

# NADOA WEBINAR – CHAPTER 13

Overview of New Mexico Oil and Gas  
Laws

# Introduction

- New Mexico is similar in some respects to Texas.
- New Mexico Oil Conservation Commission has developed extensive regulations governing oil and gas activities
- Case law is limited, possibly because of the amount of state and federal ownership but also possibly because of the extensive regulation detail.
- Oil and gas in place in New Mexico is deemed to be real property.

# Elements of the Mineral Estate

- Mineral estate includes:
  - Right to explore for, develop, produce, sever, and sell the minerals under the land
  - Right to execute oil, gas, and mineral leases (executive rights)
  - Right to receive bonus
  - Right to receive delay rental
  - Right to receive royalties
  - Right of ingress and egress and reasonable use of the surface estate to conduct mineral operations.

The mineral estate may be stripped of one of these attributes by execution of a deed granting a portion of the rights or reserving a portion of the rights in a deed. An example would be non-participating mineral interest.

## Elements of the Mineral Estate – Page 2

- A lease of the mineral estate is a conveyance of real property and vests the lessee with ownership of a mineral estate.
- The estate granted is a fee simple determinable.
- Determinable ownership is one that terminates upon the happening of a stated event.

# Oil and Gas Leases

- Few mineral owners actually drill their own wells.
- The oil and gas lease forms the basis of most relationships among parties in an oil and gas venture.
- The lease may be sold or traded multiple times both before and after production is obtained.
- There is not standard oil or gas lease form in New Mexico on fee lands, although both State and Federal leases are on their own standard form.
- An oil and gas lease has characteristics of both a contract and a conveyance since it contains both covenants and conditions.

# Oil and Gas Leases – Page 2

- Federal forms are set by the Secretary of the Interior and are periodically changed as the Mineral Leasing Act of 1920 is amended.
- State forms are statutory, although the Commissioner of Public Lands has discretion to use one of three statutory forms based upon the circumstances.
- Types of lease forms:
  - *Unless* lease form is the most common. “This lease will terminate at the end of the primary term unless production is obtained in paying quantities.”
  - *Drill or Pay* lease form gives the lessor the right to terminate the lease if the lessor does not meet conditions of the lease.

# Oil and Gas Lease – Page 3

- An oil, gas, and minerals lease will generally cover any minerals located on the ground.
- An oil and gas lease will only cover oil and gas, but not sulfur, uranium, or other minerals.
- The date of the lease is critical for many reasons:
  - It provides the beginning and ending dates of the lease
  - It provides an anniversary date for any rental payments that may be due
  - It may determine the owner of the leasehold in the event multiple leases were given by an unscrupulous or careless lessor to more than one lessee on the same tract of land.

# Oil and Gas Leases – Page 4

- Leases may have a different effective date and execution date.
- If there are differences between the date of execution and the effective date stated in the lease, the date of the lease prevails.
- An undated lease is not void, but it takes effect upon execution and delivery. That date may be difficult to prove.
- An oil and gas lease is not effective until delivery and payment of valid consideration.



# Oil and Gas Leases – Page 5

- The parties of the lease must be set forth and is generally identified in the first paragraph.
- The lessor may be any owner who has a vested interest in the mineral estate, who has the capacity to execute a lease, and has not previously executed a currently existing lease.
- The following parties are proper lessors of a lease:
  - A court appointed conservator on behalf of a minor or incapacitated person
  - The trustee of a trust should be listed and identified as the lessor and not merely the trust.
  - The personal representative of a decedent's estate that has not previously been distributed to the heirs and/or devisees.
  - Owner of executive rights where that right has been severed from other interests.
  - Attorney in fact may execute only if they hold a power of attorney that grants the authority to lease minerals. The power of sale does not include a power to execute oil and gas leases.
  - A married lessor should be joined by his/her spouse unless the interest is clearly separate property.
  - Partnerships, corporations, and limited liability companies may hold title to real property and may be a valid lessor.

## Oil and Gas Leases – Page 6

- The Habendum clause gives the term of the lease....”When do it endum? Check the habendum.”
- The primary term is usually set as a specified period of time for the lessee to start operations or actual drilling.
- “As long thereafter...” is the secondary term.
- Most New Mexico leases require the commencement of drilling operations within the primary term.
- The granting clause is the provision that causes conveyance of the estate from the lessor to the lessee. It will tell you what specific rights are being conveyed.
- New Mexico does not generally have Mother Hubbard clauses in their leases because the Jeffersonian survey system does not leave the ambiguities or opportunity for incorrectly describing a tract.

