

1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: \_\_\_\_\_

Court of Appeals of New Mexico  
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3 Filing Date: **DECEMBER 10, 2020**

4 **No. A-1-CA-37609**



Mark Reynolds

5 **BOKF, N.A.,**

6           Plaintiff,

7 **v.**

8 **THE UNKNOWN HEIRS AND DEVISEES**  
9 **AND LEGATEES OF LINORA P. PACHECO,**  
10 **Deceased; JOSE PACHECO; SANTA FE**  
11 **COMMUNITY HOUSING TRUST; NEW**  
12 **MEXICO MORTGAGE FINANCE**  
13 **AUTHORITY; and OCCUPANTS OF THE**  
14 **PROPERTY,**

15           Defendants,

16 **and**

17 **ASHOK KAUSHAL,**

18           Petitioner-Appellant,

19 **v.**

20 **SANTA FE COMMUNITY HOUSING**  
21 **TRUST,**

22           Petitioner-Appellee.

1 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

2 **David K. Thomson, District Judge**

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4 Kevin P. Holmes

5 Albuquerque, NM

6 High Desert Lawyers, LLC

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9 for Appellant

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11 Ronald J. VanAmberg

12 Santa Fe, NM

13 for Appellee

1 **OPINION**

2 **HANISEE, Chief Judge.**

3 {1} This appeal arises from litigation regarding assignment of redemption rights  
4 to Appellant Ashok Kaushal by some, but not all, heirs of decedent Linora Pacheco  
5 following a foreclosure judgment and sale of her residence. Kaushal appeals from a  
6 district court order granting Appellee Santa Fe Community Housing Trust’s (the  
7 Trust) petition for redemption and motion for summary judgment, the effect of  
8 which was to reject Kaushal’s assigned redemption interest. On appeal, Kaushal  
9 disputes the district court’s determinations that the statutory right of redemption  
10 requires a unified interest and possession of title to the property being assigned and  
11 redeemed. We reverse and remand.

12 **BACKGROUND**

13 {2} Pacheco obtained a mortgage on her home in March 2012, from National  
14 Banking Association d/b/a Bank of Oklahoma (the Bank). Through a mortgage  
15 subordination agreement, the Trust held a subordinate mortgage on Pacheco’s  
16 property. The Bank initiated foreclosure proceedings in December 2014. Pacheco  
17 died before the foreclosure action was brought to judgment and the case continued  
18 against her estate. At the time of her death, Pacheco was survived by her four sons:  
19 Raymond, Joseph, Bryan, and Richard. The Bank obtained a foreclosure judgment  
20 on Pacheco’s property in June 2017. During the underlying proceedings, the district

1 court also recognized the Trust's subordinate mortgage. In September 2018 the Bank  
2 held a foreclosure sale at which it was the highest bidder. The district court entered  
3 an order finalizing the foreclosure sale on October 24, 2017. By that date, Bryan and  
4 Richard were deceased.

5 {3} After the foreclosure sale, Kaushal purchased the statutory right to redeem the  
6 property from Pacheco's two surviving sons, Joseph and Raymond. In November  
7 2017 Kaushal tendered payment in the amount of \$154,712.93 for the value bid at  
8 the foreclosure sale, plus interest and fees, and filed a redemption petition. The Trust  
9 subsequently filed its own redemption petition based on its status as a junior  
10 lienholder. In connection with its redemption petition, the Trust also attempted to  
11 tender a cashier's check in the required amount; however, the district court clerk  
12 refused to accept the Trust's payment absent a court order requiring that it do so.  
13 The Trust then filed a motion requesting the district court to issue an order allowing  
14 the Trust to deposit funds for the property.

