UNANNOTATED

CHAPTER 39
Judgments, Costs, Appeals

ARTICLE 1
Judgments

39-1-1. [Judgments and decrees; interlocutory orders; period of control over final judgment.]

Any judgment, or decree, except in cases where trial by jury is necessary, may be rendered by the judge of the district court at any place where he may be in this state, and the district courts, except for jury trials, are declared to be at all times in session for all purposes, including the naturalization of aliens. Interlocutory orders may be made by such judge wherever he may be in the state, on notice, where notice is required, which notice, if outside of his district, may be enlarged beyond the statutory notice, for such time as the court shall deem proper. Final judgments and decrees, entered by district courts in all cases tried pursuant to the provisions of this section shall remain under the control of such courts for a period of thirty days after the entry thereof, and for such further time as may be necessary to enable the court to pass upon and dispose of any motion which may have been filed within such period, directed against such judgment; provided, that if the court shall fail to rule upon such motion within thirty days after the filing thereof, such failure to rule shall be deemed a denial thereof; and, provided further, that the provisions of this section shall not be construed to amend, change, alter or repeal the provisions of Sections 4227 or 4230, Code 1915.

History: Laws 1897, ch. 73, § 103; C. L. 1897, § 2685 (103); Code 1915, § 4185; Laws 1917, ch. 15, § 1; C. S. 1929, § 105-801; 1941 Comp., § 19-901; 1953 Comp., § 21-9-1.

39-1-2. [Judgment rendered subsequent to hearing; notice to attorneys.]

Upon any hearing before the judge of a court, wherein the judgment of the court upon such hearing shall not be rendered at the time of such hearing, but shall be taken under advisement by the judge, no judgment or order relative to the matters pertaining to such hearing shall be entered until notice of the same shall have been given to the attorneys for the respective parties in the action.

History: Laws 1897, ch. 73, § 136; C.L. 1897, § 2685(136); Code 1915, § 4229; C.S. 1929, § 105-845; 1941 Comp., § 19-902; 1953 Comp., § 21-9-2.

39-1-3. [Death of party after verdict.]

If either party to any suit shall die between verdict and judgment, the judgment shall be entered as if both parties were living.

History: Laws 1850-1851, p. 144; C.L. 1865, ch. 27, § 14; C.L. 1884, § 2135-A; C.L. 1897, § 3074; Code 1915, § 3083; C.S. 1929, § 76-115; 1941 Comp., § 19-903; 1953 Comp., § 21-9-3.

39-1-4. [Entry of judgment; execution; motion for new trial.]

Judgment shall be entered and execution may be issued thereon unless a motion for a new trial is made within the time provided by law, and granted or continued during the term at which the case is tried.

History: Laws 1897, ch. 73, § 135; C.L. 1897, § 2685(135); Code 1915, § 4228; C.S. 1929, § 105-844; 1941 Comp., § 19-904; 1953 Comp., § 21-9-4.

39-1-5. [Judgments enforced; duty of judge.]

It shall be the duty of the judge of any court to cause judgment, sentence or decree of the court to be carried into effect, according to law.

History: Laws 1850-1851, p. 144; C.L. 1865, ch. 27, § 16; C.L. 1884, § 1832; C.L. 1897, § 2878; Code 1915, § 1360; C.S. 1929, § 34-107; 1941 Comp., § 19-905; 1953 Comp., § 21-9-5.

39-1-6. Money judgment; docketing; transcript of judgment; lien on real estate; supersedeas.

Any money judgment rendered in the supreme court, court of appeals, district court or metropolitan court shall be docketed by the clerk of the court and a transcript or abstract of judgment may be issued by the clerk upon request of the parties. The judgment shall be a lien on the real estate of the judgment debtor from the date of the filing of the transcript of the judgment in the office of the county clerk of the county in which the real estate is situate. Upon approval and filing of a supersedeas bond upon appeal of the cause as provided by law, the lien shall be void. Judgment shall be enforced for not more than fourteen years thereof.

History: Laws 1891, ch. 67, § 1; C.L. 1897, § 3069; Code 1915, § 3079; C.S. 1929, § 76-110; 1941 Comp., § 19-906; Laws 1949, ch. 110, § 1; 1953 Comp., § 21-9-6; Laws 1955, ch. 69, § 1; 1966, ch. 28, § 32; 1973, ch. 25, § 1; 1983, ch. 89, § 1.

39-1-6.1. Judgment liens; release; penalties.

When any judgment giving rise to a subsisting lien pursuant to Section 39-1-6 NMSA 1978 upon any real estate in the state has been fully satisfied, it is the duty of the

judgment creditor to file a release of the lien in the office of the county clerk of the county in which the real estate is situate. The cost of filing the release of lien shall be assessed against the judgment debtor and shall be collected before the release of lien is required to be filed.

History: Laws 1985, ch. 165, § 1.

39-1-6.2. Judgment debts; discharge.

A. All judgments and decrees for payment of money rendered in the courts of this state and which have become final may be satisfied, if the judgment creditor cannot be found after a diligent search, by payment of the full amount of such judgment or decree, with interest thereon to date of payment, plus any post-judgment costs incurred by the judgment creditor which can be determined from the court record and the costs of court for receiving into and paying the money out of the registry of the court.

B. Upon such payment, the clerk, or the judge if there is no clerk, shall issue a receipt therefor and shall enter a satisfaction of such judgment in the record, and shall formally notify the judgment creditor of such judgment or decree, if known; and upon the request therefor, shall pay over to the judgment creditor, or to his order, the full amount of the judgment, costs and interest collected.

C. Full payment of judgments and decrees pursuant to Subsections A and B of this section shall constitute full satisfaction thereof, and any lien created by such judgment or decree shall thereupon be satisfied and discharged.

D. Unclaimed funds in the court registry shall be disposed of pursuant to the Uniform Disposition of Unclaimed Property Act, Sections 7-8-1 through 7-8-34 NMSA 1978.

E. Unclaimed funds in the court registry shall be deposited in an interest-bearing account at an institution acceptable to the court. Interest on such funds shall accrue to the benefit of any person found entitled to claim the funds.

History: Laws 1985, ch. 150, § 1.

39-1-7. Transcript; judgment records.

Transcripts of judgments shall be recorded in the county clerk's records. Any recording method used by a county clerk prior to July 1, 1983 in which transcripts of judgments were officially and properly recorded in the county clerk's records are validated and confirmed.

History: Laws 1891, ch. 67, § 2; C.L. 1897, § 3070; Code 1915, § 3080; C.S. 1929, § 76-111; 1941 Comp., § 19-907; 1953 Comp., § 21-9-7; Laws 1966, ch. 28, § 33; 1983, ch. 89, § 2; 1983, ch. 169, § 1.

39-1-8. Transcript of judgment; contents; fee for issuance.

A. The transcript of judgment issued by the clerks of the supreme court, court of appeals, district courts and metropolitan courts shall show:

(1) the names of the parties;

(2) the number and nature of the case;

(3) the court in which judgment was rendered;

(4) the date of judgment, amount of damages, amount of costs, total amount of judgment and date of docket;

(5) the attorney for the creditor;

(6) issuance and return of executions, if any; and

(7) satisfaction of judgment when paid.

History: Laws 1891, ch. 67, § 3; C.L. 1897, § 3071; Code 1915, § 3081; C.S. 1929, § 76-113; 1941 Comp., § 19-908; 1953 Comp., § 21-9-8; Laws 1966, ch. 28, § 34; 1983, ch. 89, § 3.

39-1-9. [Confession of judgments; entry.]

Judgment by confession, without action, may be entered by the clerk of the district courts in this state in term time or in vacation, in the manner hereinafter prescribed.

History: Laws 1889, ch. 20, § 1; C.L. 1897, § 3077; Code 1915, § 3071; C.S. 1929, § 76-102; 1941 Comp., § 19-909; 1953 Comp., § 21-9-9.

39-1-10. [Subject of judgment by confession.]

Such confession can be only for money due, or to become due, or to secure a person against contingent liabilities on behalf of the defendant and must be for a specified sum.

History: Laws 1889, ch. 20, § 2; C.L. 1897, § 3078; Code 1915, § 3072; C.S. 1929, § 76-103; 1941 Comp., § 19-910; 1953 Comp., § 21-9-10.

39-1-11. [Form of confession of judgment.]

A statement in writing must be made and signed by the defendant and verified by his oath to the following effect, and filed with the clerk:

A. if for money due, or to become due, it must state fully and concisely the facts out of which the indebtedness arose, and that the sum confessed therefor is justly due, or to become due, as the case may be;

B. if for the purpose of securing the plaintiff against a contingent liability, it must state fully but concisely the facts constituting such liability, and must show that the sum confessed therefor does not exceed the same.

History: Laws 1889, ch. 20, § 3; C.L. 1897, § 3079; Code 1915, § 3073; C.S. 1929, § 76-104; 1941 Comp., § 19-911; 1953 Comp., § 21-9-11.

39-1-12. Record and transcript of judgment by confession; execution.

The clerk shall record the confession of judgment in his court record for such county and shall issue the transcript of judgment or execution as in other cases or as may be stipulated between the parties pursuant to Section 39-1-13 NMSA 1978.

History: Laws 1889, ch. 20, § 4; C.L. 1897, § 3080; Code 1915, § 3074; C.S. 1929, § 76-105; 1941 Comp., § 19-912; 1953 Comp., § 21-9-12; Laws 1983, ch. 89, § 4.

39-1-13. [Conditions to stay execution of judgment by confession.]

Any defendant so confessing judgment, may attach such condition or conditions thereto as to stay of execution, not to exceed one year, as the beneficiary may agree to by signing the same.

History: Laws 1889, ch. 20, § 5; C.L. 1897, § 3081; Code 1915, § 3075; C.S. 1929, § 76-106; 1941 Comp., § 19-913; 1953 Comp., § 21-9-13.

39-1-14. [Effect of confessed judgment; transcripts filed in other counties; liens.]

Such judgment, when so filed, recorded and docketed, shall have all the binding force and effect that judgments obtained in the regular manner have by law in said courts, as to being liens upon real estate of such defendant, and otherwise. And the beneficiary, under such judgment, shall have the same right to file transcripts thereof in other counties to be a lien upon the real estate of such defendant, as any plaintiff has, under the law, in like manner, filing a certified transcript thereof in the office of the county clerk of such other county or counties.

History: Laws 1889, ch. 20, § 6; C.L. 1897, § 3082; Code 1915, § 3076; C.S. 1929, § 76-107; 1941 Comp., § 19-914; 1953 Comp., § 21-9-14.

39-1-15. [Affidavit of good faith.]

No such confession of judgment shall be filed with the clerks of said district courts, unless the defendant or debtor shall attach to and make as a part of the statement required in Section 39-1-11 NMSA 1978, an affidavit setting forth that the same is made in good faith to secure such beneficiary in debt or contingent liability justly due in the sum thus confessed or necessarily entered into, and not with the intention of defrauding any of such defendant's creditors.

History: Laws 1889, ch. 20, § 8; C.L. 1897, § 3084; Code 1915, § 3078; C.S. 1929, § 76-109; 1941 Comp., § 19-915; 1953 Comp., § 21-9-15.

39-1-16. [Contracts providing for confession of judgment before cause of action accrues prohibited.]

That it shall be unlawful to execute or procure to be executed as part of or in connection with the execution of any negotiable instrument, or other written contract to pay money, and before a cause of action thereon shall have accrued, any contract, agreement, provision or stipulation giving to any person or persons a power of attorney or authority as attorney for the maker or endorser thereof, in his name to appear in any court of record, and waive the service of process in an action to enforce payment of money claimed to be due thereon, or authorizing or purporting to authorize an attorney or agent, howsoever designated, to confess judgment on such instrument for a sum of money to be ascertained in a manner other than by action of the court upon a hearing after notice to the debtor, whether with or without an attorney fee, or authorizing or purporting to authorize any such attorney to release errors and the right of appealing from such judgment, or to consent to the issue of execution on such judgment. Any and all provisions hereinabove declared to be unlawful, contained in any contract, stipulation or power of attorney given or entered into before a cause of action on such promise to pay, shall have accrued, shall be void.

History: Laws 1933, ch. 46, § 1; 1941 Comp., § 19-916; 1953 Comp., § 21-9-16.

39-1-17. [Execution of foreign judgment based upon confession of judgment prohibited.]

