

## Opinion No. 79-39

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**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General

**TO:** Representative Paul Kelly, Jr., 713 N. Lea, Roswell, New Mexico 88201

An assignment is not a multiple or blanket one for purposes of Section 14-8-12(d) NMSA 1978 unless it involves more than one assignor or assignee.

### FACTS

Senate Bill 238, being Chapter 185, Laws 1979, amended Section 14-8-12(D) NMSA 1978 to read as follows:

"Each release **or assignment** shall be contained in a separate instrument. Any single instrument containing blanket or multiple releases or **assignments** shall not be accepted for recording by a county clerk." (new language underscored).

The legislature did not, however, define "assignment" nor "blanket or multiple . . . assignments" for purposes of the statute, and there is apparently considerable confusion among the county clerks as to what documents may be accepted for recording.

### QUESTIONS

When is an instrument a blanket or multiple assignment and therefore not acceptable for filing pursuant to Section 14-8-12(D) NMSA 1978?

### CONCLUSIONS

See Analysis.

### ANALYSIS

When a word is not defined by a statute, it is well-settled that the word is to be used in its ordinary and usual sense, unless, of course, a different intent is clearly indicated. See, e.g. **State ex rel. Bird v. Apodaca**, 91 N.M. 279, 573 P.2d 213 (1977); **State v. Hernandez**, 89 N.M. 698, 556 P.2d 1174 (1976); **Tafoya v. New Mexico State Police Board**, 81 N.M. 710, 472 P.2d 973 (1970).

### OPINION

An assignment is most commonly defined as "[a] transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein." **Black's Law Dictionary**, 109 (5th Ed. 1979). See also, **Rheault v. Tenefos Construction Co.**, 189 N.W.2d 626 (N.D. 1971).

Further, a distinction is made between the transfer of tangible property by deed or bill of sale and the transfer of intangible property. That is, an assignment is more particularly defined as "the transfer by a party of all of its rights to some kind of property, usually intangible property such as rights in a lease, mortgage, assignment of sale or a partnership." **Black's Law Dictionary, supra**. It may be noted that the assignments actually enumerated by Section 14-8-12(A), i.e., assignments of mortgages, leases and charter mortgage conditional sale contracts, are of that nature. Therefore, to adopt a definition of assignment for purposes of Section 14-8-12(D) which does not include such underlying documents as mortgages or deeds of sale is consistent with the other provisions of Section 14-8-12(D) which does not {<sup>95</sup>} include such underlying documents as mortgages or deeds of sale is consistent with the other provisions of Section 14-8-12. As a rule of construction, parts of a statute are to be read together so as to produce a harmonious whole. See, e.g., **Trujillo v. Romero**, 82 N.M. 301, 481 P.2d 89 (1971).

It has also been commonly held that "[t]he essential elements of a valid assignment are 'an assignor, an assignee and a thing assigned.'" **Piedmont Cattle Credit Co. v. Hall**, 34 N.C. App. 478, 238 S.E.2d 625, 627 (1977). Nevertheless, in order to be legally enforceable, there must be evidence of an intent to transfer and "the subject matter of the assignment must be described sufficiently to make it capable of being readily identified." **Certified Collectors, Inc. v. Lesnick**, 116 Ariz. 601, 570 P.2d 769, 771 (1977). See also, **Nickell v. United States**, 355 F.2d 73 (10th Cir. 1966).

An assignment then may be properly defined as an intentional transfer of certain defined property interests from one party to another. It is not required that a separate assignment relate only to a single property interest. Indeed, a single assignment may transfer more than one lease or more than one mortgage so long as each is sufficiently described to give adequate notice. See, e.g. **Luthi v. Evans**, 223 Kan. 622, 576 P.2d 1064 (1978).

A multiple or blanket assignment is not, therefore, necessarily distinguished from a single assignment by the property transferred. Rather, the legislature could have intended that multiple or blanket assignments refer to transfers involving more than one assignor or assignee. For example, an assignor could transfer, in one instrument, several leases to one assignee and the remainder to another. Pursuant to Section 14-8-12(D), Such an instrument could not be accepted for recording. This definition of multiple or blanket assignments need not, however, apply to transfers where both a husband and wife are named as assignors or assigness if they have a common interest in the property.

Finally, a statute should be construed in accord with common sense and reason. See, **State ex rel. Newsome v. Alarid**, 90 N.M. 790, 568 P.2d 1236 (1977). A construction of Section 14-8-12(D) which does not require a separate assignment and recording of each property interest conveyed as between any two given parties will avoid an unreasonable burden on both county clerks and persons needing to record assignments.

**ATTORNEY GENERAL**

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