15 {4} Kaushal responded, arguing that the Trust's redemption petition was invalid  
16 and that, in any event, Kaushal's right to redeem was superior as the assignee of the  
17 owner's right of redemption. The Trust then filed a supplement to its redemption  
18 petition asserting that Richard's daughter, Claudia Urioste, had assigned her  
19 redemption right to the Trust. In his response thereto, Kaushal maintained that the  
20 assignment from Urioste to the Trust was invalid because it was made six weeks

1 after expiration of the redemption period. The Trust then moved for summary  
2 judgment, arguing among other things that Kaushal’s petition was invalid because  
3 he was required to possess one hundred percent of the redemption rights passed from  
4 Pacheco to her heirs and did not.

5 {5} The district court granted both the Trust’s petition for redemption and its  
6 motion for summary judgement. In its written order, the district court explained:

7           The basic flaw in [Kashaul’s] argument is that he cannot redeem  
8 what he does not legally own. There is nothing in the record that  
9 transfers title of the property to the part[ies] that allegedly assigned the  
10 redemption interest. While the person[s] assigning [their rights of  
11 redemption] may be [heirs], they [the assignees] have to establish[]  
12 legal ownership in the property.

13 {6} The district court’s order relied in part on a decision by the Alabama Supreme  
14 Court dealing with the redemption of partnership property, *Costa & Head*  
15 *(Birmingham One), Ltd. v. Nat’l Bank of Commerce of Birmingham*, which states:  
16 “One who has an interest as a partner in mortgaged property may enforce his  
17 equitable right to redeem. So, in the case of a mortgage of partnership property,  
18 either partner is a debtor entitled to exercise a statutory right to redeem from a sale  
19 on foreclosure, and he may redeem the entire property.” 569 So. 2d 360, 364-65  
20 (Ala. 1990) (alteration, internal quotation marks, and citation omitted). The district  
21 court distinguished Kaushal’s right to redeem from that determined to be valid in  
22 *Costa*, concluding that unlike a legal partner, “one heir has no legal right to assign  
23 the whole of the interest (an undivided interest) to a third party.” Kaushal appeals.

1 **DISCUSSION**

2 {7} On appeal, Kaushal raises three issues: first, he claims that a redemption  
3 petitioner need not possess one hundred percent of the redemption interest to redeem  
4 a property after foreclosure. Second, he argues that a former defendant owner’s heirs  
5 need not first have received title to exercise or assign redemption rights. Third,  
6 Kaushal asserts that the Trust’s petition for redemption is invalid because his petition  
7 has priority and the Trust failed to deposit earnest money in the court registry as  
8 required by the redemption statute. The Trust answers that Kaushal’s petition was  
9 defective, as determined by the district court, because he lacked title to the entirety  
10 of the property and failed to obtain a unified interest.<sup>1</sup> Regarding the earnest money  
11 declined by the district court, the Trust argues that it substantially complied with the  
12 statutory redemption requirements. For the reasons explained below, we hold that  
13 under New Mexico law, it was not necessary for Kaushal to obtain a unified interest  
14 to exercise his assigned rights of redemption, and that Pacheco’s heirs need not have  
15 first received title to the foreclosed property in order to assign their rights of  
16 redemption. Kaushal’s interest, however, is limited to those interests possessed by  
17 the assignees—two of Pacheco’s four surviving sons—at the time of assignment.

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<sup>1</sup> Kaushal additionally asserts that the assigned right of redemption from Urioste is invalid because it occurred following the expiration of the redemption period. However, we need not resolve that issue given our conclusion that Kaushal’s interest is limited to the fifty percent he was assigned, which did not include the interest purportedly assigned by Urioste to the Trust.

1 We also conclude that the Trust substantially complied with the statutory  
2 requirements applicable to its own right of redemption. We remand for further  
3 proceedings.

#### 4 **Standard of Review**

5 {8} Kaushal’s arguments on appeal challenge the application of law to the facts  
6 of this case. “We review de novo the trial court’s application of the law to the facts  
7 in arriving at its legal conclusions.” *Kokoricha v. Estate of Keiner*, 2010-NMCA-  
8 053, ¶ 11, 148 N.M. 322, 236 P.3d 41 (internal quotation marks and citation  
9 omitted). To the extent determination of the issues presented requires that we engage  
10 in statutory interpretation, we engage in a de novo review in which “our charge is to  
11 determine and give effect to the Legislature’s intent.” *Little v. Jacobs*, 2014-NMCA-  
12 105, ¶ 7, 336 P.3d 398 (internal quotation marks and citation omitted).