No execution, or other process, shall be issued out of any court in this state to aid or enforce the collection of any judgment which may be rendered upon any judgment taken in any other state, or foreign country, and which judgment was founded or based upon any negotiable instrument, or contract, containing any such agreement, stipulation, or provision, as herein prohibited and declared void, in all cases where the court rendering such foreign judgment, obtained or attempted to obtain, jurisdiction of such judgment debtor or debtors, in whole or in part, by virtue of any such contract, agreement, or stipulation, as in this act [39-1-16, 39-1-17 NMSA 1978] declared void and prohibited. No such judgment shall be or become a lien upon real estate.

History: Laws 1933, ch. 46, § 2; 1941 Comp., § 19-917; 1953 Comp., § 21-9-17.

39-1-18. ["Cognovit note" defined; execution and procurement prohibited; penalty for violation.]

That any negotiable instrument, or other written contract to pay money, which contains any provision or stipulation giving to any person any power of attorney, or authority as attorney, for the maker, or any indorser [endorser], or assignor, or other person liable thereon, and in the name of such maker, indorser [endorser], assignor, or other obligor to appear in any court, whether of record or inferior, or to waive the issuance or personal service of process in any action to enforce payment of the money, or any part claimed to be due thereon, or which contains any provision or stipulation authorizing or purporting to authorize an attorney, agent or other representative, be he designated howsoever, to confess judgment on such instrument for a sum of money when such sum is to be ascertained, or such judgment is to be rendered or entered otherwise than by action of court upon a hearing after personal service upon the debtor, whether with or without attorney's fee, or which contains any provision or stipulation authorizing or purporting to authorize any such attorney, agent, or representative to release errors, or the right of appeal from any judgment thereon, or consenting to the issuance of execution on such judgment, is hereby designated, defined and declared to be a cognovit note. Any person, natural or corporate, who directly or indirectly shall procure another, or others, to execute as maker, or to indorse [endorse], or assign such cognovit note, or whoever being the payee, indorsee [endorsee] or assignee thereof shall accept and retain in his possession any such instrument, or whoever shall conspire or confederate with another, or others, for the purpose of procuring the execution, indorsement [endorsement] or assignment of any such instrument, or whoever shall attempt to recover upon or enforce within this state any judgment obtained in any other state or foreign country based upon any such instrument, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty dollars ($50.00), and not exceeding five hundred dollars ($500.00), to which may be added imprisonment for not less than thirty (30) days.

History: Laws 1933, ch. 48, § 1; 1941 Comp., § 19-918; 1953 Comp., § 21-9-18.

39-1-19. Repealed.

39-1-20. Execution after judgment.

An execution may issue at any time, on behalf of anyone interested in a judgment, within seven years after the rendition or revival of the judgment.

History: Laws 1887, ch. 61, § 2; C.L. 1897, § 3086; Code 1915, § 3086; C.S. 1929, § 76-118; 1941 Comp., § 19-920; 1953 Comp., § 21-9-20; Laws 1965, ch. 282, § 2; 1971, ch. 122, § 2.

ARTICLE 1A
Structured Settlement Protection Act

39-1A-1. Short title.

This act [39-1A-1 to 39-1A-7 NMSA 1978] may be cited as the "Structured Settlement Protection Act".

History: Laws 2005, ch. 135, § 1.

39-1A-2. Definitions.

As used in the Structured Settlement Protection Act:

A. "annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement;

B. "court" means:

(1) the court of original jurisdiction that authorized or approved a structured settlement; or

(2) if the court that authorized or approved the structured settlement no longer has jurisdiction to approve a transfer of payment rights under the structured settlement under the Structured Settlement Protection Act, a district court or a probate court located in the county in which the payee resides;

C. "dependents" includes a payee's spouse, minor children and all other persons for whom the payee is legally obligated to provide support, including alimony;

D. "discounted present value" means the present value of future payments determined by discounting the payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service;

E. "gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration;

F. "independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

G. "interested party" means, with respect to any structured settlement:

(1) the payee;

(2) any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;

(3) the annuity issuer;

(4) the structured settlement obligor; and

(5) any other party that has continuing rights or obligations under the structured settlement;

H. "net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Subsection E of Section 3 [39-1A-3(E) NMSA 1978] of the Structured Settlement Protection Act;

I. "payee" means an individual who is receiving tax-free payments under a structured settlement and proposes to transfer payment rights under the structured settlement;

J. "periodic payments" includes both recurring payments and scheduled future lump-sum payments;

K. "qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the Internal Revenue Code of 1986, as amended;

L. "settled claim" means the original tort claim or workers' compensation claim resolved by a structured settlement;

M. "structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

N. "structured settlement agreement" means the agreement, judgment, stipulation or release embodying the terms of a structured settlement;

O. "structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement;

P. "structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if:

(1) the payee is domiciled in or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;

(2) the structured settlement agreement was authorized or approved by a court located in this state; or

(3) the structured settlement agreement is expressly governed by the laws of this state;

Q. "terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of the court;

R. "transfer" means any sale, assignment, pledge, hypothecation or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration, except that "transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to the insured depository institution, or its agent or successor in interest, or to enforce the blanket security interest against the structured settlement payment rights;

S. "transfer agreement" means the agreement providing for a transfer of structured settlement payment rights;

T. "transfer expenses" means all the expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including court filing fees, attorney fees, escrow fees, lien recording fees, judgment and lien search fees, finders' fees, commissions and other payments to a broker or other intermediary, except that "transfer expenses" does not include preexisting obligations of the payee payable on the payee's account from the proceeds of a transfer; and

U. "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

History: Laws 2005, ch. 135, § 2.

39-1A-3. Required disclosures to payee.

At least three days before the date on which the payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type at least fourteen points in size, that states:

A. the amounts and due dates of the structured settlement payments to be transferred;

B. the aggregate amount of the payments;

C. the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement

payments under federal standards for valuing annuities", and the amount of the applicable federal rate used in calculating the discounted present value;

D. the gross advance amount;

E. an itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of those expenses;

F. the net advance amount;

G. the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

H. a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the close of the third business day after the date the agreement is signed by the payee.

History: Laws 2005, ch. 135, § 3.

39-1A-4. Approval of transfers of structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

A. the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

B. the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and

C. the transfer does not contravene any applicable statute or an order of any court or other governmental authority.

History: Laws 2005, ch. 135, § 4.

39-1A-5. Effects of transfer of structured settlement payment rights.

Following a transfer of structured settlement payment rights pursuant to the Structured Settlement Protection Act:

A. the structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments;

B. the transferee shall be liable to the structured settlement obligor and the annuity issuer:

(1) for any taxes incurred by the parties as a consequence of the transfer if the transfer contravenes the terms of the structured settlement; and

(2) for any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with the provisions of the Structured Settlement Protection Act;

C. the transferee shall be liable to the payee:

(1) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the payee as a consequence of the transfer; and

(2) for any other liabilities or costs, including reasonable costs and attorney fees, arising as a consequence of the transferee's failure to comply with the provisions of the Structured Settlement Protection Act;

D. neither the structured settlement obligor nor the annuity issuer may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

E. any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of the Structured Settlement Protection Act.

History: Laws 2005, ch. 135, § 5.

39-1A-6. Procedure for approval of transfers.

A. An application under the Structured Settlement Protection Act for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in court.

B. At least twenty days before the date of the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 4 [39-1A-4 NMSA 1978] of the Structured Settlement Protection Act, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for authorization, including with the notice:

(1) a copy of the transferee's application;

(2) a copy of the transfer agreement;

(3) a copy of the disclosure statement required under Section 3 [39-1A-3 NMSA 1978] of the Structured Settlement Protection Act;

(4) a listing of each of the payee's dependents, together with each dependent's age;

(5) notice that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and

(6) notice of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed to be considered by the court.

C. Written responses to the application under Paragraph (6) of Subsection B of this section shall be filed on or before the fifteenth day after the date the transferee's notice is served.

History: Laws 2005, ch. 135, § 6.

39-1A-7. General provisions; construction.

A. The provisions of the Structured Settlement Protection Act shall not be waived by any payee.

B. Any transfer agreement entered into by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. The transfer agreement shall not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

C. Transfer of structured settlement payment rights shall not extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and agreed to maintain procedures reasonably satisfactory to the structured settlement obligor and the annuity issuer for:

(1) periodically confirming the payee's survival; and

(2) giving the structured settlement obligor and the annuity issuer prompt written notice in the event of the payee's death.

D. A payee who proposes to make a transfer of structured settlement payment rights shall not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of the Structured Settlement Protection Act.

E. Nothing contained in the Structured Settlement Protection Act may be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into before July 1, 2005 is valid or invalid.

F. Compliance with the requirements in Section 3 [39-1A-3 NMSA 1978] of the Structured Settlement Protection Act and fulfillment of the conditions in Section 4 [39-1A-4 NMSA 1978] of that act are solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer bears any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

History: Laws 2005, ch. 135, § 7.

ARTICLE 2
Attorneys' Fees and Costs

39-2-1. Attorney's fees and costs; insured prevailing in action based on any type of first party coverage against insurer.

In any action where an insured prevails against an insurer who has not paid a claim on any type of first party coverage, the insured person may be awarded reasonable attorney's fees and costs of the action upon a finding by the court that the insurer acted unreasonably in failing to pay the claim.

History: 1953 Comp., § 58-8-36, enacted by Laws 1977, ch. 113, § 1.

39-2-2. Deficiencies; attorney fees.

In any civil action involving liability for a deficiency pursuant to Section 55-9-504 or 58-19-7 NMSA 1978, the debtor, if prevailing, may in the discretion of the court be allowed a reasonable attorney fee set by the court and taxed and collected as costs.

History: Laws 1981, ch. 10, § 3.

39-2-2.1. Collection of open accounts; attorney fees.

In any civil action in the district court, small claims court or magistrate court to recover on an open account, the prevailing party may be allowed a reasonable attorney fee set by the court, and taxed and collected as costs.

History: 1953 Comp., § 18-1-37, enacted by Laws 1965, ch. 125, § 1; 1967, ch. 164, § 1; 1975, ch. 147, § 1; 1978 Comp., § 36-2-39, recompiled as 1978 Comp. § 39-2-2.1.

39-2-3. [Unnecessary splitting of actions.]

When any plaintiff shall bring in the same court several suits against the same defendant that may be joined, and whenever any plaintiffs shall bring in the same court several suits against several defendants that may be joined, the plaintiff shall recover only the costs of one action, and the costs of the other actions shall be adjudged against him unless sufficient reason appear to the court for bringing several actions.

History: Laws 1897, ch. 73, § 129; C.L. 1897, § 2685(129); Code 1915, § 4223; C.S. 1929, § 105-839; 1941 Comp., § 29-102; 1953 Comp., § 25-1-2.

39-2-4. [Actions ex contractu; recovery of principal amount below jurisdiction of court.]

In all actions founded on debt or other contract, if the plaintiff recover an amount which, exclusive of interest, is below the jurisdiction of the court, he shall recover judgment therein, but the costs shall be adjudged against him unless the plaintiff's claim, as established on the trial, shall be reduced by offsets below the jurisdiction of the court.

History: Kearny Code, Costs, § 2; C.L. 1865, ch. 45, § 2; C.L. 1884, § 2203; C.L. 1897, § 3149; Code 1915, § 4283; C.S. 1929, § 105-1302; 1941 Comp., § 29-103; 1953 Comp., § 25-1-3.

39-2-5. [Costs on appeal from probate court or magistrate; when judgment appealed from was against appellant.]

When an appeal shall be taken from the judgment of a probate court or justice of the peace [magistrate] against the appellant, the costs shall be adjudged as follows:

A. if the judgment be affirmed, or the appellee on a trial anew shall recover as much or more than the amount of the judgment below, the appellant shall pay costs in both courts;

B. if, on such trial, the judgment of the appellate court shall be in favor of the appellant, the appellee shall pay costs in both courts;

C. if the appellant shall, at any time before the appeal is perfected, tender to the appellee any part of the judgment, and he shall not accept it in satisfaction, and the appellee shall not recover more than the amount as tendered, he shall pay costs in the appellate court, but not in the court below.

History: Kearny Code, Costs, § 3; C.L. 1865, ch. 45, § 3; C.L. 1884, § 2204; C.L. 1897, § 3150; Code 1915, § 4284; C.S. 1929, § 105-1303; 1941 Comp., § 29-104; 1953 Comp., § 25-1-4.

39-2-6. [When judgment appealed from was for appellant.]

