion by a licensed New Mexico attorney making objection to the lack of good and marketable title of record in the party claiming entitlement to payment;
• information is received bringing into question the entitlement of the person claiming the interest;
• the amount is less than $100.00; or
• the party has failed or refused to execute a reasonable division or transfer order acknowledging the proper interest and the address to which payment is to be directed.

In these cases, the rate of interest is the discount rate of the federal reserve bank of Dallas plus one and one-half percent.24

Shut-in Gas Royalty: Most leases will contain some form of a shut-in well provision. A common provision in leases is a shut-in gas royalty provision requiring the payment of shut-in gas royalty normally within 60 or 90 days from the date the well is shut-in. Failure to pay the shut-in gas royalty timely will preclude the use of this savings provision to further extend the lease.25 If the lease is within the primary term, the lessee may take the risk not to pay shut-in royalty and place the well into actual production before the end of the primary term. However, if the well is not placed into production, the shut-in royalty provision cannot be used at the end of the primary term to save the lease. Most shut-in gas royalty provisions are a condition in the lease and not a covenant, resulting in the automatic termination of the lease if the condition is not met.

Most printed lease forms used in New Mexico generally provide for the amount of shut-in royalty to be either $1.00 per acre per year or an amount equal to the amount of delay rentals depending upon the form and whether it is a paid-up lease. It is common to see sophisticated lessors provide a set fee per well per year as shut-in royalty and limit the duration the lease may be extended by payment of shut-in royalty.

Shut-in royalty is a substitute for actual production, and New Mexico would probably follow both Texas and Oklahoma in requiring the payment to be made to the royalty owners, if different from the mineral owners. Because the shut-in gas royalty is a substitute for production under the lease, it keeps the lease in effect during the secondary term without actual production or drilling operations; nonpayment would result in no production, and as discussed above, the lease terminates. Thus, the royalty owners are entitled to the payments just as they would be to royalties from actual production.26

Delay rentals
Under the typical "unless" lease form, the lease will automatically terminate, during the primary term, in the absence of commencing a well, producing oil or gas, or paying the yearly rental. Thus, upon payment, the lessee has the right to postpone commencement of drilling operations for another year of the

23 NMSA 1978, Sections 70-10-1 et. seq. (1985)

primary term.27 Failure to make timely payment of the rental is not fatal to the lease if the lessee's actions manifest a good faith intent to continue the lease.28 This is accomplished by undertaking to pay the rental by customary means and in ample time for payment to reach the lessor or depository bank, and the payment's failure to reach the lessor was due to accident or mistake (i.e., lost in the mail).29

Modern lease forms provide for the lease's continuance upon a bona fide attempt by the lessee to make the rental payment and place the burden on the lessor to notify the lessee of mistakes in the rental payment. To escape many of these entanglements, the "paid-up" lease is now generally used, wherein the delay rentals for the primary term are paid in advance to the lessor.

Please note that oil and gas leases on state lands require annual rental payment even after the lease is producing. In addition, failure to timely pay annual rentals on a state lease does not result in the automatic termination of the lease.30

As in many contractual relations, in addition to the express provisions contained in oil and gas leases there are several implied covenants recognized by New Mexico courts. Several of the implied covenants are:

- **Development:** Lessee's implied covenant to develop the land with reasonable diligence after discovery of oil or gas in paying quantities.31
- **Prevent Drainage:** Lessee's implied covenant to drill an offset well to prevent drainage.32
- **Market Production:** Lessee's implied covenant to market oil or gas produced.33

The prudent operator standard has been applied to determine if the implied covenants have been complied with. The standard is a fact question to be determined on a case by case basis under the circumstances in question. Thus, the lessee's operations under an oil and gas lease must be what is reasonably expected of operators of ordinary prudence under the circumstances, having regard to the interests of both the lessor and lessee.34 As the oil and gas industry continues to mature, these implied covenants will probably increase in importance and evolve into issues such as the lessor's demands for the use of secondary and tertiary recovery methods, exploration of deeper formations, and for operators to protect the lessor's rights before administrative tribunals.35

### Pooling, communitization and unitization

**Pooling and Communitization.** New Mexico has enacted broad legislation regarding the establishment of spacing or proration units from which oil and gas may be produced with emphasis on protecting correlative rights without waste of oil or gas in the pool and the reservoir energy. To this end, the Oil Conservation Division (OCD) has established statewide spacing and establishes field pool rules for specific spacing where the facts indicate the state spacing pattern should be altered to carry out the goal of protecting correlative rights and preventing waste. State law36 provides as follows:

When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests

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27 *Gloyd v. Midwest Refining Co.*, 62 F.2d 483, 485 (10th Cir. 1933)(applying New Mexico law).
28 *Id.* at 486
29 *Id.; Ballard v. Miller*, 87 N.M. 86, 592 P.2d 752 (N.M. 1974).
30 See NMSA 1978, Section 19-10-20
33 *Libby*, 51 N.M. 95; *Darr*, 66 N.M. 260
34 See *Clayton v. Atlantic Refining Co.*, 150 F. Supp. 9 (D.N.M. 1957)
36 NMSA 1978, Section 70-2-17 C (1961)
or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or the prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

Pooling is the term used to reflect the consolidation of two or more leases to form the spacing or proration unit. Communitization is the same concept where federal or state leases are involved. Unitization, on the other hand, is a different concept and is discussed below, although the term is often misused as a substitute for pooling or communization.