#### 13 **I. Under the New Mexico Redemption Statute, Kaushal Need Not Possess a** 14 **Unified Redemption Interest to Redeem**

15 {9} Kaushal argues that the plain language of the redemption statute makes it clear  
16 that a redemption petitioner need not possess one hundred percent of the possible  
17 redemption interests to redeem a property after a foreclosure sale. In New Mexico,  
18 the statutory redemption right is created by the State’s foreclosure redemption  
19 statute. NMSA 1978, Section 39-5-18 (2007). The redemption statute provides that  
20 “real estate may be redeemed by the former defendant owner of the real estate or by  
21 any junior mortgagee or other junior lienholder whose rights were judicially

1 determined in [a] foreclosure proceeding[.]” Section 39-5-18(A). Importantly for our  
2 purposes, the redemption statute identifies the term “owner” as including an owner’s  
3 “personal representatives, heirs, successors and assigns.” Section 39-5-18(D).  
4 Consistent with the express language of the statute, New Mexico courts have held  
5 that the right of redemption is an assignable right. *See W. Bank of Las Cruces v.*  
6 *Malooly*, 1995-NMCA-044, ¶ 9, 119 N.M. 743, 895 P.2d 265 (holding that “our  
7 redemption statute authorizes a holder-by-assignment of a junior lien to redeem from  
8 the judicial sale of foreclosed property”).

9 {10} The statute also prioritizes the rights of former-defendant owners over the  
10 rights of junior lien holders. *See* § 39-5-18(A)(3) (“[T]he former defendant owner  
11 shall have the first priority to redeem the real estate. If the former defendant owner  
12 does not redeem the real estate . . . each junior mortgagee or junior lienholder shall  
13 have a right to redeem the real estate.”). In other words, each category of “former  
14 defendant owner”—that is, “personal representatives, heirs, successors and  
15 assigns”—has the first opportunity to redeem a foreclosed property in New Mexico.  
16 However, the statute is silent on whether a prioritized redeeming former defendant  
17 owner must possess a unified interest—i.e. one-hundred-percent—of the redemption  
18 right.

19 {11} Section 39-5-18 was amended in 2007 and it is the amended language that the  
20 parties argue requires or does not require that every heir assign their percentage



1 interest to a single assignee in order for the right of redemption to accrue in that  
2 assignee. *See id.* Kaushal contends that the district court’s holding that “one heir has  
3 no legal right to assign the whole of the interest (an undivided interest) to a third  
4 party” is not supported by the language of the amended statute. Nowhere in the  
5 redemption statute, he explains, did the Legislature declare that all heirs must act in  
6 concert to redeem a deceased former owner’s property. Kaushal also asserts that the  
7 district court’s conclusion is inconsistent with the plain language of the statute,  
8 which he argues “makes clear that the [statutory] enumerated actors act on behalf of  
9 the defendant-owner.” The Trust argues that the Legislature could not have intended  
10 that opportunists and speculators could obtain a redemption right from an heir of a  
11 decedent mortgage holder post foreclosure and thereby “spring ahead of legitimate  
12 creditors.” The parties also present starkly contrasting public policy arguments  
13 regarding the potential impact of a unity requirement. Kaushal suggests that such  
14 would lead to “absurd, unworkable results that the Legislature could not have  
15 intended.” The Trust, on the other hand, argues that if Kaushal’s position is correct,  
16 it would cause a return to “the chaos which the 2007 amendment to the statute sought  
17 to eliminate.”