If such appeal be from a judgment in favor of the appellant, costs shall be adjudged as follows: if upon the trial anew, the appellant shall not recover more than the judgment below, he shall pay the costs of the appellate court; if he recover nothing, the costs shall be adjudged against him in both courts; if he recover more than the judgment below, he shall recover costs in both courts.

History: Kearny Code, Costs, § 4; C.L. 1865, ch. 45, § 4; C.L. 1884, § 2205; C.L. 1897, § 3151; Code 1915, § 4285; C.S. 1929, § 105-1304; 1941 Comp., § 29-105; 1953 Comp., § 25-1-5.

39-2-7. [Depositions to perpetuate testimony; taxing costs.]

The costs and expenses of taking the depositions shall be audited and allowed by the officer taking the same, and such costs and expenses, together with the fees of recording and copying the same, shall be taxed in favor of the party or parties paying the same, and collected as other costs in the suit or suits in which such depositions, or any part thereof, may be used.

History: Laws 1882, ch. 12, § 18; C.L. 1884, § 2128; C.L. 1897, § 3066; Code 1915, § 2158; C.S. 1929, § 45-215; 1941 Comp., § 29-106; 1953 Comp., § 25-1-6.

39-2-8. [Depositions; fees paid to the clerk and witnesses; compensation of officers.]

The fees of the county clerk for recording said depositions and certifying the same, shall be the same as are now allowed by law for recording and certifying deeds; and the fees of witnesses shall be the same as are now paid to witnesses in the district court in civil cases, and the fees of the officers taking the depositions shall be five dollars [($5.00)] per day for each day of actual and necessary service.

History: Laws 1882, ch. 12, § 19; C.L. 1884, § 2129; C.L. 1897, § 3067; Code 1915, § 2159; C.S. 1929, § 45-216; 1941 Comp., § 29-107; 1953 Comp., § 25-1-7.

39-2-9. [Witness fees taxed as costs; limitation.]

In no case in any of the courts of this state, shall any fees for witnesses be taxed to exceed four witnesses, on each side, unless under the direction of the court, and in the court's discretion the same may be necessary.

History: Laws 1887, ch. 40, § 3; C.L. 1897, § 1812; Code 1915, § 5900; C.S. 1929, § 155-106; 1941 Comp., § 29-108; 1953 Comp., § 25-1-8.

39-2-10. [Taxing costs of additional witnesses; certificate of court required.]

It shall not be legal in any civil suit for the clerk of any district court to tax in favor of the prevailing party the costs of more than four witnesses, unless the court shall certify upon the record that the attendance of more than four witnesses was necessary in the case.

History: Laws 1858-1859, p. 30; C.L. 1865, ch. 46, § 16; C.L. 1884, § 2209; C.L. 1897, § 3155; Code 1915, § 4286; C.S. 1929, § 105-1305; 1941 Comp., § 29-109; 1953 Comp., § 25-1-9.

39-2-11. [Bill of costs to be collected after issuance of execution.]

When final judgment or decree shall be rendered in any cause, and execution shall be issued thereon, the clerk shall make a complete copy of all the costs taxed against the defendant in execution, under his hand and the seal of the court, together with a certificate that the said bill of costs is correct. The said bill of costs shall be delivered to the officer to whom the execution shall be directed for execution, and when the writ shall be served, the officer shall deliver the said bill of costs to the defendant in execution, and shall receipt the same when paid, and the said clerk shall be entitled to fifty cents [($.50)] for such copy, to be paid as other costs.

History: Laws 1858-1859, p. 32; C.L. 1865, ch. 46, § 18; C.L. 1884, § 2211; C.L. 1897, § 3157; Code 1915, § 4288; C.S. 1929, § 105-1307; 1941 Comp., § 29-110; 1953 Comp., § 25-1-10.

39-2-12. [Transcript of cost book has effect of execution.]

In every cause in which either party shall become liable to pay costs, the clerk may make out a transcript from the cost book as above directed, and the same shall have in all respects the force and effect of an execution, and shall be served, collected and returned in the same manner.

History: Laws 1858-1859, p. 32; C.L. 1865, ch. 46, § 19; C.L. 1884, § 2212; C.L. 1897, § 3158; Code 1915, § 4289; C.S. 1929, § 105-1308; 1941 Comp., § 29-111; 1953 Comp., § 25-1-11.

39-2-13. [Collection of excessive fees or fees for services not rendered; retaxing costs; civil penalty.]

Any officer who shall knowingly claim for his services in any cause in the district court higher fees than provided by law, or shall claim fees for services not rendered, shall be liable to the party against whom such fraudulent charge is made in three times the amount of such charge: provided, that the same has been paid by the party; and when such payment has been made, the party against whom the charge has been made may petition the court to retax the costs, and if the court shall find that fraudulent charges have been made and paid, it shall adjudge the officer in fault to pay to the party injured three times the amount of the charges and enforce the collection of the same by means of an execution as in other cases.

History: Laws 1858-1859, p. 32; C.L. 1865, ch. 46, § 20; C.L. 1884, § 2213; C.L. 1897, § 3159; Code 1915, § 4290; C.S. 1929, § 105-1309; 1941 Comp., § 29-112; 1953 Comp., § 25-1-12.

39-2-14. [Plaintiff may be required to give security for costs; abatement on failure; reinstatement.]

In all cases the plaintiff, on motion of any person interested in the suit or costs, may be ruled to give security for costs, and in case he shall fail so to do on or before the first day of the next term after such rule, the case shall abate.

Provided, however, that should said parties at any time during said term file with the clerk of the district court a good and sufficient bond, such cause may upon application of said party be reinstated on the docket of the court, subject to trial during the term as other cases.

History: Laws 1850-1851, p. 146; C.L. 1865, ch. 27, § 47; C.L. 1884, § 1843; C.L. 1897, § 2892; Laws 1909, ch. 77, § 1; Code 1915, § 4291; C.S. 1929, § 105-1310; 1941 Comp., § 29-113; 1953 Comp., § 25-1-13.

ARTICLE 3
Appeals

39-3-1. Appeals to district court; trial de novo.

All appeals from inferior tribunals to the district courts shall be tried anew in said courts on their merits, as if no trial had been had below, except as otherwise provided by law.

History: Laws 1917, ch. 43, § 59; C.S. 1929, § 105-2533; 1941 Comp., § 19-1001; 1953 Comp., § 21-10-1; Laws 1955, ch. 68, § 1.

39-3-1.1. Appeal of final decisions by agencies to district court; application; scope of review; review of district court decisions.

A. The provisions of this section shall apply only to judicial review of agency final decisions that are placed under the authority of this section by specific statutory reference.

B. Upon issuing a final decision, an agency shall promptly:

(1) prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order;

(2) file the written decision with the official public records of the agency; and

(3) serve a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on:

(a) all persons who were parties in the proceeding before the agency; and

(b) every person who has filed a written request for notice of the final decision in that particular proceeding.

C. Unless standing is further limited by a specific statute, a person aggrieved by a final decision may appeal the decision to district court by filing in district court a notice of appeal within thirty days of the date of filing of the final decision. The appeal may be taken to the district court for the county in which the agency maintains its principal office or the district court of any county in which a hearing on the matter was conducted. When notices of appeal from a final decision are filed in more than one district court, all appeals not filed in the district court in which the first appeal was properly filed shall be dismissed without prejudice. An appellant whose appeal was dismissed without prejudice pursuant to the provisions of this subsection shall have fifteen days after receiving service of the notice of dismissal to file a notice of appeal in the district court in which the first appeal was properly filed.

D. In a proceeding for judicial review of a final decision by an agency, the district court may set aside, reverse or remand the final decision if it determines that:

(1) the agency acted fraudulently, arbitrarily or capriciously;

(2) the final decision was not supported by substantial evidence; or

(3) the agency did not act in accordance with law.

E. A party to the appeal to district court may seek review of the district court decision by filing a petition for writ of certiorari with the court of appeals, which may

exercise its discretion whether to grant review. A party may seek further review by filing a petition for writ of certiorari with the supreme court.

F. The district court may certify to the court of appeals a final decision appealed to the district court, but undecided by that court, if the appeal involves an issue of substantial public interest that should be decided by the court of appeals. The appeal shall then be decided by the court of appeals.

G. The procedures governing appeals and petitions for writ of certiorari that may be filed pursuant to the provisions of this section shall be set forth in rules adopted by the supreme court.

H. As used in this section:

(1) "agency" means any state or local public body or officer placed under the authority of this section by specific statutory reference;

(2) "final decision" means an agency ruling that as a practical matter resolves all issues arising from a dispute within the jurisdiction of the agency, once all administrative remedies available within the agency have been exhausted. The determination of whether there is a final decision by an agency shall be governed by the law regarding the finality of decisions by district courts. "Final decision" does not mean a decision by an agency on a rule, as defined in the State Rules Act [Chapter 14, Article 4 NMSA 1978]; and

(3) "hearing on the matter" means a formal proceeding conducted by an agency or its hearing officer for the purpose of taking evidence or hearing argument concerning the dispute resolved by the final decision.

History: Laws 1998, ch. 55, § 1; 1999, ch. 265, § 1.

39-3-2. Civil appeals from district court.

Within thirty days from the entry of any final judgment or decision, any interlocutory order or decision which practically disposes of the merits of the action, or any final order after entry of judgment which affects substantial rights, in any civil action in the district court, any party aggrieved may appeal therefrom to the supreme court or to the court of appeals, as appellate jurisdiction may be vested by law in these courts.

History: Laws 1917, ch. 43, § 1; C.S. 1929, § 105-2501; 1953 Comp., § 21-10-2; Laws 1966, ch. 28, § 35.

39-3-3. Appeals from district court in criminal cases.

A. By the defendant. In any criminal proceeding in district court an appeal may be taken by the defendant to the supreme court or court of appeals, as appellate jurisdiction may be vested by law in these courts:

(1) within thirty days from the entry of any final judgment;

(2) within ten days after entry of an order denying relief on a petition to review conditions of release pursuant to the Rules of Criminal Procedure [Rule 5-101 NMRA]; or

(3) by filing an application for an order allowing an appeal in the appropriate appellate court within ten days after entry of an interlocutory order or decision in which the district court, in its discretion, makes a finding in the order or decision that the order or decision involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from such order or decision may materially advance the ultimate termination of the litigation.

B. By the state. In any criminal proceeding in district court an appeal may be taken by the state to the supreme court or court of appeals, as appellate jurisdiction may be vested by law in these courts:

(1) within thirty days from a decision, judgment or order dismissing a complaint, indictment or information as to any one or more counts;

(2) within ten days from a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property, if the district attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

C. No appeal shall be taken by the state when the double jeopardy clause of the United States constitution or the constitution of the state of New Mexico prohibits further prosecution.

History: 1953 Comp., § 21-10-2.1, enacted by Laws 1972, ch. 71, § 2.

39-3-4. Interlocutory order appeals from district court.

A. In any civil action or special statutory proceeding in the district court, when the district judge makes an interlocutory order or decision which does not practically dispose of the merits of the action and he believes the order or decision involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order or decision may materially advance the ultimate termination of the litigation, he shall so state in writing in the order or decision.

B. The supreme court or court of appeals has jurisdiction over an appeal from such an interlocutory order or decision, as appellate jurisdiction may be vested in those courts. Within fifteen days after entry of the order or decision, any party aggrieved may file with the clerk of the supreme court or court of appeals an application for an order allowing an appeal, accompanied by a copy of the interlocutory order or decision.

C. Application under this section for an order allowing appeal does not stay proceedings in the district court unless so ordered by the district judge or a judge or justice of the court to which application is made.

History: 1953 Comp., § 21-10-3, enacted by Laws 1971, ch. 40, § 1; 1999, ch. 80, § 1.

39-3-5. Writs of error.

Writs of error to bring into the supreme court any cause adjudged or determined in any of the district courts, as provided by law, may be issued by the supreme court, or any justice thereof, if application is made within the time provided by law for the taking of appeals. A writ of error shall issue from the supreme court to the district court only in those actions wherein appellate jurisdiction has not been vested by law in the court of appeals.

History: Laws 1917, ch. 43, § 4; 1927, ch. 93, § 2; C.S. 1929, § 105-2504; 1953 Comp., § 21-10-3.1; Laws 1966, ch. 28, § 37.

39-3-6. Continuation in supreme court and court of appeals.

Cases which are argued or submitted in the supreme court or court of appeals during any term which are not decided during that term shall be deemed continued from term to term until disposed of.

History: Laws 1917, ch. 43, § 42; C.S. 1929, § 105-2524; 1941 Comp., § 19-1004; 1953 Comp., § 21-10-4; Laws 1966, ch. 28, § 38.

