

1                   **UNIFORM LAW - UNIFORM ASSIGNMENT OF**  
2                                   **RENTS ACT**

3                                   2009 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Ross I. Romero**

6                                   House Sponsor: Brian S. King

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8 **LONG TITLE**

9 **General Description:**

10           This bill enacts the Utah Uniform Assignment of Rents Act.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines terms;
- 14           ▶ allows a security interest in rents to accrue prior to foreclosure as an interest that is  
15 distinct from any lien on the property which produces the rents;
- 16           ▶ makes the assignment of rents effective against third persons upon proper  
17 recordation;
- 18           ▶ establishes standards to govern the appointment of a receiver for mortgaged real  
19 property;
- 20           ▶ characterizes rents as any sum paid by a tenant, licensee, or other person for the  
21 right to possess or occupy the real property of another;
- 22           ▶ permits an assignee to enforce its security interest in rents through proper  
23 notification;
- 24           ▶ allows a mortgage to create a security interest in rents by default;
- 25           ▶ clarifies that the assignee's ability to collect rents from tenants is subject to any  
26 claim or defense by the tenant of the assignee's nonperformance; and
- 27           ▶ coordinates with Article 9 of the Uniform Commercial Code regarding proceeds of  
28 rents and creates rules to establish priorities between conflicting interests.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 ENACTS:

35 **57-26-101**, Utah Code Annotated 1953

36 **57-26-102**, Utah Code Annotated 1953

37 **57-26-103**, Utah Code Annotated 1953

38 **57-26-104**, Utah Code Annotated 1953

39 **57-26-105**, Utah Code Annotated 1953

40 **57-26-106**, Utah Code Annotated 1953

41 **57-26-107**, Utah Code Annotated 1953

42 **57-26-108**, Utah Code Annotated 1953

43 **57-26-109**, Utah Code Annotated 1953

44 **57-26-110**, Utah Code Annotated 1953

45 **57-26-111**, Utah Code Annotated 1953

46 **57-26-112**, Utah Code Annotated 1953

47 **57-26-113**, Utah Code Annotated 1953

48 **57-26-114**, Utah Code Annotated 1953

49 **57-26-115**, Utah Code Annotated 1953

50 **57-26-116**, Utah Code Annotated 1953

51 **57-26-117**, Utah Code Annotated 1953

52 **57-26-118**, Utah Code Annotated 1953

53 **57-26-119**, Utah Code Annotated 1953

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55 *Be it enacted by the Legislature of the state of Utah:*

56 Section 1. Section **57-26-101** is enacted to read:

57 **CHAPTER 26. UTAH UNIFORM ASSIGNMENT OF RENTS ACT**

58 **57-26-101. Title.**

59 This chapter is known as the "Utah Uniform Assignment of Rents Act."

60 Section 2. Section **57-26-102** is enacted to read:

61 **57-26-102. Definitions.**

62 As used in this chapter:

63 (1) "Assignee" means a person entitled to enforce an assignment of rents.

64 (2) "Assignment of rents" means a transfer of an interest in rents in connection with an  
65 obligation secured by real property located in this state and from which the rents arise.

66 (3) "Assignor" means a person that makes an assignment of rents or the successor  
67 owner of the real property from which the rents arise.

68 (4) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the  
69 like.

70 (5) "Day" means calendar day.

71 (6) "Deposit account" means a demand, time, savings, passbook, or similar account  
72 maintained with a bank, savings bank, savings and loan association, credit union, or trust  
73 company.

74 (7) "Document" means information that is inscribed on a tangible medium or that is  
75 stored on an electronic or other medium and is retrievable in perceivable form.

76 (8) "Notification" means a document containing information that this chapter requires  
77 a person to provide to another, signed by the person required to provide the information.

78 (9) "Person" means an individual, corporation, business trust, estate, trust, partnership,  
79 limited liability company, association, joint venture, public corporation, government, or  
80 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

81 (10) "Proceeds" means personal property that is received or collected on account of a  
82 tenant's obligation to pay rents.

83 (11) "Purchase" means to take by sale, lease, discount, negotiation, mortgage, pledge,  
84 trust deed, lien, security interest, issue or reissue, gift, or any other voluntary transaction  
85 creating an interest in property.