Force pooling proceedings are common in the state where an unleased mineral owner refuses to join in the proposed drilling operations or two or more working interest owners cannot agree on how operations should proceed. An operator must attempt to obtain consent for voluntary pooling of all interests within the spacing or proration unit. When consent is not obtained, the operator must commence force pooling proceedings. Failure to obtain either voluntary pooling or an order from the OCD results in the operator having to pay to each interest owner the greater of the interest it would be entitled to if pooling had occurred or the amount it is entitled in the absence of pooling.

The well is located their share of 100 percent of production and owners of the other tracts within the spacing or proration unit their prorata share of production from the well. A hearing following notice is conducted before the OCD in Santa Fe, and the OCD enters an order directing the pooling of the interests within the spacing or proration unit upon terms and conditions that are "just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both." The OCD will generally allow a risk penalty to be charged against the interests of any party that does not voluntarily join in drilling the well and will set the charges that may be charged by the operator. If an unleased mineral owner is involved, seven-eighths of his interest is considered as a working interest and one-eighth is considered a royalty interest.

The royalty interests of lessors, overriding royalty interest owners, non-participating royalty interest owners, and owners of other burdens on production also require pooling. In most oil and gas leases and assignments creating these interests, the power to pool the interest is granted to or reserved by the working interest owner. Where the instrument creating such interests is silent or does not provide for the power to pool in the working interest owner, ratification of the pooling, joinder or a forced pooling order must be secured. Where a federal lease is involved, the Bureau of Land Management must approve a communitization agreement, and where a state lease is involved, the Commissioner of Public Lands must approve a communitization agreement.

Voluntary pooling is accomplished by the agreement of all interest owners and a Designation of Pooling should be recorded in the county records.

Once properly established either voluntarily or by forced pooling, operations on and production from the pooled unit is deemed

37 NMSA 1978, Section 70-2-18B (1969)

for all purposes to have been conducted on each tract within the unit. Production is allocated on an acreage basis in proportion to the number of surface acres in the tract bears to the total number of acres in the pooled unit.

Standard spacing requirements are based on the type of production (oil or gas), distance from existing production (wildcat or development), the area of the state where the well is located (Northwest or Southeast), and the depth of the producing formation. The OCD Rule 104 setting forth the standard spacing is summarized as follows:

<table>
<thead>
<tr>
<th>Type</th>
<th>Distance*</th>
<th>Area**</th>
<th>Depth</th>
<th>Applicable Spacing</th>
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</thead>
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<tr>
<td>Gas</td>
<td>Wildcat</td>
<td>SE Above Wolfcamp</td>
<td>160 acres</td>
<td></td>
</tr>
<tr>
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<td>Wildcat</td>
<td>SE Below Wolfcamp</td>
<td>320 acres</td>
<td></td>
</tr>
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<td></td>
</tr>
<tr>
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<td>NW All</td>
<td>160 acres</td>
<td></td>
</tr>
<tr>
<td>Oil</td>
<td>Wildcat</td>
<td>NW All</td>
<td>40 acres</td>
<td></td>
</tr>
<tr>
<td>Gas</td>
<td>Wildcat</td>
<td>Other All</td>
<td>160 acres</td>
<td></td>
</tr>
<tr>
<td>Oil</td>
<td>Wildcat</td>
<td>Other All</td>
<td>40 acres</td>
<td></td>
</tr>
<tr>
<td>Oil</td>
<td>Development</td>
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<tr>
<td>Gas</td>
<td>Development</td>
<td>NW All</td>
<td>160 acres</td>
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<tr>
<td>Gas</td>
<td>Development</td>
<td>Other All</td>
<td>160 acres</td>
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</tr>
</tbody>
</table>

*A Wildcat well is a well to be drilled a distance of one mile or more from the outer boundary of a defined pool in the projected formation or from any well which has produced from the projected formation.

**Southeast New Mexico is Chaves, Eddy, Lea and Roosevelt Counties; Northwest New Mexico is Rio Arriba, Sandoval, and San Juan Counties; and Other includes all other counties in the state.