39-3-7. Appeals from district court; special statutory proceedings.

Within thirty days from the entry of any final judgment or decision, any interlocutory order or decision which practically disposes of the merits of the action or any final order after entry of judgment which affects substantial rights, in any special statutory proceeding in the district court, any party aggrieved may appeal therefrom to the supreme court or to the court of appeals, as appellate jurisdiction may be vested by law in these courts.

History: Laws 1937, ch. 197, § 1; 1941 Comp., § 19-1005; 1953 Comp., § 21-10-5; Laws 1966, ch. 28, § 39.

39-3-8. Cross appeals.

Cross appeal may be taken by giving notice thereof, as provided for appeals, within thirty days after the entry of any appealable judgment, decision or order, or within fifteen days after receipt of notice of appeal or application for writ of error, whichever is later.

History: 1953 Comp., § 21-10-5.1, enacted by Laws 1966, ch. 28, § 40.

39-3-9. [Title or possession of property involved; supersedeas bond.]

Where an appeal is taken or a writ of error sued out, from a judgment or decree of any district court involving the title to or possession of real or personal property, the trial court shall fix the amount of the supersedeas bond, if supersedeas is granted, for such sum as will indemnify the appellee for all damages that may result from such supersedeas, or from such appeal or writ of error. Said bond shall be conditioned to prosecute the appeal with effect and pay all damages and costs that may result to the appellee, if said appeal or writ of error be dismissed or the judgment or decree appealed from shall be affirmed. In case the title to or possession of real estate is involved in such action, the rental value, and all damages to improvements and waste, shall be considered elements of damages.

History: Laws 1933, ch. 6, § 1; 1941 Comp., § 19-1006; 1953 Comp., § 21-10-6.

39-3-10. [Sections 39-3-9 and 39-3-10 NMSA 1978 supplemental.]

This act [39-3-9, 39-3-10 NMSA 1978] shall not be construed to repeal any existing statutes or rule of the supreme court regulating appellate procedure, except insofar as they may conflict with this act, but shall be construed as supplemental thereto.

History: Laws 1933, ch. 6, § 2; 1941 Comp., § 19-1007; 1953 Comp., § 21-10-7.

39-3-11. Appellate costs.

Amounts to be taxed as costs on appeals and writs of error shall be fixed by rule of procedure.

History: Laws 1917, ch. 43, § 16; 1927, ch. 93, § 4; C.S. 1929, § 105-2512; 1941 Comp., § 19-1008; 1953 Comp., § 21-10-8; Laws 1966, ch. 28, § 41.

39-3-12. Indigent appeals; free process.

In any appeal, the court may grant free process, including the cost of any necessary transcripts of record, to any appellant upon a proper showing of indigency, unless the trial court certifies in writing that the appeal is not taken in good faith. Necessary costs,

including costs of transcripts, shall be paid by the administrative office of the courts. Any costs awarded to an indigent appellant shall be taxed in favor of the state.

History: 1953 Comp., § 21-10-9, enacted by Laws 1977, ch. 163, § 1.

39-3-13. Transcript of record.

The official court reporter shall make an original and as many copies of transcripts of his notes as demanded, and he shall certify and file them with the clerk of the district court. These transcripts, or any portion thereof, may be used for the purpose of making up the record to be taken to the supreme court or court of appeals. The clerk of the district court shall collect the certification fee, but shall receive no compensation for transcribing. Where not otherwise fixed by statute, the court may, by rule, fix the compensation of official court reporters for extra copies filed with the clerk, which shall be paid for in advance, if demanded, by the party ordering them. The amount paid for the original and two copies of the transcript by the party ordering them shall be taxed as costs in the cause.

History: Laws 1897, ch. 73, § 174; C.L. 1897, § 2685 (174); Code 1915, § 4255; C.S. 1929, § 105-1002; 1941 Comp., § 19-1011; 1953 Comp., § 21-10-10; Laws 1966, ch. 28, § 42.

39-3-14. [Appellant may dismiss appeal.]

In all causes appealed, or in any other manner brought from any inferior court to any superior court, the party appealing, or so bringing said suit into the superior court, may, in like manner, dismiss his appeal in the same manner as in the preceding section provided; and when said cause is dismissed, as aforesaid, the judgment in the inferior court shall remain and be in all things as valid, as if said cause had never been removed from said inferior court.

History: Laws 1851-1852, p. 246; C.L. 1865, ch. 30, § 2; C.L. 1884, § 1858; C.L. 1897, § 2907; Code 1915, § 4294; C.S. 1929, § 105-1402; 1941 Comp., § 19-1002; 1953 Comp., § 21-10-11.

39-3-15. Appeals; contempt and habeas corpus.

A. Any person aggrieved by the judgment of the district court in any proceeding for civil contempt, and any person convicted of criminal contempt except criminal contempt committed in the presence of the court, may appeal within thirty days from the judgment of conviction to the supreme court or the court of appeals, as appellate jurisdiction may be vested by law in these courts. Any person convicted of criminal contempt of the court of appeals, except criminal contempt committed in the presence of the court of appeals, may appeal to the supreme court within thirty days from the judgment of conviction. In any case of criminal contempt, the taking of an appeal operates to stay execution of the judgment without bond.

B. In habeas corpus proceedings, where the petitioner is held upon an order, warrant or commitment of any court, and is ordered discharged and released from custody by any district court, the officer having custody of the petitioner, or the district attorney of the district wherein the proceedings are instituted, on behalf of the state, may appeal within thirty days from the order of discharge to the supreme court or the court of appeals, as appellate jurisdiction may be vested by law in these courts. The appeal shall not operate as a stay of execution. If the order of the district court is reversed, the officer from whose custody the petitioner was ordered released, his successor or any other peace officer of the state shall rearrest the petitioner and hold him for trial or commit him to jail or imprisonment as directed by the original order, warrant or commitment.

History: Laws 1917, ch. 43, § 2; C.S. 1929, § 105-2502; 1953 Comp., § 21-10-12; Laws 1966, ch. 28, § 43.

39-3-16. Parties; joinder.

If there are several parties entitled to sue out a writ of error or take an appeal and any of them have separate interests in the judgment; or if the judgment, though joint in form, is substantially against one; or if some of the parties in the district court have no interests in reversing or maintaining the judgment; or if upon notice and request to join in the writ of error or appeal, they fail or refuse to do so; it is not necessary to join these parties in the writ of error or appeal. The supreme court or court of appeals may, on affidavits or from the record, determine whether or not the parties omitted should have been joined.

History: Laws 1917, ch. 43, § 5; C.S. 1929, § 105-2505; 1953 Comp., § 21-10-13; Laws 1966, ch. 28, § 44.

39-3-17. Failure to join.

If any person named in the notice provided for in Section 39-3-16 NMSA 1978 does not join in the writ of error or appeal under terms contained in the notice, upon filing proof of service of the notice, he shall thereby be forever precluded from bringing any writ of error or appeal on the same judgment, order, decision or conviction, and the cause shall proceed in the same manner as if he had been named in the writ of error or appeal.

History: Laws 1917, ch. 43, § 6; C.S. 1929, § 105-2506; 1953 Comp., § 21-10-14; Laws 1966, ch. 28, § 45.

39-3-18. Inability to join.

When the name of any person out of this state or incapable of giving consent to the bringing of a writ of error or taking of an appeal is omitted in the writ of error or appeal, and the cause proceeds without his name, his rights shall not be impaired by the

judgment on the writ of error or appeal, and he may bring his separate writ of error or appeal in the same manner as if no former writ or appeal had been brought.

History: Laws 1917, ch. 43, § 7; C.S. 1929, § 105-2507; 1953 Comp., § 21-10-15; Laws 1966, ch. 28, § 46.

39-3-19. Death of party before review.

If a judgment is rendered against several persons and one or more of them dies, a writ of error or appeal may be brought by any survivors or by the successors in interest of the decedent.

History: Laws 1917, ch. 43, § 9; C.S. 1929, § 105-2509; 1953 Comp., § 21-10-16; Laws 1966, ch. 28, § 47.

39-3-20. Death of party pending review.

If any party to an appeal or writ of error dies after appeal is taken or writ of error sued out, but before final judgment thereon, the appeal or writ of error shall not abate thereby. The death shall be suggested to the supreme court or court of appeals by any surviving party, and the court shall proceed as may be provided by rule of procedure.

History: Laws 1917, ch. 43, § 10; 1927, ch. 93, § 3; C.S. 1929, § 105-2510; 1953 Comp., § 21-10-17; Laws 1966, ch. 28, § 48.

39-3-21. Substitution of parties upon review.

Persons may be substituted as parties or compelled to become parties in cases pending in the supreme court or court of appeals in like time and manner, and with like effect, as provided for in original suits in district courts.

History: Laws 1917, ch. 43, § 14; C.S. 1929, § 105-2511; 1953 Comp., § 21-10-18; Laws 1966, ch. 28, § 49.

39-3-22. Supersedeas and stay in civil actions.

A. There shall be no supersedeas or stay of execution upon any final judgment or decision of the district court in any civil action in which an appeal has been taken or a writ of error sued out unless the appellant or plaintiff in error, or some responsible person for the appellant or plaintiff in error, within sixty days from the entry of the judgment or decision, executes a bond to the adverse party in double the amount of the judgment complained of, with sufficient sureties, and approved by the clerk of the district court in case of appeals or by the clerk of the supreme court in case of writ of error. The bond shall be conditioned for the payment of the judgment and all costs that may be finally adjudged against the appellant or plaintiff in error if the appeal or writ of error is

dismissed or the judgment or decision of the district court is affirmed. The district court, for good cause shown, may grant the appellant not to exceed thirty days' additional time within which to file the bond, and a like extension of time may be granted by the supreme court in cases of writs of error upon a like showing.

B. If the decision appealed from, or from which a writ of error is sued out, is for a recovery other than a fixed amount of money, the amount of the bond, if any, shall be fixed by the district court if an appeal is taken or, in case of a writ of error, by the chief justice or any justice of the supreme court, conditioned that the appellant or plaintiff in error shall prosecute the appeal or writ of error with diligence and that if the decision of the district court is affirmed or the appeal or writ of error is dismissed, the appellant or plaintiff in error will comply with the judgment of the district court and pay all damages and costs finally adjudged against the appellant or plaintiff in error in the district court and in the supreme court or court of appeals on the appeal or writ of error, including any legal damages caused by taking the appeal, whether the damages are assessed upon motion in the cause or in a civil action on the bond.

C. In any civil action involving a signatory, a successor of a signatory or any affiliate of a signatory to the master settlement agreement, as defined in Subsection E of Section 6-4-12 NMSA 1978, the supersedeas bond required of all appellants collectively in order to stay the execution of a judgment during the entire course of appellate review shall not exceed one hundred million dollars ($100,000,000), regardless of the amount of the judgment.

D. Upon approval of a bond provided for in this section and upon filing the bond, in case of appeal with the clerk of the district court and in case of writ of error with the clerk of the supreme court, there shall be a stay of proceedings in the action until the appeal or writ of error is finally determined.

E. In all cases where an appeal has been taken or a writ of error sued out against any interlocutory judgment, order or decision of the district court, from any final order affecting a substantial right made after entry of a final judgment or from any proceeding or conviction of civil contempt, supersedeas may be granted under the provisions of this section, but the bond shall be filed within thirty days from the entry of such judgment, order, decision or conviction and no extension of time for the filing of the bond shall be granted in excess of ten days.

F. Any supersedeas granted under this section in any matter appealed to the supreme court or court of appeals shall automatically continue in effect pending any action or further review that may be taken in the supreme court or court of appeals.

History: Laws 1917, ch. 43, § 17; C.S. 1929, § 105-2513; 1953 Comp., § 21-10-19; Laws 1966, ch. 28, § 50; 2007, ch. 272 , § 1.

39-3-23. Automatic stay.

When the appellant or plaintiff in error is the state, a county or a municipal corporation, the taking of an appeal or suing out of a writ of error operates to stay the execution of the judgment, order or decision of the district court without bond.

History: Laws 1917, ch. 43, § 18; C.S. 1929, § 105-2514; 1953 Comp., § 21-10-20; Laws 1966, ch. 28, § 51.

39-3-24. Discretionary stay.

In all actions of contested elections, mandamus, removal of public officers, quo warranto or prohibition, it is discretionary with the court rendering judgment, or with the supreme court, to allow a supersedeas of the judgment. If the appeal or writ of error is allowed to operate as a supersedeas, it shall be upon terms and conditions the court may deem proper.