86           (12) "Rents" means:

87           (a) sums payable for the right to possess or occupy, or for the actual possession or  
88 occupation of, real property of another person;

89           (b) sums payable to an assignor under a policy of rental interruption insurance  
90 covering real property;

91           (c) claims arising out of a default in the payment of sums payable for the right to  
92 possess or occupy real property of another person;

93           (d) sums payable to terminate an agreement to possess or occupy real property of  
94 another person;

95           (e) sums payable to an assignor for payment or reimbursement of expenses incurred in  
96 owning, operating and maintaining, or constructing or installing improvements on, real  
97 property; or

98           (f) any other sums payable under an agreement relating to the real property of another  
99 person that constitute rents under law of this state other than this chapter.

100           (13) "Secured obligation" means an obligation the performance of which is secured by  
101 an assignment of rents.

102           (14) "Security instrument" means a document, however denominated, that creates or  
103 provides for a security interest in real property, whether or not it also creates or provides for a  
104 security interest in personal property.

105           (15) "Security interest" means an interest in property that arises by agreement and  
106 secures performance of an obligation.

107           (16) "Sign" means, with present intent to authenticate or adopt a document:

108           (a) to execute or adopt a tangible symbol; or

109           (b) to attach to or logically associate with the document an electronic sound, symbol,  
110 or process.

111           (17) "State" means a state of the United States, the District of Columbia, Puerto Rico,  
112 the United States Virgin Islands, or any territory or insular possession subject to the  
113 jurisdiction of the United States.

114           (18) "Submit for recording" means to submit a document complying with applicable  
115 legal standards, with required fees and taxes, to the appropriate governmental office under  
116 Title 57, Chapter 3, Recording of Documents.

117           (19) "Tenant" means a person that has an obligation to pay sums for the right to  
118 possess or occupy, or for possessing or occupying, the real property of another person.

119           Section 3. Section **57-26-103** is enacted to read:

120           **57-26-103. Manner of giving notification.**

121           (1) Except as otherwise provided in Subsections (3) and (4), a person gives a  
122 notification or a copy of a notification under this chapter:

123           (a) by depositing it with the United States Postal Service or with a commercially  
124 reasonable delivery service, properly addressed to the intended recipient's address as specified  
125 in Subsection (2), with first-class postage or cost of delivery provided for; or

126           (b) if the recipient agreed to receive notification by facsimile transmission, electronic  
127 mail, or other electronic transmission, by sending it to the recipient in the agreed manner at the  
128 address specified in the agreement.

129           (2) The following rules determine the proper address for giving a notification under  
130 Subsection (1):

131           (a) A person giving a notification to an assignee shall use the address for notices to the  
132 assignee provided in the document creating the assignment of rents, but, if the assignee has  
133 provided the person giving the notification with a more recent address for notices, the person  
134 giving the notification shall use that address.

135           (b) A person giving a notification to an assignor shall use the address for notices to the  
136 assignor provided in the document creating the assignment of rents, but, if the assignor has  
137 provided the person giving the notification with a more recent address for notices, the person  
138 giving the notification shall use that address.

139           (c) If a tenant's agreement with an assignor provides an address for notices to the  
140 tenant and the person giving notification has received a copy of the agreement or knows the  
141 address for notices specified in the agreement, the person giving the notification shall use that

142 address in giving a notification to the tenant. Otherwise, the person shall use the address of  
143 the premises covered by the agreement.

144 (3) If a person giving a notification pursuant to this chapter and the recipient have  
145 agreed to the method for giving a notification, any notification must be given by that method.

146 (4) If a notification is received by the recipient, it is effective even if it was not given  
147 in accordance with Subsection (1) or (3).

148 Section 4. Section **57-26-104** is enacted to read:

149 **57-26-104. Security instrument creates assignment of rents -- Assignment of rents**  
150 **creates security interest.**

151 (1) An enforceable security instrument creates an assignment of rents arising from the  
152 real property described in the security instrument, unless the security instrument provides  
153 otherwise.