## Oil and Gas Leases – Page 7

- A royalty interest is an interest in real property.
- The royalty clause is a covenant, not a condition.
- The lease does not terminate for failure to pay royalties.
- Oil royalty may be taken in cash or in kind at the option of the lessor.
- Oil royalty generally bears their proportionate share of post production cost, which may include transportation, production taxes, and severance taxes.
- Federal leases may contain a sliding scale royalty where the royalty is dependent upon the average quantity of oil or gas produced per well per month.

## Oil and Gas Leases – Page 8

- Gas royalties are generally payable based on the market value at the well for well use gas, or on the amount realized from the sale when sold on or off the premises.
- In determining market value, New Mexico would generally follow the Texas interpretations.
- Texas has determined that the market value for gas royalty production is the fair market value at the time of production and deliver rather than the value at the time of the contracts.
- Where one or more lessees is not marketing gas, New Mexico differs from Texas. The New Mexico Proceeds Payment Act requires timely payment of proceeds of production to all persons entitled to payment. This means royalty should be paid to the lessor based on all gas produced, saved and sold from the premises, even though the lessee is not marketing their share of gas.

## Oil and Gas Leases – Page 9

- Payments for royalty are due not later than 6 months after the first day of the month following the date of first sale.
- Subsequent payments are due not later than 45 days after the end of the calendar month within which payment is received by the payor.
- 18% Interest is due on any late payments unless:
  - The failure to pay is the result of good faith reliance upon a title opinion by a licensed New Mexico attorney making objection to the lack of good and marketable title of record to the party claiming entitlement.
  - Information is received that brings entitlement into question
  - The amount is less than \$100
  - The party has refused to execute a reasonable division order.
  - Interest under one of these scenarios is the discount of the federal reserve bank in Dallas plus 1 ½ percent.

## Oil and Gas Lease – Page 10

- Most leases contain a shut in gas provision requiring payments to be made within 60 or 90 days from the date a well is shut in.
- Most shut in gas royalty provisions are a condition in the lease...not a covenant. That means that if the royalties are not properly paid, the lease will terminate.
- Shut in payments generally are \$1 per acre per year or an amount equal to the delay rental. It may even be a set amount per well per year and limit the length of time a lease can be extended by the payment of shut in royalty.
- Shut in payments would be made to the royalty owner if different from the mineral owner.

## Oil and Gas Lease – Page 11

- Under the “unless” lease form the lease will automatically terminate during the primary term unless a well is commenced, production is obtained, or the annual delay rental is paid.
- Payment of the delay rental allows the lessee to delay drilling operations for a year.
- In New Mexico failure to make timely payment of the rental is not fatal to the lease if the lessee’s actions manifest a good faith intent to continue the lease.
- Modern lease forms provide for continuance of the lease upon a bona fide attempt by the lessee to make the rental payment. They place the burden on the lessor to notify the lessee of any mistakes in the rental payment.
- State of New Mexico leases require payment of annual rental regardless of whether production is obtained; however, failure to pay annual rentals on a state does not result in automatic termination.

## Oil and Gas Lease – Page 12

- In addition to the express provisions contained in the oil and gas leases, New Mexico courts have recognized several implied covenants of the lease:
  - Lessee has an implied covenant to develop the land with reasonable diligence after discovery of oil and gas in paying quantities.
  - Lessee has an implied covenant to drill an offset well to prevent drainage.
  - Lessee has an implied covenant to market oil or gas produced.
  - The prudent operator standard is applied to determine if the implied covenants have been complied with.



## Pooling, Communitization and Unitization

- The Oil Conservation Division (OCD) has established statewide spacing and establishes field rules in such a manner to protect the correlative rights and prevent waste.
- The OCD has the authority to pool tracts owned by two or more parties when an agreement to pool and develop cannot be reached.
- Pooling is the term used to reflect the consolidation of two or more leases to form the spacing or proration unit. The term “communitization” is used for pooling involving federal or state ownership.
- Force pooling proceedings are common when an unleased mineral owner refuses to join in the proposed drilling operation or two or more working interests owners cannot agree on how operations should proceed.