History: Laws 1917, ch. 43, § 19; C.S. 1929, § 105-2515; 1953 Comp., § 21-10-21; Laws 1966, ch. 28, § 52.

39-3-25. District court clerk; fees for record.

The clerk of the district court shall collect the following fees from the party suing out a writ of error or taking an appeal:

for making out and certifying the original copy of the record on appeal or writ of error, per typewritten folio	$ .10
for each additional copy, per typewritten folio	.05
for certifying a bill of exceptions furnished by the official court reporter	2.00
for copies of any records reproduced by photographic process, per page	.10

History: Laws 1917, ch. 43, § 24; 1927, ch. 93, § 5; C.S. 1929, § 105-2518; 1953 Comp., § 21-10-22; Laws 1966, ch. 28, § 53.

39-3-26. Disposition after review.

The supreme court or court of appeals in appeals, and the supreme court in writs of error, shall examine the record, and on the facts therein contained alone, shall award a new trial, reverse or affirm the judgment of the district court or give any other judgment it deems agreeable to law. The supreme court or court of appeals shall not decline to pass upon any question of law or fact which may appear in any record, either upon the face of the record or in the bill of exceptions, because the cause was tried by the court without a jury, but shall review the cause in the same manner and to the same extent as if it had been tried by a jury.

History: Laws 1917, ch. 43, § 38; C.S. 1929, § 105-2520; 1953 Comp., § 21-10-23; Laws 1966, ch. 28, § 54.

39-3-27. Award of damages on review.

Upon the affirmation of any judgment or decision, the supreme court or court of appeals may award to the appellee or defendant in error damages not exceeding ten percent of the judgment complained of, as may be deemed just by the court.

History: Laws 1917, ch. 43, § 39; C.S. 1929, § 105-2521; 1953 Comp., § 21-10-24; Laws 1966, ch. 28, § 55.

39-3-28. Directions following review; execution.

The supreme court or court of appeals, on the determination of a cause on appeal or error, may award execution to carry it into effect, or may remit the record with its decision to the district court from which the cause came, and the determination shall be carried into effect by the district court. When any writ of execution sued out of the supreme court or court of appeals is placed in the hands of any officer for levy or collection and the officer fails to find any property from which it may be satisfied, the officer shall notify all persons who may be indebted to the defendant named in the writ not to pay the defendant, but to appear before the district court from which the cause was originally taken by appeal or writ of error and answer on oath concerning his indebtedness. Thereupon, like proceedings shall be had in the district court as in case of garnishees summoned in suits originating by attachment in the district courts.

History: Laws 1917, ch. 43, § 40; C.S. 1929, § 105-2522; 1953 Comp., § 21-10-25; Laws 1966, ch. 28, § 56.

39-3-29. Directions following review; judgment on bond.

If the judgment on review is against the appellant or plaintiff in error, the supreme court or court of appeals shall either render judgment against him and his sureties on the appeal or supersedeas bond, or remand the cause with directions to the district court to enter judgment against him and his sureties on the bond. Execution may issue on any such judgment against the principal and his sureties, either jointly or severally.

History: Laws 1917, ch. 43, § 41; C.S. 1929, § 105-2523; 1953 Comp., § 21-10-26; Laws 1966, ch. 28, § 57.

39-3-30. Costs in civil actions.

In all civil actions or proceedings of any kind, the party prevailing shall recover his costs against the other party unless the court orders otherwise for good cause shown. In all cases triable in the supreme court in the first instance, or removed to the supreme

court or court of appeals upon appeal or writ of error, the taxation of costs shall be in the discretion of the reviewing court except in those cases in which a different provision is made by law.

History: Kearny Code, Costs, § 1; C.L. 1865, ch. 45, § 1; C.L. 1884, § 2202; C.L. 1897, § 3148; Code 1915, § 4282; Laws 1917, ch. 45, § 1; C.S. 1929, § 105-1301; Laws 1933, ch. 16, § 1; 1953 Comp., § 21-10-27; Laws 1966, ch. 28, § 58.

ARTICLE 4
Recovery on Judgments

39-4-1. [Right to execution; issuance; levy and sale; jurisdiction.]

The party in whose favor any judgment, order or decree in any court may be returned, shall have execution therefor in conformity to the order, judgment or decree. Said execution may be issued to the sheriff of any county of the state, and levy and sale made in any county wherein the judgment debtor may have property subject to execution.

The court where the judgment or decree was rendered shall have jurisdiction over all matters growing out of the levy or sale under any execution.

History: Kearny Code, Executions, § 1; C.L. 1865, ch. 34, § 1; C.L. 1884, § 2157; C.L. 1897, § 3105; Code 1915, § 2190; Laws 1919, ch. 60, § 1; C.S. 1929, § 46-101; 1941 Comp., § 21-101; 1953 Comp., § 24-1-1.

39-4-2. [Property subject to execution.]

The execution shall be against the goods, chattels and lands of the defendant against whom the judgment, order or decree shall be rendered: provided, that executions from justices of the peace [magistrate courts] shall not go against lands.

History: Kearny Code, Executions, § 2; C.L. 1865, ch. 34, § 2; C.L. 1884, § 2158; C.L. 1897, § 3106; Code 1915, § 2191; C.S. 1929, § 46-102; 1941 Comp., § 21-102; 1953 Comp., § 24-1-2.

39-4-3. [Levy; insufficient property; garnishment proceedings.]

When any execution shall be placed in the hands of any officer for collection, he shall call upon the defendant for payment thereof, or to show him sufficient goods, chattels, effects and lands, whereof the same may be satisfied; and if the officer fail to find property sufficient to make the same he shall notify all persons who may be indebted to said defendant not to pay said defendant, but to appear before the court, out of which said execution issued, and make true answers, on oath, concerning his

indebtedness, and the like proceedings shall be had as in cases of garnishees, summoned in suits originating by attachments.

History: Kearny Code, Executions, § 3; C.L. 1865, ch. 34, § 3; C.L. 1884, § 2159; C.L. 1897, § 3107; Laws 1901, ch. 49, § 1; Code 1915, § 2192; C.S. 1929, § 46-103; 1941 Comp., § 21-103; 1953 Comp., § 24-1-3.

39-4-4. Filing notice of levy on real estate; recording and indexing; release of levy.

A. Any peace officer making a levy on real estate under execution or writ of attachment shall file a notice of the levy in the office of the county clerk of the county where located, describing the real estate levied upon, the title and number of the case and the amount of the debt or judgment. A certificate of the facts recited in the notice, under the hand and seal of the peace officer, shall be sufficient to entitle the instrument to record.

B. The county clerk shall record the notice of levy and shall index it in the records of the county clerk's office, and when so filed it shall be notice to the public of the facts therein recited.

C. When the debt for which a levy is made has been satisfied, or if directed by the plaintiff or the plaintiff's attorney, the peace officer shall file a release of the levy under the peace officer's official hand and seal, in the office of the county clerk.

History: Laws 1933, ch. 13, § 1; 1941 Comp., § 21-104; 1953 Comp., § 24-1-4; 2013, ch. 214, § 11.

39-4-5. Repealed.

History: Laws 1933, ch. 13, § 2; 1941 Comp., § 21-105; 1953 Comp., § 24-1-5; 1978 comp., § 39-4-5, repealed by Laws 2013, ch. 214, § 14.

39-4-6. Repealed.

History: Laws 1933, ch. 13, § 3; 1941 Comp., § 21-106; 1953 Comp., § 24-1-6; 1978 Comp., § 39-4-6, repealed by Laws 2013, ch. 214, § 14.

39-4-7. [Bond to retain possession of goods until sale.]

The person whose goods are taken on execution, may retain possession thereof until the day of sale, by giving bond in favor of the plaintiff with sufficient security to be approved by the officer in double the value of such property, conditioned for the delivery of the property to the officer at the time and place of sale, to be named in such bond, which bond shall be returned with the execution.

History: Kearny Code, Executions, § 6; C.L. 1865, ch. 34, § 6; C.L. 1884, § 2162; C.L. 1897, § 3110; Code 1915, § 2193; C.S. 1929, § 46-104; 1941 Comp., § 21-107; 1953 Comp., § 24-1-7.

39-4-8. [Failure to return bond; insufficient bond; liability of officer.]

Upon the failure of the officer to return such bond, or in case of its insufficiency, the officer shall be subjected to the same liability as is provided in the case of similar bonds in suits commenced by attachment.

History: Kearny Code, Executions, § 7; C.L. 1865, ch. 34, § 7; C.L. 1884, § 2163; C.L. 1897, § 3111; Code 1915, § 2194; C.S. 1929, § 46-105; 1941 Comp., § 21-108; 1953 Comp., § 24-1-8.

39-4-9. [Time limit on return of district court executions; sale; control of writ.]

All the executions taken out of district courts shall be returned within sixty days from the date of the delivery thereof, to the sheriff or other officer, or person whose duty it is or who may be designated to serve the same; and such sheriff, or other officer or person, may offer for sale, and sell at public auction, at such time and place as may be designated, any real estate taken by virtue of such execution, complying with the provisions of the law, providing for appraisements, and by giving twenty days public notice of the time and place of the sale, in the manner provided by law. All personal property, taken by virtue of any execution, may be sold as provided by law. All executions may issue on application, and the service and return thereof shall be controlled by the plaintiff or his agent.

History: Laws 1873-1874, ch. 15, § 2; C.L. 1884, § 2168; C.L. 1897, § 3117; Code 1915, § 2200; C.S. 1929, § 46-111; 1941 Comp., § 21-109; 1953 Comp., § 24-1-9.

39-4-10. [Execution against sureties.]

No execution shall issue against any security on any promissory note, bond, bond for costs, appeal bond or other obligation for the payment of money or property, until execution shall have been first issued against the principal in any such note or obligation, and levied upon all the real estate or other property of said principal, which may be within the jurisdiction of the court, in which the judgment may have been rendered: provided, that whenever the plaintiff in any such execution shall file in the court, in which the judgment is pending, an affidavit in relation to such security or securities similar to the one required by law to be filed previous to issuing an attachment, then in such case execution shall issue simultaneously against the principal and the security against whom the said affidavit be filed.

History: Laws 1856-1857, p. 42; C.L. 1865, ch. 34, § 18; C.L. 1884, § 2170; C.L. 1897, § 3118; Code 1915, § 2201; C.S. 1929, § 46-112; 1941 Comp., § 21-111; 1953 Comp., § 24-1-19.

39-4-11. [Execution against corporation; information to be furnished.]

Every agent or person having charge or control of any property of a corporation, on request of any public officer, having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due to it so far as he may have knowledge of the same.

History: Laws 1905, ch. 79, § 68; Code 1915, § 952; C.S. 1929, § 32-170; 1941 Comp., § 21-112; 1953 Comp., § 24-1-20.

39-4-12. [Assignment of debts due corporation.]

If any officer, holding an execution shall be unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution, in whole or in part, by any debts due to the corporation; and it shall be the duty of any agent or person having custody of any evidence of such debt to deliver the same to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor, and [sic] shall be a valid assignment thereof; and such creditor may sue for and collect the same in the name of the corporation, subject to such equitable set-offs on the part of the debtor as in other assignments; and every agent or person who shall neglect or refuse to comply with the provisions of this and the last preceding section [39-4-11 NMSA 1978], shall be himself liable to pay to the execution creditor the amount due on said execution, with costs.

History: Laws 1905, ch. 79, § 69; Code 1915, § 953; C.S. 1929, § 32-171; 1941 Comp., § 21-113; 1953 Comp., § 24-1-21.

39-4-13. [Judgment lien on real estate; foreclosure suit; sale.]

Any person holding a judgment lien on any real estate situated in this state may subject said real estate to the payment of his judgment by a foreclosure suit in any court of competent jurisdiction, such suit to be instituted and prosecuted in the same manner as ordinary suits for the foreclosure of mortgages, and the sale thereunder to be held in the same manner and subject to the same rights of redemption as in sales held under mortgage foreclosure decrees.

History: Laws 1933, ch. 7, § 1; 1941 Comp., § 21-114; 1953 Comp., § 24-1-22.

39-4-14. [Execution and appraisal not prerequisites to bringing of suit.]

Neither the issuance or levy of execution shall be a prerequisite to the bringing of such suit, nor shall any appraisal of the real estate be required.

History: Laws 1933, ch. 7, § 2; 1941 Comp., § 21-115; 1953 Comp., § 24-1-23.