154 (2) An assignment of rents creates a presently effective security interest in all accrued  
155 and unaccrued rents arising from the real property described in the document creating the  
156 assignment, regardless of whether the document is in the form of an absolute assignment, an  
157 absolute assignment conditioned upon default, an assignment as additional security, or any  
158 other form. The security interest in rents is separate and distinct from any security interest  
159 held by the assignee in the real property.

160 Section 5. Section **57-26-105** is enacted to read:

161 **57-26-105. Recordation -- Perfection of security interest in rents -- Priority of**  
162 **conflicting interests in rents.**

163 (1) A document creating an assignment of rents may be submitted for recording in the  
164 office of the county recorder for the county in which the property is situated in the same  
165 manner as any other document evidencing a conveyance of an interest in real property.

166 (2) Upon recording, the security interest in rents created by an assignment of rents is  
167 fully perfected, even if a provision of the document creating the assignment or law of this state  
168 other than this chapter would preclude or defer enforcement of the security interest until the  
169 occurrence of a subsequent event, including a subsequent default of the assignor, the

170 assignee's obtaining possession of the real property, or the appointment of a receiver.

171 (3) Except as otherwise provided in Subsection (4), a perfected security interest in  
172 rents takes priority over the rights of a person that, after the security interest is perfected:

173 (a) acquires a judicial lien against the rents or the real property from which the rents  
174 arise; or

175 (b) purchases an interest in the rents or the real property from which the rents arise.

176 (4) A perfected security interest in rents has priority over the rights of a person  
177 described in Subsection (3) with respect to future advances to the same extent as the assignee's  
178 security interest in the real property has priority over the rights of that person with respect to  
179 future advances.

180 Section 6. Section **57-26-106** is enacted to read:

181 **57-26-106. Enforcement of security interest in rents.**

182 (1) An assignee may enforce an assignment of rents using one or more of the methods  
183 specified in Sections 57-26-107, 57-26-108, and 57-26-109 or any other method sufficient to  
184 enforce the assignment under law of this state other than this chapter.

185 (2) From the date of enforcement, the assignee or, in the case of enforcement by  
186 appointment of a receiver under Section 57-26-107, the receiver is entitled to collect all rents  
187 that:

188 (a) have accrued but remain unpaid on that date; and

189 (b) accrue on or after that date, as those rents accrue.

190 Section 7. Section **57-26-107** is enacted to read:

191 **57-26-107. Enforcement by appointment of receiver.**

192 (1) An assignee is entitled to the appointment of a receiver for the real property subject  
193 to the assignment of rents if:

194 (a) the assignor is in default and:

195 (i) the assignor has agreed in a signed document to the appointment of a receiver in  
196 the event of the assignor's default;

197 (ii) it appears likely that the real property may not be sufficient to satisfy the secured

198 obligation;

199 (iii) the assignor has failed to turn over to the assignee proceeds that the assignee was  
200 entitled to collect; or

201 (iv) a subordinate assignee of rents obtains the appointment of a receiver for the real  
202 property; or

203 (b) other circumstances exist that would justify the appointment of a receiver under  
204 law of this state other than this chapter.

205 (2) An assignee may file a petition for the appointment of a receiver in connection  
206 with an action:

207 (a) to foreclose the security instrument;

208 (b) for specific performance of the assignment;

209 (c) seeking a remedy on account of waste or threatened waste of the real property  
210 subject to the assignment; or

211 (d) otherwise to enforce the secured obligation or the assignee's remedies arising from  
212 the assignment.

213 (3) An assignee that files a petition under Subsection (2) shall also give a copy of the  
214 petition in the manner specified in Section 57-26-103 to any other person that, ten days before  
215 the date the petition is filed, held a recorded assignment of rents arising from the real property.

216 (4) If an assignee enforces an assignment of rents under this section, the date of  
217 enforcement is the date on which the court enters an order appointing a receiver for the real  
218 property subject to the assignment.

219 (5) From the date of its appointment, a receiver is entitled to collect rents as provided  
220 in Subsection 57-26-106(2). The receiver also has the authority provided in the order of  
221 appointment and law of this state other than this chapter.

222 (6) The following rules govern priority among receivers:

223 (a) If more than one assignee qualifies under this section for the appointment of a  
224 receiver, a receivership requested by an assignee entitled to priority in rents under this chapter  
225 has priority over a receivership requested by a subordinate assignee, even if a court has



226 previously appointed a receiver for the subordinate assignee.