***Gas Development wells in the Southeast are spaced on 160 acres for defined gas pools in a formation younger than the Wolfcamp formation or in the Wolfcamp formation created and defined by the OCD prior to November 1, 1975 or in a Pennsylvanian age or older formation which was created and defined by the OCD prior to June 1, 1964. For defined gas pools in the Wolfcamp formation created after November 1, 1975 or in the Pennsylvanian age or older formation created after June 1, 1964 the spacing is 320 acres.

Special pool rules may vary the standard spacing pattern for a designated pool.

Upon application, notice and hearing the OCD has authority to increase or decrease the spacing unit, permit unorthodox locations, and/or allow additional wells to be drilled within the unit.39

39 See Oil and Gas Act, NMSA 1978, Section 70-2-1, et. seq. (1977)
Unitization. Unitization must be distinguished from pooling or communitization agreements that are utilized to conform to state spacing requirements. Unfortunately, the terms communitization, pooling, and unitization are incorrectly, but commonly, used interchangeably. This leads to confusion and precipitates miscommunication between parties. Unitization is an attempt to provide for unified development and operation of an entire geologic prospect or producing reservoir.

The purpose of unitization is to allow the entire unit area to be operated as a single entity without regard to lease boundaries. The goal is to maximize production by using the most efficient spacing pattern and to minimize costs by providing, to the greatest extent possible, common facilities to service all the wells within the unit area. Unlike the pooling provision found in most fee leases, most lease forms do not contain an unitization provision allowing the lessee to commit the lease or a portion thereof to a unit agreement.

The agreements for exploratory units differ from unit agreements concerning enhanced recovery. Whenever the United States owns the mineral estate in more than ten percent of the lands proposed to be unitized for an exploratory unit, the BLM will insist on the use of the Model Onshore Unit Agreement for Unproven Areas (Federal Unit Agreement) promulgated in the regulations, 43 C.F.R. Subpart 3186. The unit agreement becomes effective upon approval, but the public interest requirement is satisfied only if the unit operator commences actual drilling operations and diligently prosecutes such operations in accordance with the terms of the unit agreement. If the public interest requirement is not met, the leases committed to it are treated as if the unit had never been formed, and any segregation and extensions that occurred by reason of commitment to the unit are invalid. There is no federal form of unit agreement for enhanced recovery.

A notice of the unit agreement and unit operating agreement should be recorded in the county records in which the lands are located for constructive notice purposes.

Marital property
New Mexico follows the community property system, modeled after the civil law of Spain and Mexico, regarding rights of spouses in property acquired during marriage.

Community property. Community property is defined by statute as "property acquired by either or both spouses during marriage which is not separate property." There is a strong presumption that property acquired during marriage is community property, but the presumption may be rebutted by a preponderance of the evidence. Nichols v. Nichols, 98 N.M. 322, 648 P.2d 780 (1982); NMSA 1978, Section 40-3-12 A (1973).

Separate property. Separate property is property acquired by either spouse in the following ways:
- acquired before marriage;
- after a divorce decree is entered;
- gift;
- devise, bequest, or descent;
- designated as separate property by a written agreement between spouses; or
- designated as separate property by a judgment or decree of any court having jurisdiction

In addition, property acquired by a woman by an instrument in writing in her name alone or in her name and another person not her husband prior to July 1, 1973 is presumed to be her separate property. Property acquired with funds that are separate property remains separate property.

40 NMSA 1978, Section 40-3-8 B (1973)
41 NMSA 1978, Section 40-3-8 A (1973)
42 NMSA 1978, Section 40-3-12B (1973)
In New Mexico, property takes its status at the time it was acquired. However, the presumption of community property overrides any attempt by a party to an instrument (either as a grantor or a grantee) to recite that the interest held or being obtained is the party’s separate property.

Conveyances by spouses. Both spouses must join in any transfer, conveyance, mortgage, or contract to transfer, convey or mortgage any interest in community real property. This necessarily includes mineral deeds, oil and gas leases and assignments of interests in oil and gas. Any attempted conveyance of community real property by one spouse is void and has no effect. The New Mexico legislature recently revised this statute to provide that "nothing in this section shall affect the right of a spouse not joined in a transfer, conveyance, mortgage, lease or contract to validate an instrument at any time by a ratification in writing."44

However, for title examiners, this revision creates some issues that have not been resolved by court interpretation. Can the non-joining spouse alone ratify a "void" instrument or does the ratification require the joinder of both spouses? Can a ratification lacking present words of grant life into a "void" conveyance? The better practice is to secure joinder of both spouses in a replacement instrument or secure a ratification containing present words of grant from both spouses.

An additional problem is that the revision does not indicate whether the legislature intended the revision to be retroactive. Therefore, it must not be given a retroactive effect, so ratifications before June 18, 1993, are not effective unless joined by both spouses and contain present words of grant.