## Pooling, Communitization, and Unitization – Page 2

- The operator must attempt to consent for voluntary pooling of all interest within the spacing or proration unit. If he cannot, he petitions the OCD in Santa Fe to force pool.
- The OCD will determine terms that are fair to all parties. A risk penalty is generally allowed to be charged against the interests of any party that chooses not to voluntarily join in drilling the well.
- An unleased mineral owner's interest will be deemed to be 1/8 royalty interest and 7/8 working interest.
- All interests owners must agree to pool their interest. Leases and agreements generally grant the power for the lessee to pool their interests. If authority is not granted in the lease, a ratification of the pooling, joinder or a forced pooling order must be secured.
- Communitization of a federal is approved by the BLM and the Commissioner of Public Lands approves communitization of state lands.

## Pooling, Communitization, and Unitization – Page 3

- Voluntary pooling is accomplished by the agreement of all interest owners and a Designation of Pooling should be recorded in the county records.
- Once pooling has been established, operations on and production from the pooled unit are deemed to have been conducted on each tract within the unit.
- Production is allocated on a tract participation factor based on the acreage in the tract divided by the acreage in the unit.
- Spacing is based on the type of production, distance from existing production, the depth of the formation, and the area of the state where the well is located.
- A wildcat well is a well to be drilled a distance of one mile or more from the outer boundary of a defined pool in the projected formation or from any well that has produced in the existing formation.
- Southeast New Mexico is Chaves, Eddy, Lea, and Roosevelt Counties. Northwest New Mexico is made up of Rio Arriba, Sandoval, and San Juan Counties. All other counties are included under “Other.”

## Pooling, Communitization, and Unitization – Page 4

- Communitization, pooling, and unitization are commonly used interchangeably, but in reality unitization is an attempt to provide for unified development and operation of an entire geologic prospect or producing reservoir.
- Most lease forms do not contain an unitization provision allowing the lessee to commit the lease or a portion thereof to a unit agreement.
- Agreements for exploratory units differ from unit agreements for enhanced recovery.
- If the United States owns the mineral estate in more than 10 percent of the lands proposed to be unitized for an exploratory unit, a Model Onshore Unit Agreement for Unproven Areas must be used.

## Pooling, Communitization, and Unitization – Page 5

- The unit agreement becomes effective upon approval, but the public interest requirements is only satisfied if the unit operator commences actual drilling operations and diligently prosecutes operations in accordance with the terms of the unit agreement.
- If the public interest requirement is not met, the leases committed to it are treated as though the unit had never been formed, and any segregations or extensions that occurred by reason of commitment to the unit are invalid.
- There is no federal form of unit agreement for enhanced recovery.
- The unit agreement and unit operating agreement should be recorded in the county where the lands are located.

# Marital Property

- New Mexico is a community property state.
- Community property is defined by statute as property acquired by either or both spouses during marriage which is not separate property.
- The presumption is that property acquired during marriage is community property.
- Separate property is property acquired by either spouse in one of the following ways:
  - Acquired before marriage
  - After a divorce decree is entered
  - Gift
  - Devise, bequest, or descent
  - Designated as separate property by a written agreement between spouses
  - Designated as separate by a judgment or decree of any court having jurisdiction.
  - Property acquired by a woman by an instrument in writing in her name alone or in her name and another person not her husband prior to July 1, 1973 is presumed to be her separate property.
  - Property acquired with funds that are separate property remains separate property.
  - Property takes its status at the time it was acquired
  - The presumption of community property overrides any attempt by one party to an instrument to recite that the interest is being held as the party's separate property.

## Marital Property – Page 2

- Both spouses must join in any transfer, conveyance, mortgage or contract to transfer, convey or mortgage any interest in community property.
- Any attempted conveyance of community property by one spouse is void.
- The New Mexico legislature revised the statute to provide that “nothing in this section shall affect the right of a spouse not joined in a transfer, conveyance, mortgage, lease or contract to validate an instrument at any time by a ratification in writing?”
- This statute revision raises many questions:
  - Can the non-joining spouse alone ratify a “void” instrument or does ratification require the joinder of both spouses?
  - Can a ratification lacking present words of grant breathe life into a “void” conveyance?
  - The statute does not say it is retroactive; therefore, any ratifications taken before June 18, 1993 are not effective unless joined by both spouses.

