

TITLE 2: NATURAL RESOURCES
DIVISION 4: LAND RESOURCES

§ 4941. Definitions.

For purposes of this article:

(a) “Attorney” means any attorney, lawyer, personal representative or any person who undertakes to represent another person in any legal proceeding.

(b) “Contingent fee” means a fee:

(1) Based on, or calculated according to, the value of ownership of real property, which real property is the subject of a legal proceeding;

(2) That is a percentage of the value of ownership of all or any part of the real property which is the subject of such proceeding regardless of how the value of the property may be calculated; or

(3) Based on, or calculated according to, the value of any settlement or award that may be made in a legal proceeding concerned with real property.

“Contingent fee,” for purposes of this section, applies only to fees based on the value of real property or of settlements or awards in legal proceedings concerned with real property, and does not apply to contingent fees in tort cases.

(c) “Legal proceeding” means an action at law, lawsuit, court hearing, arbitration, administrative hearing before a government agency, or similar proceeding to determine legal rights and interests, which proceeding has not been reduced to final judgment as of October 29, 1993.

(d) “Real property” means real property or any interest in real property, including, but not limited to, a lease, sublease, mortgage, life estate, undivided interest, or remainder interest.

Source: PL 8-32, § 2 (§ 4917(a)), modified.

Commission Comment: PL 8-32 took effect October 29, 1993. According to PL 8-32, § 1:

Section 1. Findings. The Legislature finds that a number of court cases have been filed in the last several years seeking to overturn land transactions pursuant to [N.M.I. Const. art. XII]. Only a few of these court actions have yet been reduced to judgment.

The Legislature further finds that these pending actions, taken together, have had a cumulative adverse effect on the CNMI economy in the last two to three years. These actions have led to uncertainty of title, instability of land values, and financial inequities. They have caused the Commonwealth to suffer an undesirable reputation as a risky and uncertain place in which to lease land for investment or development or in which to grant leasehold mortgages.

The Legislature finds that the NMI Supreme Court recognized the possibility of these problems in its decisions, but felt that it could not decide otherwise under the law of the Commonwealth as it then existed. The Legislature notes that the law as it then existed was the law of the Restatement of Trusts.

The Legislature finds that the Restatement of Trusts is a compilation of the common law, and only has effect in the Commonwealth because of

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a Commonwealth statute (7 CMC [§] 3401). The law of trusts in the Commonwealth is common law, and so can be modified, amended, or restricted by legislative action. The Legislature therefore finds that clarification and restriction of the doctrine of resulting trusts is appropriate.

The Legislature further finds that there exists the possibility of exploitation by, or unjust enrichment of, attorneys who represent parties in real property cases alleging violation of [N.M.I. Const. art. XII]. The Legislature recognizes that contingent fees are necessary in order to make legal services available to those not otherwise able to afford an attorney; however, the Legislature also finds that it has the power to regulate the legal services industry and to insure that contingent fees should be reasonable.

The Legislature further finds that a reasonable statute of limitations would go far towards restoring confidence in the title of lands and property in the CNMI. Having carefully researched the issue, the Legislature finds that a reasonable statute of limitations is constitutional as long as there is a “grace period” before the statute takes effect.

Finally, the Legislature finds that in cases where a person recovers land under a judgment according to [N.M.I. Const. art. XII], the person adversely affected by such judgment is entitled to recover their investment, including money or other capital paid for the purchase of lease of the land, for buildings, structures, or other improvements on the land, and the cost of money for the time elapsed between the land transaction and improvements and the judgment voiding the transaction.

PL 8-32 directed that this section and the following sections in this chapter be codified within chapter 9 of this division, either as additions to article 1 of that chapter or within new articles. In electing to codify PL 8-32 as a new chapter of this division, the Commission exercised its authority to “[r]earrange sections so that they fit harmoniously within the code.” 1 CMC § 3806(c).