

November 20, 2008 County Clerk Recording Fees Inquiry

The Honorable Michael S. Sanchez
Majority Floor Leader
New Mexico State Senate
3 Bunton Road
Belen, NM 87002

Re: Opinion Request - County Clerk Recording Fees Inquiry

Dear Senator Sanchez:

You have requested our advice regarding the interpretation of House Bill 327, which was enacted by the 2008 legislature, and went into effect on May 14, 2008. This bill, in relevant part, amended Section 14-8-12.3 to add “grantor, grantee” to the provision that reads: “[I]f an assignment or release assigns or releases an interest in property by reference to more than one grantor, grantee, deed, mortgage, lease, or other instrument that created the interest ... There shall be an additional recording fee of five dollars ... for each such reference.” Your letter asks whether the recording fee applies to all legal instruments filed with the county clerk or just those legal instruments listed in Section 14-8-12.3. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that the fee imposed under Section 14-8-12.3 applies to an *assignment or release* that refers to *two or more grantors, grantees, deeds, mortgages, leases, or other instruments that created the interest in property* that is being assigned or released.

A review of Section 14-8-12.3, and its predecessor statute, Section 14-8-12, has been conducted by two prior Attorney General opinions. This history appears to help explain the legislative intent behind the 2008 changes. First, for many years, Section 14-8-12 provided a fee schedule for filing all types of legal instruments, including but not limited to, standard form of deeds, transcripts of judgment, patents, releases of recorded mortgage or deeds of trusts, nonstandard forms of amortization mortgages, standard forms of oil and gas mining leases and releases of oil and gas leases. Section 14-8-12(D) expressly stated: “Each release shall be contained in a separate instrument. Any single instrument containing blanket or multiple releases shall not be accepted for recording by a county clerk.” 1977 N.M. Session Laws, ch. 179, § 5(D) (emphasis added). The 1979 legislature amended this section to add the term “release or assignment” in subsection D. See 1979 N.M. Session Laws, ch. 185, § 1.

A legislator asked for a clarification of the concept of “multiple” listings on releases or assignments. The Attorney General’s office wrote: “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.” N.M. Att’y Gen. Op. 79-39 (1979). The Opinion, however, raised questions regarding the clarity of subsection (D) on grounds: “multiple

assignments need not, however, apply to transfers where both a husband and wife are named as assignors or assignees if they have a common interest in the property.” Id.

The 1980 legislature, “apparent in response to the 1979 opinion,” See N.M. Att’y Gen. Op. 80-12 (1980), amended the law and set up a framework where if an assignment or a release assigned or released “an interest in property” by reference to more than one deed, mortgage, lease or other instrument, then a supplemental fee (\$3.00) for “each such reference” shall be charged. See 1980 N.M. Session Laws, ch. 48, § 1. (This fee was later raised to five dollars). A legislator asked for a clarification of this new framework. The Attorney General’s office concluded: “Section 14-8-12(D) is intended to require the payment of the \$3.00 fee for each property interest referenced by a release or assignment.” N.M. Att’y Gen. Op. 80-12 (1980).

The 1985 legislature then split apart several subsections of Section 14-8-12 and moved subsection (D) into a new Section 14-8-12.3. This clarified that the fee found in Section 14-8-12.3 was supplemental to the fee schedule in Section 14-8-12. Therefore, if a person wanted to record an assignment or release described in Section 14-8-12.3 that had multiple assignments or releases, he had to pay the general fee provided in Section 14-8-12 and the supplemental fee provided in Section 14-8-12.3.

One canon of statutory construction is that a statute should be read according to its plain, written meaning. See Wilson v Denver, 125 N.M. 308, 314, 961 P.2d 153 (1998). The 2008 legislature accomplished several important items when it passed House Bill 327. First, it repealed Section 14-8-12. Second, it amended Section 14-8-12.2 to provide that “[f]or each instrument recorded the county clerk shall charge a recording fee of five dollars (\$5.00) for the first page and two dollars (\$2.00) for each additional page or portion thereof of the same instrument.”[1]

House Bill 327, however, did not alter the scope of the Section 14-8-12.3 and its plain language still governs the recording of a specific subset of legal instruments (i.e. an assignment or a release that assigns or releases an interest in property). The legislature simply added “grantor” and “grantee” to the list of items that are considered a “multiple” release or assignment. Therefore, anytime more than one grantor or grantee is referenced in an assignment or release, a supplemental five-dollar fee for each reference has to be paid to the county clerk.[2]

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,

ZACHARY A. SHANDLER
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

[1] House Bill 327 also permits a county clerk to charge a four-dollar “equipment recording fee.”

[2] Your letter enclosed a memorandum drafted by the San Juan County Clerk’s office regarding its interpretation of the 2008 amendment. It is unclear whether the memorandum correctly explains that Section 14-8-12.2 provides for a general fee for all instruments and Section 14-8-12.3 instruments have a supplemental fee.