39-4-15. [Pleading claim of exemption.]

The defendant, if he desires to claim such real estate or any part thereof as an exemption allowed by law, shall set up his claim of exemption by answer in such foreclosure suit.

History: Laws 1933, ch. 7, § 3; 1941 Comp., § 21-116; 1953 Comp., § 24-1-24.

39-4-16. [Procedure not exclusive; existing remedies unaltered.]

The method of procedure provided by this act [39-4-13 to 39-4-16 NMSA 1978] shall be available to the holder of the judgment lien at his option, but shall not be exclusive. Nothing herein contained shall be construed as diminishing or altering any existing remedies, by execution or otherwise, now afforded by law to a judgment creditor.

History: Laws 1933, ch. 7, § 4; 1941 Comp., § 21-117; 1953 Comp., § 24-1-25.

ARTICLE 4A
Foreign Judgments

39-4A-1. Short title.

This act [39-4A-1 to 39-4A-6 NMSA 1978] may be cited as the "Foreign Judgments Act".

History: Laws 1989, ch. 256, § 1.

39-4A-2. Definitions.

As used in the Foreign Judgments Act "foreign judgment" means any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

History: Laws 1989, ch. 256, § 2.

39-4A-3. Filing and status of foreign judgments.

A. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of the district court of any county of this state in which the judgment debtor resides or has any property or property rights subject to execution, foreclosure, attachment or garnishment. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed shall have the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, staying, enforcing or satisfying as a judgment of the district court of this state and may be enforced or satisfied in like manner, except as provided in Subsection B of this section.

B. All property in this state of a judgment debtor is exempt from execution issuing from a foreign judgment filed pursuant to Subsection A of this section that is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

History: Laws 1989, ch. 256, § 3; 1994, ch. 48, § 2.

39-4A-4. Notice of filing.

A. At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the district court an affidavit setting forth the name and last known address of the judgment debtor and the judgment creditor.

B. Promptly upon the filing of the foreign judgment and the affidavit, the clerk of the district court shall mail a notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and address of the judgment creditor and his attorney, if any, in this state. In addition, the judgment creditor shall mail a notice of the filing of the judgment to the judgment debtor, certified mail, and shall file proof of the mailing with the clerk.

C. No execution or other process for enforcement of a foreign judgment filed pursuant to this section shall issue until twenty days after the date the judgment is filed.

History: Laws 1989, ch. 256, § 4.

39-4A-5. Stay.

A. If the judgment debtor shows the district court that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

B. If the judgment debtor shows the district court sufficient grounds upon which enforcement of a judgment of any district court of this state would be stayed, the court

shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction that is required in this state.

History: Laws 1989, ch. 256, § 5.

39-4A-6. Optional procedure.

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under the Foreign Judgments Act remains unimpaired.

History: Laws 1989, ch. 256, § 6.

ARTICLE 4B
Foreign Money-Judgments Recognition (Repealed.)

39-4B-1. Repealed.

History: Laws 1991, ch. 180, § 1; repealed by Laws 2009, ch. 142, § 12.

39-4B-2. Repealed.

History: Laws 1991, ch. 180, § 2; repealed by Laws 2009, ch. 142, § 12.

39-4B-3. Repealed.

History: Laws 1991, ch. 180, § 3; repealed by Laws 2009, ch. 142, § 12.

39-4B-4. Repealed.

History: Laws 1991, ch. 180, § 4; repealed by Laws 2009, ch. 142, § 12.

39-4B-5. Repealed.

History: Laws 1991, ch. 180, § 5; repealed by Laws 2009, ch. 142, § 12.

39-4B-6. Repealed.

History: Laws 1991, ch. 180, § 6; repealed by Laws 2009, ch. 142, § 12.

39-4B-7. Repealed.

History: Laws 1991, ch. 180, § 7; repealed by Laws 2009, ch. 142, § 12.

39-4B-8. Repealed.

History: Laws 1991, ch. 180, § 8; repealed by Laws 2009, ch. 142, § 12.

39-4B-9. Repealed.

History: Laws 1991, ch. 180, § 9; repealed by Laws 2009, ch. 142, § 12.

ARTICLE 4C
Foreign-Money Claims

39-4C-1. Short title.

Sections 1 through 16 [39-4C-1 to 39-4C-16 NMSA 1978] of this act may be cited as the Uniform Foreign-Money Claims Act.

History: Laws 1991, ch. 181, § 1.

39-4C-2. Definitions.

As used in the Uniform Foreign-Money Claims Act:

A. "action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim;

B. "bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate;

C. "conversion date" means the banking day next preceding the date on which money, in accordance with the Uniform Foreign-Money Claims Act, is:

(1) paid to a claimant in an action or distribution proceeding;

(2) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(3) used to recoup, set-off or counterclaim in different moneys in an action or distribution proceeding;

D. "distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity and the distribution of an estate, trust or other fund;

E. "foreign money" means money other than money of the United States of America;

F. "foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money;

G. "money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement;

H. "money of the claim" means the money determined as proper pursuant to Section 5 [39-4C-5 NMSA 1978] of the Uniform Foreign-Money Claims Act;

I. "person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest or any other legal or commercial entity;

J. "rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion; if separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim;

K. "spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next-day availability or for settlement by immediate payment in cash or equivalent, by charge to an account or by an agreed delayed settlement not exceeding two days; and

L. "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States.

History: Laws 1991, ch. 181, § 2.

39-4C-3. Scope.

A. The Uniform Foreign-Money Claims Act applies only to a foreign-money claim in an action or distribution proceeding.

B. The Uniform Foreign-Money Claims Act applies to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding.

History: Laws 1991, ch. 181, § 3.

39-4C-4. Variation by agreement.

A. The effect of the Uniform Foreign-Money Claims Act may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

B. Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

History: Laws 1991, ch. 181, § 4.

39-4C-5. Determining money of the claim.

A. The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

B. If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(1) regularly used between the parties as a matter of usage or course of dealing;

(2) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) in which the loss was ultimately felt or will be incurred by the party claimant.

History: Laws 1991, ch. 181, § 5.

39-4C-6. Determining amount of the money of certain contract claims.

A. If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

B. If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

C. A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

History: Laws 1991, ch. 181, § 6.

39-4C-7. Asserting and defending foreign-money claim.

A. A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

B. An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

C. A person may assert a defense, set-off, recoupment or counterclaim in any money without regard to the money of other claims.

D. The determination of the proper money of the claim is a question of law.

History: Laws 1991, ch. 181, § 7.

39-4C-8. Judgments and awards on foreign-money claims; times of money conversion; form of judgment.

A. Except as provided in Subsection C of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

B. A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate.

C. Assessed costs must be entered in United States dollars.

D. Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

E. A judgment or award made in an action or distribution proceeding on both a defense, set-off, recoupment or counterclaim, and the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.

F. A judgment substantially in the following form complies with Subsection A of this section: "It is the judgment of this court that Defendant _____(insert name)_____ pay to Plaintiff _____(insert name)_____ the sum of _____(insert amount in the foreign money)_____ plus interest on that sum at the rate of _____(insert rate - see Section 10 of the Uniform Foreign-Money Claims Act)_____ percent a year or, at the option of the judgment debtor, the number of United States dollars that will purchase the _____(insert name of foreign money)_____ with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of _____(insert amount)_____ United States dollars.".

G. If a contract claim is of the type covered by Subsection A or B of Section 6 of the Uniform Foreign-Money Claims Act, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars that will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

H. A judgment shall be filed, docketed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

History: Laws 1991, ch. 181, § 8.

39-4C-9. Conversions of foreign money in distribution proceeding.

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

History: Laws 1991, ch. 181, § 9.

39-4C-10. Pre-judgment and judgment interest.

A. With respect to a foreign-money claim, recovery of pre-judgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in Subsection B of this section, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.

B. The court or arbitrator shall increase or decrease the amount of pre-judgment or pre-award interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

C. A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

History: Laws 1991, ch. 181, § 10.

39-4C-11. Enforcement of foreign judgments.

A. If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in Section 8 [39-4C-8 NMSA 1978] of the Uniform Foreign-Money Claims Act, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

B. A foreign judgment may be filed and docketed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

C. A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

D. A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

History: Laws 1991, ch. 181, § 11.

39-4C-12. Determining United States dollar value of foreign-money claims for limited purposes.

A. Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

B. For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in Subsections C and D of this section.

C. A party seeking process, costs, bond or other undertaking under Subsection B of this section shall compute in United States dollars the amount of the foreign-money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

D. A party seeking the process, costs, bond or other undertaking under Subsection B of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

History: Laws 1991, ch. 181, § 12.

39-4C-13. Effect of currency revalorization.

A. If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

B. If substitution under Subsection A of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

History: Laws 1991, ch. 181, § 13.

39-4C-14. Supplementary general principles of law.

Unless displaced by particular provisions of the Uniform Foreign-Money Claims Act, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating causes supplement its provisions.

History: Laws 1991, ch. 181, § 14.

39-4C-15. Uniformity of application and construction.

The Uniform Foreign-Money Claims Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

History: Laws 1991, ch. 181, § 15.

39-4C-16. Severability clause.

If any provision of the Uniform Foreign-Money Claims Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

History: Laws 1991, ch. 181, § 16.

ARTICLE 4D
Uniform Foreign-Country Money Judgments Recognition Act

39-4D-1. Short title.

This act may be cited as the "Uniform Foreign-Country Money Judgments Recognition Act".

History: Laws 2009, ch. 142, § 1.

39-4D-2. Definitions.

As used in the Uniform Foreign-Country Money Judgments Recognition Act:

A. "foreign country" means a government other than:

(1) the United States;

(2) a state, district, commonwealth, territory or insular possession of the United States; or

(3) any other government with regard to which the decision in this state as to whether to recognize the judgments of that government's court is initially subject to determination under the full faith and credit clause of the United States constitution;

B. "foreign-country judgment" means a judgment of a court of a foreign country; and

C. "foreign court" means a court of a foreign country.

History: Laws 2009, ch. 142, § 2.

39-4D-3. Application.

A. Except as otherwise provided in Subsection B of this section, the Uniform Foreign-Country Money Judgments Recognition Act applies to a foreign-country judgment to the extent that the foreign-country judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final, conclusive and enforceable.

B. The Uniform Foreign-Country Money Judgments Recognition Act does not apply to a foreign-country judgment, even if the foreign-country judgment grants or denies recovery of a sum of money, to the extent that the foreign-country judgment is:

(1) a judgment for taxes;

(2) a fine or other penalty; or

(3) a judgment for divorce, support or maintenance, or other judgment rendered in connection with domestic relations.

C. The party seeking recognition of a foreign-country judgment has the burden of establishing that the Uniform Foreign-Country Money Judgments Recognition Act applies to the foreign-country judgment.

History: Laws 2009, ch. 142, § 3.

39-4D-4. Standards for recognition of foreign-country judgment.

A. Except as otherwise provided in Subsections B and C of this section, a court of this state shall recognize a foreign-country judgment to which the Uniform Foreign-Country Money Judgments Recognition Act applies.

B. A court of this state shall not recognize a foreign-country judgment if:

(1) the foreign-country judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

C. A court of this state need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the foreign-country judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) the foreign-country judgment or the cause of action on which the foreign-country judgment is based is repugnant to the public policy of this state or of the United States;

(4) the foreign-country judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the foreign-country judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the foreign-country judgment; or

(8) the specific proceeding in the foreign court leading to the foreign-country judgment was not compatible with the requirements of due process of law.

D. The party resisting recognition of the foreign-country judgment has the burden of establishing that one of the grounds for nonrecognition stated in Subsection B or C of this section exists.

History: Laws 2009, ch. 142, § 4.

39-4D-5. Personal jurisdiction.

A. A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

B. The list of bases for personal jurisdiction in Subsection A of this section is not exclusive, and the courts of this state may recognize bases of personal jurisdiction other than those listed in Subsection A of this section as sufficient to support a foreign-country judgment.

History: Laws 2009, ch. 142, § 5.

39-4D-6. Procedure for recognition of foreign-country judgment.

A. If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

B. If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim or affirmative defense.

History: Laws 2009, ch. 142, § 6.

39-4D-7. Effect of recognition of foreign-country judgment.

If the court in a proceeding pursuant to Section 6 [39-4D-6 NMSA 1978] of the Uniform Foreign-Country Money Judgments Recognition Act finds that the foreign-country judgment is entitled to recognition under that act, then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

A. conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

B. enforceable in the same manner and to the same extent as a judgment rendered in this state.

History: Laws 2009, ch. 142, § 7.