Joint tenancy. Spouses may hold property as joint tenants with right of survivorship and their interest may either be their separate property or their community property.45

Corporations, partnerships and Limited Liability Companies

Corporations. New Mexico corporations have the power to acquire, convey, lease or otherwise deal in real property, or any interest therein, wherever situated.46 The authority of officers and agents of a corporation is derived from the bylaws thereof or from resolutions of the board of directors not inconsistent with the bylaws.47 In addition, depending on the magnitude of the transaction compared to the total corporate assets, a transfer may require authorization of the board.48 As a practical matter, the president or vice-president usually have the authority and do execute oil and gas leases. However, if there is any doubt, or an agent other than an executive officer is to sign a lease, a board resolution or other authorization should be obtained, completed with the proper acknowledgments (see New Mexico short form acknowledgment for representative capacity below).

Partnerships. In a partnership, individual partners generally have the power to convey real property in the partnership’s name.49 There are three basic exceptions. The first, an overall limitation on all conveyances, is where the grantee knows the partner lacks the authority to execute the instrument, but generally is not a problem, absent fraud.

43 NMSA 1978, Section 40-3-13 (1973); Marquez v. Marquez, 85 N.M. 470, 513 P.2d 713 (1978)
44 NMSA 1978, Section 40-3-13B (1973)
45 See Swink v. Fingado, 115 N.M. 275, 850 P.2d 978 (1993) (spouses acquiring property as joint tenants with right of survivorship does not destroy presumption of community property)
46 See NMSA 1978, Sections 53-11-4D, E (1967)
47 NMSA 1978, Section 53-11-48 (1967)
49 See NMSA 1978, Sections 54-1A-301 and 303 (1996)
because the grantee wouldn't complete a transaction with such knowledge.50 Second, if the title is in the name of one or more but not all the partners, and the partnership's interest is not disclosed in the record, the partners in whose name the title stands may convey the property.51 Third, where the title is in the name of all the partners, they should all be a party in conveying the property.52 It is recommended to have a lease executed in the partnership's name signed by a partner (all the partners if practical) in that capacity.

**Limited partnerships.** The New Mexico Uniform Revised Limited Partnership Act authorizes the transaction of any and all business by limited partnerships.53 General partners have the right to execute leases in the name of the limited partnership.54 Foreign limited partnerships may apply for a certificate of authority to transact business in the state.55 However, merely owning a nonoperating mineral interest in New Mexico does not constitute transacting business.56

**Limited Liability Companies.** Limited Liability Companies (LLC) were provided for in New Mexico, in 1993, and are authorized to conduct any lawful business.57 The management of an LLC is generally vested in the member or members, but if management is vested in a manager it must be set out in the articles of organization.58 Thus, if there is a question about executing a lease, a look at the articles of organization should state whether management, outside of the members, is so authorized. If it is, there may be a need to examine the operating agreement to determine the full extent of the manager’s authority. If a manager or management has been provided for, then unless specifically reserved to the members by the Limited Liability Company Act, the manager or managers, in accordance with the articles or agreement, have the exclusive power to make all decisions for the company.59

**Decedents' estates**

**Resident Decedents.** "Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent’s heirs" pursuant to the applicable rules of descent and distribution in New Mexico.60 The rules are summarized as follows:

- **Separate property:** One-fourth goes to the surviving spouse and three-fourths goes to the surviving issue of the decedent, “by representation.” If there are no surviving issue, all passes to the spouse.

- **Community property:** All of the decedent’s one-half interest in community property passes to the surviving spouse.

- **Issue:** All descendants of all generations with the relationship of parent-child all descendants of all generations with the relationship of parent and child at each generation.

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50 See NMSA 1978, Section 54-1A-302 (1996)
51 See NMSA 1978, Section 54-1A-302 (1996)
52 See NMSA 1978, Section 54-1A-302 (1996)
57 NMSA 1978, Section 53-19-6 (1993)
60 NMSA 1978, Sections 45-2-103 et seq. (1975)
If the decedent is not survived by a spouse or issue, the entire estate passes to the decedent’s parents or surviving parent. If both parents are deceased, the entire estate passes to the descendants of the decedent’s parents or either of them, “by representation.” If the decedent is not survived by any of the above, the one-half of the estate passes to the decedent’s paternal grandparents or their descendants, “by representation” and the other one-half to the decedent’s maternal grandparents or their descendants, “by representation”, and if there are not surviving descendants on one side, the entire estate passes to the other side.

Prior to 1993, any distribution that is now “by representation” was a *per stirpes* distribution.

**Passage of title.** Title is generally not considered marketable in New Mexico until there has been a probate proceeding conducted on the decedent's estate.