227 (b) If a subordinate assignee obtains the appointment of a receiver, the receiver may  
228 collect the rents and apply the proceeds in the manner specified in the order appointing the  
229 receiver until a receiver is appointed under a senior assignment of rents.

230 Section 8. Section **57-26-108** is enacted to read:

231 **57-26-108. Enforcement by notification to assignor.**

232 (1) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee  
233 may give the assignor a notification demanding that the assignor pay over the proceeds of any  
234 rents that the assignee is entitled to collect under Section 57-26-106. The assignee shall also  
235 give a copy of the notification to any other person that, ten days before the notification date,  
236 held a recorded assignment of rents arising from the real property.

237 (2) If an assignee enforces an assignment of rents under this section, the date of  
238 enforcement is the date on which the assignor receives a notification under Subsection (1).

239 (3) An assignee's failure to give a notification under Subsection (1) to any person  
240 holding a recorded assignment of rents does not affect the effectiveness of the notification as  
241 to the assignor, but the other person is entitled to any relief permitted under law of this state  
242 other than this chapter.

243 (4) An assignee that holds a security interest in rents solely by virtue of Subsection  
244 57-26-104(1) may not enforce the security interest under this section while the assignor  
245 occupies the real property as the assignor's primary residence.

246 Section 9. Section **57-26-109** is enacted to read:

247 **57-26-109. Enforcement by notification to tenant.**

248 (1) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee  
249 may give to a tenant of the real property a notification demanding that the tenant pay to the  
250 assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall  
251 give a copy of the notification to the assignor and to any other person that, ten days before the  
252 notification date, held a recorded assignment of rents arising from the real property. The  
253 notification must be signed by the assignee and:

254 (a) identify the tenant, assignor, assignee, premises covered by the agreement between  
255 the tenant and the assignor, and assignment of rents being enforced;

256 (b) provide the recording data for the document creating the assignment or other  
257 reasonable proof that the assignment was made;

258 (c) state that the assignee has the right to collect rents in accordance with the  
259 assignment;

260 (d) direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued  
261 rents as they accrue;

262 (e) describe the manner in which Subsections (3) and (4) affect the tenant's payment  
263 obligations;

264 (f) provide the name and telephone number of a contact person and an address to  
265 which the tenant can direct payment of rents and any inquiry for additional information about  
266 the assignment or the assignee's right to enforce the assignment; and

267 (g) contain a statement that the tenant may consult a lawyer if the tenant has questions  
268 about its rights and obligations.

269 (2) If an assignee enforces an assignment of rents under this section, the date of  
270 enforcement is the date on which the tenant receives a notification substantially complying  
271 with Subsection (1).

272 (3) Subject to Subsection (4) and any other claim or defense that a tenant has under  
273 law of this state other than this chapter, following receipt of a notification substantially  
274 complying with Subsection (1):

275 (a) a tenant is obligated to pay to the assignee all unpaid accrued rents and all  
276 unaccrued rents as they accrue, unless the tenant has previously received a notification from  
277 another assignee of rents given by that assignee in accordance with this section and the other  
278 assignee has not canceled that notification;

279 (b) unless the tenant occupies the premises as the tenant's primary residence, a tenant  
280 that pays rents to the assignor is not discharged from the obligation to pay rents to the  
281 assignee;

282 (c) a tenant's payment to the assignee of rents then due satisfies the tenant's obligation  
283 under the tenant's agreement with the assignor to the extent of the payment made; and

284 (d) a tenant's obligation to pay rents to the assignee continues until the tenant receives  
285 a court order directing the tenant to pay the rent in a different manner or a signed document  
286 from the assignee canceling its notification, whichever occurs first.

287 (4) A tenant that has received a notification under Subsection (1) is not in default for  
288 nonpayment of rents accruing within 30 days after the date the notification is received before  
289 the earlier of:

290 (a) ten days after the date the next regularly scheduled rental payment would be due;

291 or

292 (b) 30 days after the date the tenant receives the notification.