18 {12} Prior to the 2007 amendment, the right of redemption, under the New Mexico  
19 foreclosure statute provided that “[a]fter sale of [any] real estate pursuant to any such  
20 judgment or decree of any court, the real estate may be redeemed by the former

1 defendant owner of the real estate, his heirs, personal representatives or assigns or  
2 by any junior mortgagee or other junior lienholder.” Section 39-5-18(A) (1987). This  
3 statute did not prioritize the redemption rights of the former defendant owner or his  
4 heirs and assignees or junior lienholders. *See id.*

5 {13} In 2007 Subsection D of Section 39-5-18 was amended to provide and explain  
6 that “the terms ‘owner,’ ‘junior mortgagee,’ ‘junior lienholder,’ and ‘purchaser’  
7 include their respective personal representatives, heirs, successors and assigns.”  
8 Section 39-5-18(D). The 2007 amendment to Subsection D of Section 39-5-18,  
9 established a redemption priority for those parties falling within classification of  
10 “owner.” *See* § 39-5-18(A)(3) (providing that “the former defendant owner shall  
11 have the first priority to redeem the real estate”). The parties debate the legislative  
12 intent behind the plural use of “heirs, successors and assigns.” Kaushal argues that  
13 the Legislature’s use of the plural “heirs” was simply stylistic and provided  
14 generalized terms, while the Trust claims that the use of the term “heirs” evidences  
15 the Legislature’s intent to require a “unity of interest.” Additionally, the Trust claims  
16 that by requiring a unified interest, the Legislature eliminated the need to address  
17 conflicts between competing heirs and their assignees. Instead, the Trust argues that  
18 to maintain the legislative intent behind the amendments, a redeeming petitioner  
19 must unify however many interests exist in the property for which redemption is  
20 sought. The Trust also suggests that a unified interest requirement would not prevent

1 heirs from maintaining the ability to save a family property. For instance, the Trust  
2 posits that if the original mortgagor is unable to make a mortgage payment, any heir  
3 can step in and help save the property from foreclosure. The Trust also insists that  
4 because of the typically lengthy timeline of a foreclosure action, when a property  
5 goes to a foreclosure sale, it is by then evident that none of the heirs are prepared or  
6 interested in redeeming the property.

7 {14} We begin our analysis by noting that nothing about the amendment to Section  
8 39-5-18 expressly resolves the question of whether the right of redemption requires  
9 unification of interests. Thus, we agree with Kaushal that the plain language of the  
10 current and applicable redemption statute, including use of a general plural term in  
11 a provision that lists all party classifications plurally, does not require all heirs to act  
12 in unity to redeem a former defendant owner’s property. Had the Legislature  
13 intended to require redemption petitioners to act with one hundred percent of the  
14 redemption interests, it could have expressly included such a requirement in the  
15 amended statute. “The Legislature knows how to include language in a statute if it  
16 so desires.” *State v. Greenwood*, 2012-NMCA-017, ¶ 38, 271 P.3d 753 (alteration,  
17 internal quotation marks, and citation omitted); *see also State ex rel. Helman v.*  
18 *Gallegos*, 1994-NMSC-023, ¶ 20, 117 N.M. 346, 871 P.2d 1352 (affirming that  
19 courts may add words to a statute only “if it is necessary to do so to carry out the  
20 legislative intent or to express the clearly manifested meaning of the statute”

1 (internal quotation marks and citation omitted)). The district court’s ruling and the  
2 Trust’s interpretation of this statute would require this Court to add words that the  
3 Legislature chose not to include, something we will not do.

4 {15} Indeed, New Mexico case law points away from such a requirement. In  
5 *Banker’s Trust Co. v. Woodall*, a recently divorced husband and wife assigned each  
6 of their redemption rights to foreclosed property to separate purchasers and both  
7 assignees attempted to redeem. 2006-NMCA-129, ¶ 1, 140 N.M. 567, 144 P.3d 126.