**Powers of personal representative.** Original probate proceedings may be either informal or formal, requiring court approval at all phases of the administration of the proceedings. Most probates are conducted informally unless there is a contest or a desire by the personal representative to minimize his or her liability. Once appointed by the court, the personal representative generally has broad powers and wide latitude in attending to estate matters. This would include the power to execute oil and gas leases and other instruments concerning the decedent’s minerals pending the probate proceeding. Court approval must be obtained if a formal proceeding is being conducted or the power of the personal representative is otherwise limited.

**Will probated.** A will is not effective until it is admitted to probate. The passage of title relates back to the date of death. A will must be probated within three years after the decedent’s death. Recently the statutes were amended to allow the submission of a will in a formal testacy proceeding after three years following the decedent's death to evidence the passage of title from the decedent to the person named in the will.\(^6\)

**Deed of Distribution.** Since 1975 the personal representative must execute deeds of distribution to evidence the passage of title from the estate to the heir, devisee or distributee.\(^6\) The deed of distribution is "conclusive evidence that the distributee has succeeded to the interest of the estate . . . ."\(^6\) However, New Mexico no longer requires that a determination of heirship be made by the court, but it is extremely helpful to future title examiners and helps insure that no third parties can attack the proceedings.

**Pretermitted Heirs.** Under New Mexico law, a child (or descendant of a deceased child) not mentioned in a decedent's will takes an intestate share of the estate, unless the estate was devised to the unmentioned child's other parent.\(^6\)

**Rules prior to July 1973 and other dates.**

After July 1, 1973, community property passes to the surviving spouse subject to the deceased's spouses power of testamentary disposition.

Prior to July 1, 1973, the wife could not dispose of her community property interest, and upon her death, it passed directly to her husband without necessity of probate.

From June 12, 1959 to July 1, 1973, the wife received the entire community estate of her husband in the absence of a will, without necessity of probate.

\(^6\) NMSA 1978, Section 45-3-108 (1975)  
\(^6\) NMSA 1978, Section 45-3-907 (1975)  
\(^6\) NMSA 1978, Section 45-3-908 (1975)  
\(^6\) NMSA 1978, Section 45-2-302 (1993)
Prior to June 12, 1959, upon the death of the husband, the wife received her one-half of the community property and one-fourth of the husband's one-half giving her five-eighths; the remaining three-eighths was divided among the children.

**Antilapse statute.** New Mexico has an antilapse statute that says "If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply: (1) if it is not a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants; (2) if it is a class gift, other than a devise to issue, descendants, heirs, family or similar language, a substitute gift is created in the deceased devisee or devisee's surviving descendants."  

**Forced heirship.** New Mexico does not have a forced heirship statute.

**Nonresident estate.** There is nothing in New Mexico law similar to the procedure in Texas whereby authenticated copies of a decedent's will and probate from another state can simply be recorded in the county deed records and be considered effective as though the will were probated. In addition to full ancillary probate proceedings, New Mexico does have a short form proceeding.

**Foreign domiciliary proceedings.** A foreign will can be probated in a relatively inexpensive "short form" procedure that will allow the personal representative to distribute the decedent's property to those entitled. The authority of the foreign domiciliary personal representative in this short form proceeding is only for the duration of his or her appointment in the foreign court. Care must be taken to finalize the New Mexico matters prior to securing the discharge of the personal representative in the original foreign proceedings.

**Ancillary Probate Proceedings.** New Mexico does have ancillary probate proceedings similar to the original resident probate proceedings.

**Authenticated Copies Required.** In both the short form and ancillary proceedings, authenticated or exemplified (not simply certified) copies of the foreign court's pleadings must be submitted. The authenticated copies of the petition, order admitting the will to probate, order appointing the personal representative, the will, letters testamentary, and any other orders providing for the authority of the personal representative or make a determination of heirship should be submitted for filing in the New Mexico proceeding.

**Conflict of Law Rules.** Title to real property in New Mexico is subject to the laws of the state of New Mexico. New Mexico law of descent and distribution determines who is entitled to an intestate decedent's estate. The presumption of community property is made even if the domicile of the decedent is in a non-community property state. The presumption may be rebutted by a preponderance of the evidence.

**Non-resident decedent dies intestate without administration.** While marketable title does not pass absent a New Mexico proceeding, it is common to rely upon affidavits of heirship and death certificates. The affidavit and certificate must be recorded in the

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65 See NMSA 1978, Section 45-2-603 (1993)
66 NMSA 1978, Section 45-4-204 (1975) (not available for decedents who died prior to July 1, 1976)
county records where the decedent's real property is located. When the interest is small or the purpose is to determine from whom a lease should be secured, the expense of probate may make the desire to secure marketable title unrealistic. The strength of the affidavit may provide adequate assurance of the heirship of the decedent and those parties who may claim an interest in the decedent's property. The affidavit must be taken from someone who does not benefit from the decedent's estate and sets forth the following:

- name of the decedent;
- decedent’s residence at the time of death;
- time and place of death;
- names and addresses of the decedent’s heirs and each of their relationship to the decedent. This necessarily includes the surviving spouse, the children, the children of a deceased child, etc. and includes natural born and adopted children, etc.;
- marital history, including the names of each spouse and dates of marriage (and divorce) and their death if they predeceased the decedent while married;
- whether the decedent died testate or intestate and, if testate, the disposition of the decedent’s will and a copy, if available, and names of the devisees, legatees and personal representative appointed therein;
- the court and location of any probate proceedings that have been commenced; and
- a description of the real property in the state owned by the decedent.