293 (5) Upon receiving a notification from another creditor that is entitled to priority under  
294 Subsection 57-26-105(3) that the other creditor has enforced and is continuing to enforce its  
295 interest in rents, an assignee that has given a notification to a tenant under Subsection (1) shall  
296 immediately give another notification to the tenant canceling the earlier notification.

297 (6) An assignee's failure to give a notification under Subsection (1) to any person  
298 holding a recorded assignment of rents does not affect the effectiveness of the notification as  
299 to the assignor and those tenants receiving the notification. However, the person entitled to  
300 the notification is entitled to any relief permitted by law of this state other than this chapter.

301 (7) An assignee that holds a security interest in rents solely by virtue of Subsection  
302 57-26-104(1) may not enforce the security interest under this section while the assignor  
303 occupies the real property as the assignor's primary residence.

304 Section 10. Section **57-26-110** is enacted to read:

305 **57-26-110. Notification to tenant -- Form.**

306 No particular phrasing is required for the notification specified in Section 57-26-109.  
307 However, the following form of notification, when properly completed, is sufficient to satisfy  
308 the requirements of Section 57-26-109:

309 NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

310 Tenant:

311 \_\_\_\_\_

312 Name of Tenant

313 Property Occupied by Tenant (the "Premises"):

314 \_\_\_\_\_

315 Address

316 Landlord: \_\_\_\_\_

317 Name of landlord

318 Assignee: \_\_\_\_\_

319 Name of assignee

320 Address of Assignee and Telephone Number of Contact Person:

321 \_\_\_\_\_

322 Address of assignee

323 \_\_\_\_\_

324 Telephone number of person to contact

325 1. The Assignee named above has become the person entitled to collect your rents on  
326 the Premises listed above under \_\_\_\_\_

327 Name of document

328 (the "Assignment of Rents") dated \_\_\_\_\_ , and recorded at \_\_\_\_\_

329 Date \_\_\_\_\_ Recording data

330 in the

331 \_\_\_\_\_

332 Appropriate governmental office under the recording act of this state

333 You may obtain additional information about the Assignment of Rents and the Assignee's  
334 right to enforce it at the address listed above.

335 2. The Landlord is in default under the Assignment of Rents. Under the Assignment  
336 of Rents, the Assignee is entitled to collect rents from the Premises.

337 3. This notification affects your rights and obligations under the agreement under

338 which you occupy the Premises (your "Agreement"). In order to provide you with an  
 339 opportunity to consult with a lawyer, if your next scheduled rental payment is due within 30  
 340 days after you receive this notification, neither the Assignee nor the Landlord can hold you in  
 341 default under your Agreement for nonpayment of that rental payment until ten days after the  
 342 due date of that payment or 30 days following the date you receive this notification, whichever  
 343 occurs first. You may consult a lawyer at your expense concerning your rights and obligations  
 344 under your Agreement and the effect of this notification.

345 4. You must pay to the Assignee at the address listed above all rents under your  
 346 Agreement which are due and payable on the date you receive this notification and all rents  
 347 accruing under your Agreement after you receive this notification. If you pay rents to the  
 348 Assignee after receiving this notification, the payment will satisfy your rental obligation to the  
 349 extent of that payment.

350 5. Unless you occupy the Premises as your primary residence, if you pay any rents to  
 351 the Landlord after receiving this notification, your payment to the Landlord will not discharge  
 352 your rental obligation, and the Assignee may hold you liable for that rental obligation  
 353 notwithstanding your payment to the Landlord.

354 6. If you have previously received a notification from another person that also holds an  
 355 assignment of the rents due under your Agreement, you should continue paying your rents to  
 356 the person that sent that notification until that person cancels that notification. Once that  
 357 notification is canceled, you must begin paying rents to the Assignee in accordance with this  
 358 notification.

359 7. Your obligation to pay rents to the Assignee will continue until you receive either:

360 (a) a written order from a court directing you to pay the rent in a manner specified in  
 361 that order; or

362 (b) written instructions from the Assignee canceling this notification.