39-4D-8. Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires or the party appealing has had sufficient time to prosecute the appeal and has failed to do so.

History: Laws 2009, ch. 142, § 8.

39-4D-9. Statute of limitations.

An action to recognize a foreign-country judgment shall be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country.

History: Laws 2009, ch. 142, § 9.

39-4D-10. Saving clause.

The Uniform Foreign-Country Money Judgments Recognition Act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of that act.

History: Laws 2009, ch. 142, § 10.

39-4D-11. Uniformity of interpretation.

In applying and construing the Uniform Foreign-Country Money Judgments Recognition Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2009, ch. 142, § 11.

ARTICLE 5
Sales Under Execution and Foreclosure

39-5-1. [Time and notice of judicial sales.]

That no lands, tenements, goods or chattels shall be sold by virtue of any execution or other process, including chattel or real estate mortgages, unless such sale be at public vendue, between the hours of nine in the morning and the setting of the sun of the same day, nor unless the time and place of holding such sale and full description of property to be sold shall have previously been published for four weeks preceding said sale in English or Spanish, as the officer conducting said sale in his judgment may deem will give the most extensive notice in the county in which said property is situate,

or, if there be no newspaper printed in said county, then in the newspaper chosen as the official paper for said county, and also by posting six such notices printed or written or partly printed or written in six of the most public places in said county.

History: Laws 1895, ch. 37, § 1; C.L. 1897, § 3113; Code 1915, § 2195; C.S. 1929, § 46-106; 1941 Comp., § 21-201; 1953 Comp., § 24-2-1.

39-5-1.1. Judicial sales of perishable property; court order; petition; hearing.

In all cases of the sale of perishable goods by virtue of any execution or other process pursuant to the provisions of Section 39-5-1 NMSA 1978 or by virtue of the foreclosure of a landlord's lien pursuant to the provisions of Section 48-3-14 NMSA 1978, when the property being sold is of a perishable nature and liable to be lost or diminished in value before the time for the notice required for such sale has elapsed, the judgment creditor or the lienholder may petition the judge of the district court having jurisdiction, setting forth the kind, nature and condition of the property being sold, its approximate value and the possibility of damage to its value. If the judge finds the petition sufficient in form and conditions, he may hear testimony of witnesses as to the property and if he believes that the interests of both the owner of the goods and the lienholder or judgment creditor will be protected by the sale, he may order such sale to be made, may order the posting of appropriate security and may direct the manner of such sale.

History: Laws 1981, ch. 13, § 1.

39-5-1.2. ["Real estate" and "real property" defined.]

As used in Chapter 39, Article 5 NMSA 1978 "real estate" or "real property" includes leaseholds. As used in this section, "leasehold" means an estate in real estate or real property held under a lease.

History: 1978 Comp., § 39-5-1.2, enacted by Laws 1991, ch. 234, § 2.

39-5-2. [Unlawful sales; liability of officer.]

If any sheriff or other person shall sell any lands, tenements, goods or chattels by virtue of any process otherwise than in the manner aforesaid or without such previous notice, the sheriff or other person so offending shall for every offense, forfeit and pay the sum of fifty dollars [($50.00)] with costs of suit in any district court in this territory [state], to be recovered by the person whose lands are sold.

History: Laws 1895, ch. 37, § 2; C.L. 1897, § 3114; Code 1915, § 2196; C.S. 1929, § 46-107; 1941 Comp., § 21-202; 1953 Comp., § 24-2-2.

39-5-3. [Contents of sale notices.]

All notices of sale by sheriffs under execution, order or decree of any district court in this state shall contain as briefly as possible the style or title of the cause in which said judgment, order or decree was obtained, the nature of the action, the date of the rendition of said judgment, or the making of said order or decree, the amount thereof, with interest to date of sale, and the description of the property to be sold, sufficient for the complete identification thereof, together with a statement of the date, hour and conditions of said sale.

History: Laws 1887, ch. 36, § 4; C.L. 1897, § 3115; Code 1915, § 2198; C.S. 1929, § 46-109; 1941 Comp., § 21-203; 1953 Comp., § 24-2-3.

39-5-4. [Notice of sale for personal property not exceeding three hundred dollars.]

That hereafter when personal property shall be sold under execution issued out of any justice court [magistrate court], or from the district court, when the property seized under execution does not exceed three hundred dollars, ($300.00), notice of such sale may be given by posting written or printed notices of such sale at least ten days prior to the date of sale in at least five public places in the county, one of which places shall be at the courthouse in said county, and one at the place where said sale is to be held.

History: Laws 1931, ch. 8, § 1; 1935, ch. 68, § 1; 1941 Comp., § 21-204; 1953 Comp., § 24-2-4.

39-5-5. [Limit on sale price of real estate.]

No real property shall be sold on any execution issued out of any court in any case at law for less than two-thirds of the appraised cash value thereof, exclusive of liens and encumbrances.

History: Laws 1856-1857, p. 66; C.L. 1865, ch. 34, § 21; Laws 1884, ch. 11, § 1; C.L. 1884, § 2171; C.L. 1897, § 3119; Code 1915, § 2202; C.S. 1929, § 46-113; 1941 Comp., § 21-205; 1953 Comp., § 24-2-5.

39-5-6. [Sheriff to ascertain value.]

The sheriff, between the days of levying the execution and the sale of the property, shall proceed to ascertain the cash value of such property as follows:

History: Laws 1856-1857, p. 66; C.L. 1865, ch. 34, § 22; C.L. 1884, § 2172; C.L. 1897, § 3120; Code 1915, § 2203; C.S. 1929, § 46-114; 1941 Comp., § 21-206; 1953 Comp., § 24-2-6.

39-5-7. [Selection of appraisers; appraisal.]

For that purpose two disinterested householders of the neighborhood where the levy is made shall be selected as appraisers, one of whom shall be selected by each of the parties or their agents, or in the absence of either party or his agent, or upon the refusal of either party, after three days' notice by the sheriff to make the selection, the sheriff shall proceed to select the appraisers, who shall proceed to appraise the property according to its cash value at the time, deducting liens and encumbrances; and in case of their disagreement as to the value thereof, they shall select a like disinterested appraiser, and with his assistance shall complete the valuation, and the appraisement of any two of them shall be deemed the cash value.

History: Laws 1856-1857, p. 66; C.L. 1865, ch. 34, § 23; C.L. 1884, § 2173; C.L. 1897, § 3121; Code 1915, § 2204; C.S. 1929, § 46-115; 1941 Comp., § 21-207; 1953 Comp., § 24-2-7.

39-5-8. [Appraiser failing to act.]

In case any appraiser shall fail to act or to complete such valuation, another shall be chosen in his stead as above provided.

History: Laws 1856-1857, p. 66; C.L. 1865, ch. 34, § 24; C.L. 1884, § 2174; C.L. 1897, § 3122; Code 1915, § 2205; C.S. 1929, § 46-116; 1941 Comp., § 21-208; 1953 Comp., § 24-2-8.

39-5-9. [Schedule of property.]

The sheriff shall furnish the appraisers with a schedule of the property levied on with the encumbrances made known to him, and they shall proceed to fix, and set down opposite to each tract, lot or parcel of real estate, the cash value, deducting liens and encumbrances, which schedule shall be returned to the sheriff.

History: Laws 1856-1857, p. 68; C.L. 1865, ch. 34, § 26; C.L. 1884, § 2175; C.L. 1897, § 3123; Code 1915, § 2206; C.S. 1929, § 46-117; 1941 Comp., § 21-209; 1953 Comp., § 24-2-9.

39-5-10. [No duty to ascertain amount of liens.]

It shall not be the duty of the sheriff or appraisers to ascertain the amount of liens or encumbrances, but either party may furnish the sheriff with a list thereof, with the amount and nature of each.

History: Laws 1856-1857, p. 66; C.L. 1865, ch. 34, § 25; C.L. 1884, § 2176; C.L. 1897, § 3124; Code 1915, § 2207; C.S. 1929, § 46-118; 1941 Comp., § 21-210; 1953 Comp., § 24-2-10.

39-5-11. [Oath of appraisers.]

The appraisers shall take and subscribe an oath annexed to such appraisements, to the effect that the property mentioned in the schedule is, to the best of their judgment, worth the sums specified therein, that the same is the fair cash value thereof at the time, exclusive of liens and encumbrances; which oath the sheriff is authorized to administer and attest when taken and subscribed by the appraisers.

History: Laws 1856-1857, p. 68; C.L. 1865, ch. 34, § 27; C.L. 1884, § 2177; C.L. 1897, § 3125; Code 1915, § 2208; C.S. 1929, § 46-119; 1941 Comp., § 21-211; 1953 Comp., § 24-2-11.

39-5-12. [Unsold property; return.]

When any property levied on remains unsold, it shall be the duty of the sheriff, when he returns the execution, to return the appraisement therewith, stating in his return the failure to sell, and the cause of the failure.

History: Laws 1856-1857, p. 68; C.L. 1865, ch. 34, § 29; C.L. 1884, § 2179; C.L. 1897, § 3127; Code 1915, § 2210; C.S. 1929, § 46-121; 1941 Comp., § 21-212; 1953 Comp., § 24-2-12.

39-5-13. [Lien continues; alias writ.]

The lien of the levy upon the property shall continue until the debt is paid, and the clerk, unless otherwise directed by the plaintiff, shall forthwith issue another execution, reciting the return of the former execution, the levy and failure to sell, and directing the sheriff to satisfy the judgment out of the property unsold, if the same is sufficient, if not, then out of any other property of the debtor, subject to execution.

History: Laws 1856-1857, p. 68; C.L. 1865, ch. 34, § 30; C.L. 1884, § 2180; C.L. 1897, § 3128; Code 1915, § 2211; C.S. 1929, § 46-122; 1941 Comp., § 21-213; 1953 Comp., § 24-2-13.

39-5-14. [Reoffer of unsold property; costs; revaluation.]

Whenever any property levied upon remains unsold for want of buyers, the plaintiff may cause the same to be reoffered at any time before the return day of the execution, at his cost, as often as he may direct, but in case of the sale of the property, the costs of such offer and sale shall be taxed against the defendant; each party may have one revaluation of the property, at his costs, after the first offer to sell.

History: Laws 1856-1857, p. 68; C.L. 1865, ch. 34, § 31; C.L. 1884, § 2181; C.L. 1897, § 3129; Code 1915, § 2212; C.S. 1929, § 46-123; 1941 Comp., § 21-214; 1953 Comp., § 24-2-14.

39-5-15. [Foreclosure; lien claimed by deceased; making unknown heirs and devisees parties defendant.]

In all actions brought for the foreclosure of any real estate mortgage or deed of trust where the plaintiff alleges in his complaint that any person who is now deceased, during his lifetime, claimed a lien upon the real estate described in said mortgage or trust deed and further alleges either that there has been no administration of such decedent's estate, or that the plaintiff is unable to ascertain the names, residences and whereabouts of the heirs, devisees or legatees of such deceased person he may make such unknown heirs, legatees and devisees of any such deceased person parties defendant to said cause under the name, style and designation of "unknown heirs, devisees, or legatees, of (here insert name of deceased person), deceased"; and service of process on and notice of said suit against such defendants shall be made as provided by law and the rules of court.

History: Laws 1937, ch. 134, § 1; 1941 Comp., § 21-216; 1953 Comp., § 24-2-16.

39-5-16. Foreclosure after March 15; growing crops.

In cases of mortgage foreclosures of property on which there is a growing crop and when the proceeding has been commenced after March 15 of any year, the mortgagor shall not be dispossessed by any means whatsoever until the crop has been fully harvested, and the mortgagor shall be entitled to retain the crops; provided, however, that the mortgage instrument may provide otherwise.

History: Laws 1934 (S.S.), ch. 26, § 1; 1941 Comp., § 21-217; 1953 Comp., § 24-2-17; 1991, ch. 229, § 1.

39-5-17. Time for sale under judgment or decree of foreclosure; avoidance of sale.

No real property shall be sold under any judgment or decree of court foreclosing any mechanic's or materialman's lien, mortgage, mortgage deed, trust deed or any other written instrument which may operate as a mortgage, until thirty days after the date of entry thereof, within which time the then owner of the real estate, his heirs, personal representatives, assigns or any junior lienholder may pay off the judgment or decree and avoid the sale by depositing in the office of the clerk of the district court in which the judgment, decree or order was entered the amount necessary to make payment thereof, including accrued interest and costs of suit.