The affidavit must be sworn or affirmed under oath and properly acknowledged. The instrument must thereafter be recorded in each county where the decedent owned real property. This does not take the place of probate proceedings, but it does give some assurance of the group of people entitled to the decedent's estate. The title remains unmarketable until proceedings in New Mexico are properly conducted.

**Life tenant/remainderman**

Lacking in direct New Mexico authority, the following represents the majority view, including Texas. Neither the life tenant nor the remainderman of an estate has the right to unilaterally explore for and/or produce oil, gas or minerals or exercise executory rights. Development of the minerals by the life tenant constitutes waste. Thus, each party owns a veto power over the other's right to lease or develop the property. However, the life tenant and remainderman can enter into a joint lease, each can lease their interest separately, or one can ratify the other's lease with present words of grant.70

The parties may agree as to the division of the rents and royalties; however, absent agreement, the life tenant is not entitled to any part of the royalties, considered as corpus, but is entitled to the income produced after investment of the royalties. Likewise, though more controversial, the majority of states treat bonuses the same as royalties. A minority view, including Oklahoma and Arkansas, allocate bonuses to the life tenant. Delay rentals are generally paid to the life tenant as income from the estate.71

Despite these rules, a majority of states apply the "Open Mine" doctrine in apportioning proceeds from a well or lease. It provides that if a mine has been opened before the creation of the life estate and future interest, the life tenant may develop or exploit the minerals.


71 See 2 Williams & Meyers Oil & Gas Law, § 512.2; Clyde v. Hamilton, 414 S.W.2d 434 (Tex. 1967); Franklin v. Margay Oil Corp., 194 Okla. 519, 153 P.2d 486 (1944)
Thus, the life tenant is entitled to the royalties, bonuses and rents derived from the mine. Under this doctrine, the life tenant enjoys the same beneficial enjoyment of the land as was derived before the creation of the life estate; however, this can be changed by express provisions to the contrary in the creating instrument. The doctrine has been applied to allow the operation and development of oil and gas on land with a lease in effect or a well in production at the time of the life estate’s creation.72

**Attorney-in-fact**

**General.** An attorney-in-fact may execute conveyancing instruments on behalf of the principal consistent with the powers granted by the principal in a validly executed, acknowledged and recorded power of attorney instrument. It must be recorded in the county in which the real estate is located. Once recorded, the powers granted are not considered revoked until an instrument revoking the appointment is similarly recorded. Notice of death of the principal or notice of incapacity of the principal, unless the powers granted are durable, terminates the power of the attorney.73

The powers of the attorney-in-fact should be set forth with specificity. It has been held in New Mexico that a naked power of sale does not confer a power to lease.74 Title examiners will require authority to deal with the mineral estate, including the leasing for oil and gas, to be set forth in the instrument granting the powers to the attorney-in-fact.

**Durability.** A Power of Attorney may survive the disability of the principal if the instrument contains sufficient language evidencing this intent. The statute states that the following words are sufficient: “This power of attorney shall not be affected by incapacity of the principal,” “This power of attorney shall become effective upon the incapacity of the principal,” or similar language.75

**Protection to bona fide purchasers.** The statutes protect bona fide purchasers and the attorney who act without knowledge of the principal’s death or incapacity, if not a durable power.76 If it is determined that the principal died or became incapacitated before the date of the execution of the conveyancing instrument by the attorney-in-fact, an affidavit from the attorney stating he or she did not have knowledge of the death or disability must be secured and recorded in the county records.

**Trusts**

**Powers of the trustee.** A trustee has all of the powers conferred by the New Mexico Uniform Trust Code unless the powers are withheld or limited by the trust instrument.77 Such powers specifically include the entering "into a lease or arrangement for exploration and removal of natural resources ...." New Mexico does not have much statutory or case law guidance regarding many trust issues. Title examiners are cautious and require the instruments creating a trust to be filed of record to set forth any limitations on the trustee’s powers and set forth the duration of the trust. Many trustors do not want the trust agreement recorded, and it is satisfactory for a memorandum of trust to be recorded so long as it identifies the trustee, his or her powers and any limitations, and the duration of the trust.