363 \_\_\_\_\_

364 Name of assignee

365 \_\_\_\_\_

366 By: Officer/authorized agent of assignee

367 Section 11. Section **57-26-111** is enacted to read:

368 **57-26-111. Effect of enforcement.**

369 The enforcement of an assignment of rents by one or more of the methods identified in  
370 Sections 57-26-107, 57-26-108, and 57-26-109, the application of proceeds by the assignee  
371 under Section 57-26-112 after enforcement, the payment of expenses under Section  
372 57-26-113, or an action under Subsection 57-26-114(4) does not:

373 (1) make the assignee a purchaser in possession of the real property;

374 (2) make the assignee an agent of the assignor;

375 (3) constitute an election of remedies that precludes a later action to enforce the  
376 secured obligation;

377 (4) make the secured obligation unenforceable;

378 (5) limit any right available to the assignee with respect to the secured obligation;

379 (6) limit, waive, or bar any foreclosure or power of sale remedy under the security  
380 instrument;

381 (7) violate Section 78B-6-901; or

382 (8) bar a deficiency judgment pursuant to any law of this state governing or relating to  
383 deficiency judgments following the enforcement of any encumbrance, lien, or security interest.

384 Section 12. Section **57-26-112** is enacted to read:

385 **57-26-112. Application of proceeds.**

386 Unless otherwise agreed, an assignee that collects rents under this chapter or collects  
387 upon a judgment in an action under Subsection 57-26-114(4) shall apply the sums collected in  
388 the following order to:

389 (1) the assignee's reasonable expenses of enforcing its assignment of rents, including,  
390 to the extent provided for by agreement and not prohibited by law of this state other than this  
391 chapter, reasonable attorney fees and costs incurred by the assignee;

392 (2) reimbursement of any expenses incurred by the assignee to protect or maintain the  
393 real property subject to the assignment;

394 (3) payment of the secured obligation;

395 (4) payment of any obligation secured by a subordinate security interest or other lien  
396 on the rents if, before distribution of the proceeds, the assignor and assignee receive a  
397 notification from the holder of the interest or lien demanding payment of the proceeds; and

398 (5) the assignor.

399 Section 13. Section **57-26-113** is enacted to read:

400 **57-26-113. Application of proceeds to expenses of protecting real property --**  
401 **Claims and defenses of tenant.**

402 (1) Unless otherwise agreed by the assignee, and subject to Subsection (3), an assignee  
403 that collects rents following enforcement under Section 57-26-108 or 57-26-109 need not  
404 apply them to the payment of expenses of protecting or maintaining the real property subject  
405 to the assignment.

406 (2) Unless a tenant has made an enforceable agreement not to assert claims or  
407 defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the  
408 agreement between the assignor and tenant and any claim or defense arising from the  
409 assignor's nonperformance of that agreement.

410 (3) This chapter does not limit the standing or right of a tenant to request a court to  
411 appoint a receiver for the real property subject to the assignment or to seek other relief on the  
412 ground that the assignee's nonpayment of expenses of protecting or maintaining the real  
413 property has caused or threatened harm to the tenant's interest in the property. Whether the  
414 tenant is entitled to the appointment of a receiver or other relief is governed by law of this state  
415 other than this chapter.

416 Section 14. Section **57-26-114** is enacted to read:

417 **57-26-114. Turnover of rents -- Commingling and identifiability of rents --**  
418 **Liability of assignor.**

419 (1) In this section, "good faith" means honesty in fact and the observance of  
420 reasonable commercial standards of fair dealing.

421 (2) If an assignor collects rents that the assignee is entitled to collect under this

422 chapter:

423 (a) the assignor shall turn over the proceeds to the assignee, less any amount  
424 representing payment of expenses authorized by the assignee; and

425 (b) the assignee continues to have a security interest in the proceeds so long as they  
426 are identifiable.

427 (3) For purposes of this chapter, cash proceeds are identifiable if they are maintained  
428 in a segregated account or, if commingled with other funds, to the extent the assignee can  
429 identify them by a method of tracing, including application of equitable principles, that is  
430 permitted under law of this state other than this chapter with respect to commingled funds.

431 (4) In addition to any other remedy available to the assignee under law of this state  
432 other than this chapter, if an assignor fails to turn over proceeds to the assignee as required by  
433 Subsection (2), the assignee may recover from the assignor in a civil action:

434 (a) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to  
435 turn over under Subsection (2); and

436 (b) reasonable attorney fees and costs incurred by the assignee to the extent provided  
437 for by agreement and not prohibited by law of this state other than this chapter.