History: Laws 1931, ch. 149, § 1; 1941 Comp., § 21-218; 1953 Comp., § 24-2-18; Laws 1971, ch. 88, § 1.

39-5-18. Redemption of real property sold under judgment or decree of foreclosure; notice and hearing; redemption amount; priority of redemption rights.

A. After sale of real estate pursuant to the order, judgment or decree of foreclosure in the district court, the real estate may be redeemed by the former defendant owner of the real estate or by any junior mortgagee or other junior lienholder whose rights were judicially determined in the foreclosure proceeding:

(1) by paying to the purchaser, at any time within nine months from the date of sale, 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 pending foreclosure case in the district court in which the order, judgment or decree of foreclosure was entered 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 nine months from the date of sale. Copies of the petition for redemption shall be served upon the purchaser of the real estate at the judicial foreclosure sale and upon all parties who appeared in the judicial foreclosure case; and

(3) the former defendant owner shall have the first priority to redeem the real estate. If the former defendant owner does not redeem the real estate as provided in this subsection, each junior mortgagee or junior lienholder 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 mortgages or liens, as set forth in the court order, judgment or decree of foreclosure or as otherwise determined by the court. All redemptions must be made within the time periods set forth in Paragraphs (1) and (2) of this subsection.

B. The purchaser of real estate at a foreclosure sale, upon being served with the petition for redemption of the property, shall answer the petition within thirty days after service of the petition.

C. The hearing shall be governed by the rules of civil procedure and shall be set upon the earlier of the filing of a redemption by the former defendant owner or the expiration of the period for filing a redemption. 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 Subsection A 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 it deems just.

D. As used in this section, the terms "owner", "junior mortgagee", "junior lienholder" and "purchaser" include their respective personal representatives, heirs, successors and assigns.

E. For the purpose of this section, "date of sale" means the date the district court order confirming the special master's report is filed in the office of the clerk of the court.

F. The nine-month redemption period provided in this section is subject to modification pursuant to the provisions of Section 39-5-19 NMSA 1978.

G. A trustee's sale pursuant to a power of sale in a deed of trust as provided in the Deed of Trust Act is not a sale of real estate pursuant to a judgment or decree of a court. A redemption after a trustee's sale is governed by the Deed of Trust Act.

History: Laws 1931, ch. 149, § 2; 1941 Comp., § 21-219; 1953 Comp., § 24-2-19; Laws 1957, ch. 109, § 1; 1977, ch. 85, § 1; 1987, ch. 61, § 24; 2007, ch. 156, § 1.

39-5-19. Application; shorter redemption period.

This section and Section 39-5-18 NMSA 1978 do not apply to any foreclosure sale made before the effective date of this section. The parties to any such instrument may, by its terms, shorten the redemption period to not less than one month, but the district court may in such cases, upon a sufficient showing before judgment that redemption will be effected, increase the period of redemption to not to exceed nine months notwithstanding the terms of such instrument.

History: 1953 Comp., § 24-2-19.1, enacted by Laws 1957, ch. 109, § 2; 1965, ch. 224, § 1.

39-5-20. Repealed.

39-5-21. [Redemption of real property sold on execution.]

When any real estate shall be sold under a writ of execution issued out of the district court upon any money judgment against a defendant or defendants, the defendants or any one defendant, where there shall be more than one defendant, the heirs, personal representatives or assigns of said defendant or defendants may redeem the property within nine months after the sale thereof, by paying to the purchaser, his personal representatives or assigns, the amount paid with interest thereon at the rate of ten per centum per annum from the date of sale, together with any and all taxes, penalties and interest thereon paid by the purchaser, together with ten per centum interest per annum upon the amount so paid for taxes, interest and penalties from the date of payment, or by making deposit of like amount in cash in the office of the clerk of the district court out

of which such writ of execution was issued, at any time within nine months from the date of sale.

History: Laws 1931, ch. 149, § 4; 1941 Comp., § 21-221; 1953 Comp., § 24-2-21.

39-5-22. [Rights of purchaser upon redemption; growing crops; rents and profits; waste.]

Whenever any property shall be redeemed under the terms or provisions of any section of this act [39-5-17 to 39-5-23 NMSA 1978], the purchaser, his personal representatives or assigns shall have the growing crops upon such lands and shall not be responsible for rents and profits, but shall account only for waste.

History: Laws 1931, ch. 149, § 5; 1941 Comp., § 21-222; 1953 Comp., § 24-2-22.

39-5-23. Duty to record redemption.

A. In all cases of redemption of lands from sale pursuant to the provisions of Sections 39-5-17 through 39-5-23 NMSA 1978:

(1) if the redemption is by payment to the purchaser, it is the duty of the purchaser within forty-five days of receiving payment to create an acknowledged instrument in writing evidencing the redemption; or

(2) if the redemption is by making deposit in the office of the clerk of the district court upon approval of the redemption by the district judge, it is the duty of the clerk of the court to create under the seal of the court an instrument evidencing the redemption.

B. It is the duty of the party redeeming to record the instrument evidencing the redemption in the office of the county clerk in the same manner as other instruments of writing affecting title to real estate.

History: Laws 1931, ch. 149, § 6; 1941 Comp., § 21-223; 1953 Comp., § 24-2-23; 2013, ch. 214, § 12.

ARTICLE 6
Levy and Sale of Livestock

39-6-1. [Levy on range cattle; gathering; filing, noting, indexing, copy of writ.]

Whenever it shall be necessary to levy any writ of attachment, replevin or execution under the laws of this state upon any livestock or herd of cattle that are ranging at large

with other livestock or cattle over any range country, and when it would be impossible or impracticable to round up, gather or take possession of the same under such process without, at the same time, rounding up and cutting out the livestock belonging to other owners, then and in such case, the sheriff or other officer holding such writ, shall only take possession of such stock as he may be able to get without interfering with the livestock of other owners, and as to the balance, it shall be sufficient, in order to subject them to the lien of said writ, that the officer shall file with the county clerk of the county in which the brand of such livestock is recorded, a certified copy of said writ, and immediately upon the filing thereof the county clerk shall note the same in the reception book of his office, and shall also note the same in red ink on the margin of the page of the book where such brand is recorded, and shall properly index the process in the general and other proper indices of his office: provided, that if said livestock range is in more than one county, then the officer may file a like certified copy of the writ and brand in any such county, and the same shall have like binding effect as a lien upon such livestock.

History: Laws 1889, ch. 54, § 1; C.L. 1897, § 3132; Code 1915, § 4533; C.S. 1929, § 106-104; 1941 Comp., § 21-401; 1953 Comp., § 24-4-1.

39-6-2. [Effect of filing, noting, indexing, copy of writ.]

Such process, when so filed, noted and indexed, shall have all the binding force as a lien upon said livestock, as if the same had been levied against said livestock upon the range and the officer had taken possession of the same. Upon the next roundup after such levy, and at all times after such levy until such writ is satisfied, all persons coming into possession of any such livestock shall treat said officer as the owner thereof.

History: Laws 1889, ch. 54, § 2; C.L. 1897, § 3133; Code 1915, § 4534; C.S. 1929, § 106-105; 1941 Comp., § 21-402; 1953 Comp., § 24-4-2.

39-6-3. [Disposing of or killing livestock levied upon; larceny; penalty.]

After the filing, noting and indexing of such process in the office of the county clerk, as aforesaid, if any person or persons, including the defendant or defendants in such process, shall sell, drive away, dispose of or kill or butcher any of said livestock so levied upon, or shall attempt to sell, drive away, dispose of, kill, or butcher, any of said livestock, or shall gather or round up any of said stock with intent in any way to defeat the levy of said writ, he or they, shall be deemed guilty of grand larceny, and on conviction thereof, shall be subject to a fine of not less than two hundred dollars [($200)], nor more than one thousand dollars [($1,000)], or to imprisonment for not less than one year, or more than two years, in the discretion of the jury trying the case.

History: Laws 1889, ch. 54, § 3; C.L. 1897, § 3134; Code 1915, § 4535; C.S. 1929, § 106-106; 1941 Comp., § 21-403; 1953 Comp., § 24-4-3.

39-6-4. [Sale of stock levied upon; recording satisfaction of writ.]

Any livestock taken under any process, as provided in the foregoing section [sections] [39-6-1 to 39-6-3 NMSA 1978], shall be disposed of by the sheriff, or officer, as provided by law: provided, that in the case of a levy of a writ of execution, under the three preceding sections [39-6-1 to 39-6-3 NMSA 1978], the officer shall forthwith proceed to sell any livestock so levied upon, as now provided by law, in lots, from time to time as he may come into possession of the same, until the writ is satisfied. And upon such writ being satisfied he shall at once enter satisfaction thereof, in all cases, upon the margin of the record aforesaid, where such brand is recorded, and shall indorse [endorse] such satisfaction upon all process filed as aforesaid.

History: Laws 1889, ch. 54, § 4; C.L. 1897, § 3135; Code 1915, § 4536; C.S. 1929, § 106-107; 1941 Comp., § 21-404; 1953 Comp., § 24-4-4.

ARTICLE 7
Uniform Certification of Questions of Law

39-7-1. Short title.

This act [39-7-1 to 39-7-13 NMSA 1978] may be cited as the "Uniform Certification of Questions of Law Act".

History: Laws 1997, ch. 8, § 1.

39-7-2. Definitions.

As used in the Uniform Certification of Questions of Law Act:

A. "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States; and

B. "tribe" means a tribe, band or village of Native Americans that is recognized by federal law or formally acknowledged by a state.

History: Laws 1997, ch. 8, § 2.

39-7-3. Power to certify.

The supreme court or the court of appeals of this state, on the motion of a party to pending litigation or its own motion, may certify a question of law to the highest court of another state, a tribe, Canada, a Canadian province or territory, Mexico or a Mexican state if:

A. the pending litigation involves a question to be decided under the law of the other jurisdiction;

B. the answer to the question may be determinative of an issue in the pending litigation; and

C. the question is one for which an answer is not provided by a controlling appellate decision, constitutional provision or statute of the other jurisdiction.

History: Laws 1997, ch. 8, § 3.

39-7-4. Power to answer.

The supreme court of this state may answer a question of law certified to it by a court of the United States or by an appellate court of another state, a tribe, Canada, a Canadian province or territory, Mexico or a Mexican state if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision or statute of this state.

History: Laws 1997, ch. 8, § 4.

39-7-5. Power to reformulate question.

The supreme court of this state may reformulate a question of law certified to it.

History: Laws 1997, ch. 8, § 5.

39-7-6. Certification order; record.

The court certifying a question of law to the supreme court of this state shall issue a certification order and forward it to the supreme court of this state. Before responding to a certified question, the supreme court of this state may require the certifying court to deliver all or part of its record to the supreme court of this state.

History: Laws 1997, ch. 8, § 6.

39-7-7. Contents of certification order.

A. A certification order must contain:

(1) the question of law to be answered;

(2) the facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

(3) a statement acknowledging that the supreme court of this state, acting as the receiving court, may reformulate the question; and

(4) the names and addresses of counsel of record and parties appearing without counsel.

B. If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as part of its certification order.

History: Laws 1997, ch. 8, § 7.

39-7-8. Notice; response.

The supreme court of this state, acting as a receiving court, shall notify the certifying court of acceptance or rejection of the question and, in accordance with notions of comity and fairness, respond to an accepted certified question as soon as practicable.

History: Laws 1997, ch. 8, § 8.

39-7-9. Procedures.

After the supreme court of this state has accepted a certified question, proceedings are governed by the rules and statutes governing briefs, arguments and other appellate procedures. Procedures for certification from this state to a receiving court are those provided in the rules and statutes of the receiving forum.

History: Laws 1997, ch. 8, § 9.

39-7-10. Opinion.

The supreme court of this state shall state in a written opinion the law answering the certified question and send a copy of the opinion to the certifying court, counsel of record and parties appearing without counsel.

History: Laws 1997, ch. 8, § 10.

39-7-11. Cost of certification.

Fees and costs are the same as in civil appeals docketed before the supreme court of this state and must be equally divided between the parties, unless otherwise ordered by the certifying court.

History: Laws 1997, ch. 8, § 11.

39-7-12. Severability.

If any provision of the Uniform Certification of Questions of Law Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

History: Laws 1997, ch. 8, § 12.

39-7-13. Uniformity of application and construction.

The Uniform Certification of Questions of Law Act shall be applied and construed to effectuate its general purpose to make uniform law with respect to the subject of that act among states enacting it.

History: Laws 1997, ch. 8, § 13.