8 We first determined that the husband and wife’s cotenancy was not “terminated  
9 either by the foreclosure sale or their assignment of their rights of redemption to two  
10 different parties.” *Id.* ¶ 2. We further concluded that because the foreclosure sale did  
11 not terminate the cotenancy, under the doctrine of inurement, a redemption by one  
12 cotenant would inure to the benefit of the other cotenant, triggering the latter’s right  
13 of contribution. *See id.* ¶ 9; *see also Velasquez v. Mascaranas*, 1962-NMSC-157,  
14 ¶ 12, 71 N.M. 133, 367 P.3d 311 (stating that in New Mexico, “a cotenant who  
15 redeems from a tax sale does so for the benefit of all the cotena[n]ts”). Cotenancy  
16 interests are freely alienable and “[g]enerally, a tenant in common may convey his  
17 or her own interest in the common estate to a stranger without the knowledge or  
18 approval of other cotenants.” *Woodall*, 2006-NMCA-129, ¶ 12 (internal quotation  
19 marks and citation omitted). In *Woodall*, we also explained that “by purchasing a  
20 right of redemption from a divorced cotenant, the purchaser/assignee is charged with

1 constructive knowledge of the existence of the other cotenant’s [redemption] rights.”  
2 *Id.* Thus in *Woodall*, the separate assignees of cotenants’ redemption rights could  
3 redeem the property as cotenants. *See id.* ¶ 9. Notably in *Woodall*, each assignee’s  
4 non-unified right of redemption was determined to be valid, and only upon  
5 redemption added up to a one-hundred percent right of redemption. *See id.*

6 {16} Kaushal declares that *Woodall* concludes that no redeeming petitioner must  
7 possess one hundred percent of the redemption interests on a property to redeem,  
8 given that clearly in that case neither assignee did. The Trust answers that because  
9 *Woodall* was decided in 2006, prior to the 2007 amendments, it is inapplicable.  
10 Further, the Trust claims that the Legislature is presumed to know existing case law  
11 and therefore grasped “the problems” arising from *Woodall*. *See State v. Cleve*,  
12 1999-NMSC-017, ¶ 14, 127 N.M. 240, 980 P.2d 23 (stating that “the Legislature is  
13 presumed to act with knowledge of relevant case law”) (alteration, internal quotation  
14 marks, and citation omitted). But *Woodall*’s applicability, and the question of a  
15 unification requirement, does not turn on the 2007 amendment to the redemption  
16 statute. We explain.

17 {17} As the assignee to two heirs’ redemption rights and the junior lienholder  
18 respectively, Kaushal and the Trust hold valid and separate redemption rights. Under  
19 New Mexico’s foreclosure redemption statute, Kaushal’s redemption rights have  
20 priority given that an owner’s assignee is included in the statutory definition of a

1 defendant owner. Section 39-5-18(A). However, he holds only a fifty-percent  
2 redemption interest in the property. To reiterate, in *Woodall*, we determined that  
3 cotenants' separate title is freely alienable to strangers and each assignee stands in  
4 the shoes of the assignor. *See Woodall*, 2006-NMCA-129, ¶ 14. A formal opinion of  
5 this Court is controlling authority. *See Gulbransen v. Progressive Halcyon Ins. Co.*,  
6 2010-NMCA-082, 148 N.M. 585, 241 P.3d 183. As in *Woodall*, Raymond and  
7 Joseph, separate heirs, assigned their rights of redemption to Kaushal. Because the  
8 plain language of the 2007 version of Section 39-5-18 does not include a unity  
9 requirement, and our case law has previously determined that the separate  
10 assignments of redemption rights can be exercised by multiple assignees, we have  
11 no basis to conclude that Kaushal was required to possess one-hundred percent of  
12 the possible redemption interests. "We may only add words to a statute where it is  
13 necessary to make the statute conform to the [L]egislature's clear intent, or to  
14 prevent the statute from being absurd." *State v. Maestas*, 2007-NMSC-001, ¶ 15,  
15 140 N.M. 836, 149 P.3d 933.