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72 See 2 Williams & Meyers Oil and Gas Law § 513; see also Youngman v. Shular, 155 Tex. 437, 288 S.W.2d 495, 5 O.&G.R. 1069 (1956); In re Shailer’s Estate, 266 P.2d 613 (Okla. 1954)

73 See NMSA 1978, Sections 47-1-5 et. seq. (1991)


76 NMSA 1978, Section 46B-1-108 (2007)

trust or the events of termination.78

**Title. Title** to property should be held in the name of the trustee. Conveyances into the trust should be conveyed to the trustee, in trust for the specified trust. A trust is not a legal entity by itself. The trustee is the proper party to hold title on behalf of the trust.79

**Conservators and guardians**

New Mexico court-appointed conservators of an incompetent’s estate has the authority to execute oil and gas leases without further court action.80 Guardians of a minor have authority to act on behalf of the.81 However, it is wise to obtain court approval of a lease acquired from a guardian acting on behalf of a minor. Foreign conservators or guardians must receive authority from a New Mexico court to exercise such authority. There is a short form proceeding for foreign conservators to establish their proof of authority.82

**Production in paying quantities**

In following the majority rule, New Mexico has required production in "paying quantities" to extend oil and gas leases into their secondary terms under their habendum clauses.83 Likewise, New Mexico courts have required wells capable of production in "paying quantities" in order to continue lease's where the lessee is paying a shut in royalty to preserve the lease.84 Although New Mexico is lacking in further interpretive law, it would probably follow the Texas authority on this issue.

The seminal case of Garcia v. King established one of the early standards and rationales for the rule requiring production in "paying quantities." To meet the standard, a well must produce sufficient oil and/or gas to pay the operating expenses and yield a profit to the lessee. The cost of drilling and equipping the well does not affect the calculation, thus the well might produce in paying quantities and still be, on the whole, unprofitable to the lessee. The rationale for the rule is that the parties do not intend for the lessee to retain the lease for speculative purposes if it is not profitable.85

Texas further refined the rule in Clifton v. Koontz, shifting the analysis from a mere profitability test to whether, under all relevant circumstances, a reasonably prudent operator would continue to operate a well, in the same manner, for the purpose of making a profit and not merely speculation.86 The factors to be considered were:

- the depletion of the reservoir and the price for which the lessee is able to sell his produce;
- the relative profitability of other wells in the area;
- the operating and marketing costs of the lease;
- the lessee’s net profit’ the lease provisions;
- a reasonable period of time under the circumstances; and

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80 NMSA 1978, Section 45-5-424 C.(11) (1975)
81 minor NMSA 1978, Section 45-5-209 (1995)
82 See NMSA 1978, Section 45-5-432 (1975)
85 Id.; 3 Williams and Meyers Oil and Gas Law, § 604.5
86 160 Tex. 82, 325 S.W.2d 684, 10 O&GR 1109 (Tex. 1959)
whether or not the lessee is holding the lease merely for speculative purposes.

Thus, under this test the operating expenses of the well and the lessee’s net profit are among the factors considered and are not the exclusively dispositive of the issue.

### Surface damages

New Mexico recognizes the mineral estate’s dominance over the surface estate. Lessees of the mineral estate have the right to explore for and extract the minerals and in doing so are entitled to as much of the surface area as is reasonably necessary for its drilling and production operations. However, this right must be exercised with due regard for the rights of the surface owner. Generally, any damages are measured against the reasonableness standard based on the standard theory of negligence. The theories of private nuisance and an implied covenant to restore the surface estate to its original condition have been at least implicitly rejected by New Mexico.87

In a Texas case, cited by the New Mexico Supreme Court in *Carter Farms*, the court discussed the respective rights of lessees and surface owners. The court stated that the lessee's use of the surface does not ordinarily contemplate the destruction or substantial impairment of the surface for agricultural purposes. In cases where there is existing use by the surface owner and there are various alternatives available to the lessee, the lessee may be required to accommodate this use. Thus, lessees can be required to accommodate the surface owner's irrigation systems by installing its pumping units in concrete cellars or by using hydraulic pumps if the lessee's use of other means is proven unreasonable.88

An oil and gas lessee has access to the entire surface area committed to a communitization or pooling agreement.89 However, the New Mexico Supreme Court held that an operator may not use the surface estate of the lease outside of the communitized area to access a communitized well on adjacent land.90

In 2006, New Mexico enacted surface damage legislation. The New Mexico Surface Owners Protection Act91 sets forth a procedure that must be followed before an oil and gas lessee may enter lands for exploration, drilling and production of oil and gas. The lessee must give five days notice for non-surface disturbing activities and 30 days for surface disturbing activities. The lessee must offer a surface use and compensation. If the surface owner does not enter into the agreement timely, the oil and gas lessee may enter the property and begin its operations after posting financial security with a New Mexico financial institution.