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

# Corporations, Partnerships and LLC's

- New Mexico corporations have the power to acquire, convey, lease, or otherwise deal in real property.
- The authority of officers and agents is derived from the bylaws or from resolutions of the board of directors not inconsistent with the bylaws.
- A transfer may require authorization from the board of directors, depending on the magnitude.
- The president or vice-president usually has the authority to execute oil and gas leases.
- If an agent other than an executive officer is to sign a lease, a board resolution or other authorization should be obtained.
- In a partnership, individual partners generally have the power to convey real property in the partnership's name, with 3 basic exceptions:
  - The grantee knows the partner lacks the authority to execute the instrument
  - Title is in the name of one or more but not all of the partners, and the partnership's interest is not disclosed on the record, the only partners in whose name the title stands may convey the property.
  - If title is in the name of all partners, they should all be a party in conveying the property.



## Corporations, Partnerships and LLC's – Page 2

- The New Mexico Uniform Revised Limited Partnership Act authorizes the transaction of any and all business by limited partnerships.
- General partners have the right to execute leases in the name of the limited partnership.
- Foreign limited partnerships may apply for a certificate of authority to transact business in the state.
- Merely owning a non-operating mineral interest in New Mexico does not constitute transacting business.
- Limited Liability Companies were provided for in New Mexico in 1993 and are authorized to conduct any lawful business.
- The management of an LLC is generally vested in the member or members but if management is vested in a manager it must be set out in the articles of organization.
- If a manager has been provided for, then unless specifically reserved to the members by the Limited Liability Company Act, the manager or managers, in accordance with the articles or agreement, have the exclusive power to make all decisions for the company.

# Decedents' Estates

- Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs pursuant to the applicable rules of descent and distribution.
- Separate property passes  $\frac{1}{4}$  to the surviving spouse and  $\frac{3}{4}$  to the surviving issue of the decedent by representation. If there are no surviving issue, all passes to the spouse.
- Community property all goes to the surviving spouse.
- If the decedent is not survived by a spouse or issue the entire estate passes to the decedent's parents or surviving parent.
- If both parents are deceased the entire estate passes to the descendants of the decedent's parents or either of them by representation.
- If the decedent is not survived by any of the above, one-half of the estate passes to the maternal grandparents or their descendants by representation and the other one-half to the descendant's paternal grandparents or their descendants.
- If there are no surviving descendants on one side the entire estate passes to the other side.
- Prior to 1993 any distribution that is now "by representation" in the statute was a per stirpes distribution.

## Decedent's Estates – Page 2

- Title is generally not considered marketable in New Mexico until there has been a probate proceeding conducted on the decedent's estate.
- Original probate proceedings may be either informal or formal. Formal proceedings require court approval at all phases of administration of the proceedings. Most probates are informal.
- The personal representative generally has broad powers in attending to estate matters, including the power to execute oil and gas leases and other instruments concerning the decedent's minerals pending the probate proceeding.
- A will is not effective until it is admitted to probate but the passage of title relates back to the date of death.
- A will must be probate within 3 years after the decedent's death.
- Statues were recently amended to allow the submission of a will in a formal testacy proceeding after three years following the decedent's death to evidence passage of title to from the decedent to the person named in the will.

## Decedent's Estates – Page 3

- Since 1975 the personal representative must execute deeds of distribution to evidence the passage of title from the estate to the heir, devisee, or distributee. New Mexico no longer requires that a determination of heirship be made by the court.
- Pretermitted Heirs - Under New Mexico law, a child (or descendant of a deceased child) not mentioned in a decedent's will takes an intestate share of the estate, unless the estate was devised to the unmentioned child's other parent.
- Prior to July 1973 a wife could not dispose of her community property interest and upon her death, it passed directly to her husband without the necessity of probate.
- From June 12, 1959 to July 1, 1973 the wife received the entire community estate of her husband in the absence of a will, without necessity of probate.
- Prior to June 12, 1959, upon the death of the husband, the wife received her one-half of the community property and one-fourth of the husband's one-half giving her five-eighths with the remaining three-eighths divided among the children.

## Decedent's Estates – Page 4

- New Mexico does not have forced heirship.
- New Mexico does not accept foreign probate like Texas (recording authenticated copies of decedent's will and probate in county) but it does have a short form proceeding in addition to a full ancillary probate proceeding.
- The short form of ancillary probate is fairly inexpensive but the authority to act in New Mexico is only good for the duration of his or her appointment in the foreign court.
- Full ancillary probate is similar to the original resident probate proceedings.
- Both forms of ancillary probate require authenticated or exemplified copies of the petition, order admitting the will to probate, order appointing the personal representative, the will, letters testamentary, and any other orders providing for the authority of the personal representative or making a determination of heirship.