438 (5) The assignee may maintain an action under Subsection (4) without bringing an  
439 action to foreclose any security interest that it may have in the real property. Any sums  
440 recovered in the action must be applied in the manner specified in Section 57-26-112.

441 (6) Unless otherwise agreed, if an assignee entitled to priority under Subsection  
442 57-26-105(3) enforces its interest in rents after another creditor holding a subordinate security  
443 interest in rents has enforced its interest under Section 57-26-108 or 57-26-109, the creditor  
444 holding the subordinate security interest in rents is not obligated to turn over any proceeds that  
445 it collects in good faith before the creditor receives notification that the senior assignee has  
446 enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds  
447 that it collects after it receives the notification.

448 Section 15. Section **57-26-115** is enacted to read:

449 **57-26-115. Perfection and priority of assignee's security interest in proceeds.**



450 (1) In this section:

451 (a) "Article 9" means Title 70A, Chapter 9a, Uniform Commercial Code - Secured  
452 Transactions, or, to the extent applicable to any particular issue, Article 9 as adopted by the  
453 state whose laws govern that issue under the choice-of-laws rules contained in Title 70A,  
454 Chapter 9a, Uniform Commercial Code - Secured Transactions.

455 (b) "Conflicting interest" means an interest in proceeds, held by a person other than an  
456 assignee, that is:

457 (i) a security interest arising under Article 9; or

458 (ii) any other interest if Article 9 resolves the priority conflict between that person and  
459 a secured party with a conflicting security interest in the proceeds.

460 (2) An assignee's security interest in identifiable cash proceeds is perfected if its  
461 security interest in rents is perfected. An assignee's security interest in identifiable noncash  
462 proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.

463 (3) Except as otherwise provided in Subsection (4), priority between an assignee's  
464 security interest in identifiable proceeds and a conflicting interest is governed by the priority  
465 rules in Article 9.

466 (4) An assignee's perfected security interest in identifiable cash proceeds is  
467 subordinate to a conflicting interest that is perfected by control under Article 9 but has priority  
468 over a conflicting interest that is perfected other than by control.

469 (5) An assignee's perfected security interest in identifiable cash proceeds is  
470 subordinate to a conflicting interest arising under a right of recoupment or setoff.

471 Section 16. Section **57-26-116** is enacted to read:

472 **57-26-116. Priority subject to subordination.**

473 This chapter does not preclude subordination by agreement as to rents or proceeds.

474 Section 17. Section **57-26-117** is enacted to read:

475 **57-26-117. Uniformity of application and construction.**

476 In applying and construing this uniform act, consideration must be given to the need to  
477 promote uniformity of the law with respect to its subject matter among states that enact it.

478 Section 18. Section **57-26-118** is enacted to read:

479 **57-26-118. Relation to Electronic Signatures in Global and National Commerce**  
480 **Act.**

481 This chapter modifies, limits, and supersedes the federal Electronic Signatures in  
482 Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify,  
483 limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize  
484 electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C.  
485 Section 7003(b)).

486 Section 19. Section **57-26-119** is enacted to read:

487 **57-26-119. Application to existing relationships.**

488 (1) Except as otherwise provided in this section, this chapter governs the enforcement  
489 of an assignment of rents and the perfection and priority of a security interest in rents, even if  
490 the document creating the assignment was signed and delivered before May 12, 2009.

491 (2) This chapter does not affect an action or proceeding commenced before May 12,  
492 2009.

493 (3) Subsection 57-26-104(1) of this chapter does not apply to any security instrument  
494 signed and delivered before May 12, 2009.

495 (4) This chapter does not affect:

496 (a) the enforceability of an assignee's security interest in rents or proceeds if,  
497 immediately before May 12, 2009, that security interest was enforceable;

498 (b) the perfection of an assignee's security interest in rents or proceeds if, immediately  
499 before May 12, 2009, that security interest was perfected; or

500 (c) the priority of an assignee's security interest in rents or proceeds with respect to the  
501 interest of another person if, immediately before May 12, 2009, the interest of the other person  
502 was enforceable and perfected, and that priority was established.