Before beginning operations in New Mexico, an operator should understand the procedures required and have a statewide bond in place to cover its operations. By statute, the operator must pay damages to the surface owner and must reclaim the land to its original condition when abandoning the oil and gas operations. **Note:** This is a departure from the common law notions of reasonable surface use.

In June 2009, the Commissioner of Public Lands for the State of New Mexico began including a surface damage policy in all agricultural leases renewals. State grazing lessees are allowed to collect actual damages and any reasonable lost business costs due to oil and gas activities on state trust lands subject to a

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88 See *Getty Oil Co. v. Jones*, 470 S.W.2d 618 (Tex. 1971)
89 See *Kysar v. Amoco Prod. Co.*, 379 F.3d 1150 (10th Cir. 2004)
91 NMSA 1978, Section 70-12-1 et. seq. (2006)
grazing lease. The grazing lessee will split all damages in excess of actual damages and costs associated with lost earnings with the Commissioner. The Commissioner will receive from fifty to seventy percent of the damages received. The grazing lessee must report any payment involving surface damages and any lawsuit involving damage to state trust land to the Commissioner. Time will reveal whether this policy will actually result in oil and gas companies having to pay additional compensation for their operations on state trust lands. Paragraph 11 of the state oil and gas lease forms requires payment to the state grazing lessee or surface owner for actual damages caused to the range, livestock, growing crops or improvements.92

Recording and constructive notice

All instruments conveying interests in minerals or oil and gas leases should be filed of record in the office of the county clerk for the county where the land is located.93 Failure to record does not invalidate the instrument, but constructive notice is provided by recording, and recording precludes a third party from securing an instrument purporting to convey the same interest and securing valid title.94 New Mexico follows the notice theory regarding who prevails in the event of multiple instruments to different parties conveying the same interest.95 A purchaser of an interest is on notice of all matters affecting the real property appearing of record in the clerk's office as well as matters apparent from a visual inspection of the premises.96

Even assignments affecting federal oil and gas leases must be recorded in the county in addition to the required federal filing because federal records are not deemed to impart constructive notice.97 Therefore with federal leases, there should be a double filing of all instruments; the chains of title in both the federal records and county records should be identical. By statute, the records of the Commissioner of Public Lands do impart constructive notice, so a double filing is not necessary for state oil and gas leases and assignments requiring the Commissioner of Public Land's approval.98

To be entitled to be recorded, the instrument must contain an acknowledgment form that substantially complies with the New Mexico statutory forms of acknowledgment.99 In addition, a proper filing fee must be presented to the county clerk. Presently the fee is $5 for the first page and $2 for every additional page, and the clerk may charge an equipment recording fee up to $4 per instrument.100 If an assignment or release references more than one grantor, grantee, deed, mortgage, lease or other instrument or describes more than one deed, lease or other instrument, the clerk will charge $5 for such reference.101 If there are more than two acknowledgments, the clerk will charge an additional fee of $.50 per additional acknowledgment.102

Title examiners forms

Title examiners will reject acknowledgment

real estate contract shall not be construed to impart knowledge or impose a duty to inquire)97 See NMSA 1978, Section 70-1-1(1987)
98 NMSA 1978, Section 19-10-31 (1994); see Angle, 102 N.M. 521
99 See F & S Co. v. Gentry, 103 N.M. 54, 702 P.2d 999 (1985)
100 NMSA 1978, Section 14-8-12.2 (2008)
101 NMSA 1978, Section 14-8-12.3 (2008)
102 NMSA 1978, Sections 14-8-12.4 (1985)
forms that do not substantially comply with the statutory form of acknowledgment in existence at the time of the acknowledgment. Prior to July 1993, many acknowledgments were rejected because the form did not reflect the marital status of a husband and wife executing an instrument or left off the state of incorporation on a corporate acknowledgment. The new forms are in line with the uniform acknowledgment statute. New Mexico law states that even if an instrument containing a defective acknowledgment is actually recorded in the county records, it is not entitled to constructive notice.\textsuperscript{103} There is a \textit{curative statute} that provides that certain minor defects in an acknowledgment form are cured if the instrument has been of record for more than ten years.\textsuperscript{104} A sample of the current New Mexico short form acknowledgments is included in this chapter on the next page.\textsuperscript{105}

\textsuperscript{103} See NMSA 1978, Section 14-8-4 (1988)
\textsuperscript{104} See NMSA 1978, Section 14-13-25 (1991)
\textsuperscript{105} See NMSA 1978, Section 14-14-8 N.M.S.A. (1993)
State of _________ } 
County of _________ } 

This instrument was acknowledged before me on ______, 20__, by 
________________ .

My commission expires:

________________________

State of _________ } 
County of _________ } 

This instrument was acknowledged before me on ______, 20__, by 
________________ as (type of authority, e.g. officer, trustee, etc.) of (name of party on 
behalf of whom the instrument was executed).

My commission expires:

________________________