## Decedent's Estates – Page 5

- Title to real property in New Mexico is subject to the laws of the State of New Mexico.
- New Mexico law of descent and distribution determines who is entitled to an intestate decedent's estate.
- The presumption of community property is made even if the domicile of the decedent is in a non-community property state. The presumption may be rebutted by a preponderance of the evidence.
- Marketable title does not pass without a New Mexico probate proceeding, it is common to rely upon affidavits of heirship and death certificates. The affidavits of heirship, must be recorded in the county where the property is located.
- The affidavit must be taken from someone who does not benefit from the decedent's estate and sets forth the following:
  - Name of the decedent
  - Decedent's residence at the time of death
  - Time and place of death

## Decedent's Estates – Page 6

- The affidavit must be taken from someone who does not benefit from the decedent's estate and sets forth the following:
  - Name of the decedent
  - Decedent's residence at the time of death
  - Time and place of death
  - Names and addresses of decedent's heirs and each of their relationship to the decedent
  - Marital history, including the names of each spouse and dates of marriage, divorce, and their death if they predeceased the decedent while married
  - Whether the decedent died testate or intestate and, if testate, the disposition of the decedent's will and a copy, if available, and names of the devisees, legatees, and personal representative appointed therein
  - The court and location of any probate proceedings that have been commenced
  - A description of the real property in the state owned by the decedent

The affidavit must be sworn or affirmed under oath, properly acknowledged, and properly recorded in each county where the decedent owned real property.

Title is still considered unmarketable absent probate proceedings are held in New Mexico.

## Decedent's Estates – page 7

- Life tenancies follow the basic handling as in other states.
- Neither the life tenant nor the remainderman has the right to explore and produce oil, gas, or minerals and neither has executory rights.
- The life tenant cannot waste the corpus of the estate, so he is not entitled to the royalties. Technically he is entitled to interest from depositing the royalty proceeds in an interest bearing account.
- The remaindermen is not entitled to the corpus until the death of the life tenant.
- The life tenant and remainder can jointly enter into a lease or agreement or one can ratify a lease taken from the other with present words of grant.
- Bonus is generally treated the same as royalty but delay rentals are generally paid to the life tenant as income from the estate.
- Most states apply the Open Mine Doctrine which grants the right to develop and exploit the minerals in the life tenant if the mine was opened before the creation of the life estate. If the mine was opened subsequent to the creation of the life estate, the royalties would be paid to the remainderman.



# Attorney in Fact

- An attorney in fact may execute conveyancing instruments on behalf of the principal consistent with the powers granted by the principal in a validly executed, acknowledge and recorded power of attorney instrument.
- The POA must be recorded in every county where the principal owns property.
- The POA is effective until revoked by an instrument recorded in each county where the principal owns property.
- The POA must state specific authority. A power of sale does not confer a power to lease.
- A POA must be a “durable” POA in order to survive the disability of the principal. A durable POA states that the power of attorney will not be affected by the incapacity of the principal or that it becomes effective upon the incapacity of the principal.
- The statutes protect bona fide purchasers and the attorney who act without knowledge of the principal’s death or incapacity, if not a durable power. If the principal died or became incapacitated before the date of the execution of the conveyancing instrument by the attorney-in-fact, an affidavit from the attorney stating he or she did not have knowledge of the death or disability must be secured and filed in the county records.

# Trusts

- A trustee has all of the powers conferred by the New Mexico Uniform Trust Code unless the powers are withheld or limited by the trust instrument.
- Those powers include the power to lease.
- Attorneys prefer that the trust agreement be recorded but most trustees are hesitant to record the entire agreement. A Memorandum of Trust may be recorded as long as it identifies the trustee, his powers and any limitations, and the duration of the trust or the events of termination.
- Title to property should be held in the name of the trustee, in trust for the specified trust. The trust is not a legal entity by itself.

# Conservators and Guardians

- New Mexico court-appointed conservators of an incompetent's estate, as well as guardians of a minor, have the authority to execute oil and gas leases without further court action.
- It is wise to obtain court approval of a lease acquired from a guardian acting on behalf of a minor.
- Foreign conservators or guardians must receive authority from a New Mexico court to exercise such authority.

# Production in Paying Quantities

- New Mexico requires production in “paying quantities” to extend oil and gas leases into their secondary terms under their habendum clauses.
- New Mexico courts have also required wells capable of production in “paying quantities” in order to continue lease’s where the lessee is paying a shut in royalty to preserve the lease.
- Pursuant to *Garcia v King*, to meet the paying quantities standard, a well must produce sufficient oil and/or gas to pay the operating expenses and yield a profit to the lessee.
- The cost of drilling and equipping the well does not affect the calculation, so a well might meet the producing in paying quantities standard but still be unprofitable.
- Texas expanded the rule in *Clifton v. Koontz* making the test whether a reasonably prudent operator would continue to operate the well in the same manner, for the purpose of making a profit and not merely speculation.

## Production in Paying Quantities – Page 2

- The factors to be considered were:
  - The depletion of the reservoir and the price for which the lessee is able to sell his produce
  - The relative profitableness of other wells in the area
  - The operating and marketing costs of the lease
  - The lessee's net profit
  - The lease provisions
  - A reasonable period of time under the circumstances
  - Whether or not the lessee is holding the lease merely for speculative purposes

Under this test the operating expenses of the well and the lessee's net profit are among the primary factors considered.

# Surface Damages

- New Mexico recognizes the mineral estate's dominance over the surface estate.
- Lessee's are entitled to use as much of the surface area as is reasonably necessary for its drilling and production operations, but they must exercise due regard for the rights of the surface owner.
- Any damages are measured against the reasonableness standard.
- A Texas case is created the reasonable use doctrine. In situations where there are reasonable alternatives available to the lessee to prevent damage or disruption of the surface owner's use, the lessee may be required to accommodate the surface owner.
- An oil and gas lessee has access to the entire surface area committed to a communitized or pooled agreement, but the New Mexico Supreme Court has held that an operator may not use the surface estate of the lease outside of the communitized area to access a communitized well on adjacent land.

## Surface Damages – Page 2

- In 2006 New Mexico enacted the New Mexico Surface Owners Protection Act which requires the lessee to give 5 days notice for non-surface disturbing activities and 30 days for surface disturbing activities.
- The lessee must offer a surface use agreement and compensation to the surface owner. If the surface owner does not enter into the agreement timely, the lessee may enter proceed with operations after posting financial security with a New Mexico financial institution.
- A statewide bond is necessary before an operator begins operations in New Mexico.
- By statute the operator must pay damages t the surface owner and must reclaim the land to its original condition when abandoning the oil and gas operations.
- In June 2009 the Commissioner of Public Lands for the State of New Mexico began including a surface damage policy in all agricultural lease renewals. State grazing lessees are allowed to collect actual damages and any reasonable lost business costs due to oil and gas activities on state trust lands subject to a grazing lease.
- The grazing lessee must split all damages in excess of actual damages and costs associated with lost earnings with the Commissioner, which ranges from 50 to 70% of the damages received.

# Recording and Constructive Notice

- Failure to record an instrument does not invalidate the instrument but constructive notice is provided by recording, and recording precludes a third party from securing an instrument purporting to convey the same interest.
- New Mexico is a notice state. A purchaser of an interest is on notice of all matters affecting the real property appearing of record in the clerk's office as well as matters apparent from a visual inspection of the premises.
- Federal records are not deemed to impart constructive notice, so assignments affecting federal oil and gas leases must be recorded in the county.
- Federal records will be filed twice, one in the federal records and one in the county records.
- By statute the records of the Commissioner of Public Lands do impart constructive notice so there is no need to file those records in the county.
- To be recorded an instrument must contain an acknowledgment form that substantially complies with the new Mexico statutory form of acknowledgment.



## Recording and Constructive Notice – Page 2

- Filing fees are currently \$5 for the first page and \$2 for each additional page, plus the clerk may charge an equipment recording fee of \$4 per instrument.
- If an assignment or releases references more than one grantor, grantee, deed, mortgage, lease or other instrument or describes more than one deed, lease or other instrument the clerk will charge \$5 for each reference.
- If there are more than two acknowledgments, the clerk will charge an additional 50 cents per additional acknowledgement.
- New Mexico law states that even if an instrument containing a defective acknowledgment is recorded in the county records, it is not entitled to constructive notice.
- Prior to July 1993 many acknowledgments were rejected because the form did not reflect the marital status of a husband and wife executing an instrument or left off the state of incorporation on a corporate acknowledgment.
- There is a curative statute that proves that certain minor defects in an acknowledgment form are cured if the instrument has been of record for more than 10 years.