16 **II. The Heirs of a Former Defendant Owner Did Not Need to Possess Title**  
17 **to Assign Redemption Rights**

18 {18} As mentioned above, the district court determined that Kaushal's redemption  
19 petition is invalid because there was "nothing in the record that transfers title of the  
20 property to the party that allegedly assigned the redemption interest." Kaushal argues  
21 the district court erred because a former defendant owner's heirs need not have first

1 received title to foreclosed property in order to exercise the statutory right of  
2 redemption as to that property, and that the district court’s reliance on *Costa*  
3 confused the statutory right of redemption with that of equitable redemption.  
4 Kaushal points to language, within *Costa*, relied upon by the district court stating  
5 that “[o]ne who has an interest as a partner in mortgaged property may enforce his  
6 equitable right to redeem.”<sup>2</sup> 569 So. 2d at 364 (internal quotation marks and citation  
7 omitted). The Trust responds that the district court’s holding relates to the unity of  
8 interest argument upon which it prevailed.

9 {19} Kaushal again relies on the plain meaning of Section 39-5-18 to argue that  
10 title need not be received to exercise redemption rights on the land. Kaushal contends  
11 that because the plain language of the redemption statute and the Legislature’s  
12 definition of former “defendant owner” includes the former defendant owner’s heirs,  
13 the heirs stand in the shoes of the former defendant owner. Thus, actual title need  
14 not have been transferred to an heir in order for the heirs to assert or assign a right  
15 of redemption.<sup>3</sup> The Trust maintains that title is, as the district court determined,

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<sup>2</sup>Kaushal also suggests that the Alabama redemption statute is not nearly as explicit as the New Mexico redemption statute on who may exercise the right of redemption. However, he has not provided the specific Alabama statute, nor has he developed this argument further. *See Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 (“This Court has no duty to review an argument that is not adequately developed.”).

<sup>3</sup>Kaushal also claims that even if the redemption statute in New Mexico required the heirs to first have title before assigning their redemption rights, the heirs’ assignment would have been valid under the doctrine of after-acquired title.

1 required and that Kaushal “at best holds a [fifty-percent] tenancy in common  
2 redemption interest.” For the following reasons, we hold that title is not required to  
3 exercise redemption rights.

4 {20} Kaushal is correct that the plain language of the redemption statute does not  
5 require that heirs first have title to the entirety of the property to assign or exercise  
6 redemption rights. Again, had the Legislature intended to require redemption  
7 petitioners to acquire title prior to exercising redemption rights, it could have  
8 included such a requirement in the amended statute. *See Greenwood*, 2012-NMCA-  
9 017, ¶ 38. Notably, the redemption statute identifies the term “owner” as including  
10 an owner’s “heirs” and “assigns.” Section 39-5-18(D). It would be redundant for the  
11 Legislature to employ the terms “heirs” and “assigns” in that context if in fact such  
12 parties would first have to acquire title—thereby becoming owners, and falling  
13 within the first category of those entitled to redeem under the statute. *See United*  
14 *Nuclear Corp v. Allstate Ins. Co.*, 2012-NMSC-032, ¶ 28, 285 P.3d 644 (noting that

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Although it is not necessary to address this argument given our holding today, we assume, without deciding, that the doctrine is not applicable to the circumstances herein. Rather, our New Mexico Supreme Court has applied the doctrine when there are two chains of title originating from a common grantor. *See Hays v. King*, 1989-NMSC-078, ¶ 8, 109 N.M. 202, 784 P.2d 21. The doctrine “estops a grantor who obtains title to land after already granting the land from claiming the land as against the grantee.” *Rendleman v. Heinley*, 2007-NMCA-009, ¶ 3, 140 N.M 912, 149 P.3d 1009.



1 interpreting statutory terms to avoid redundancy is one rule of construction, though  
2 not absolute).

3 {21} Moreover, by amending the statute to clarify the definition of a term in a  
4 manner that included classifications that by their nature contemplate an absence of  
5 titled ownership, the Legislature expressed its intent in a manner inconsistent with  
6 the Trust’s argument. *See* § 39-5-18(D). To conclude that heirs or assignees require  
7 title in order to exercise their right of redemption would reclassify them as a different  
8 category of owner under the statute, rendering the statute’s use of the terminology  
9 “heirs” or “assignees” a legal nullity. “We presume that the Legislature is well  
10 informed regarding existing statutory and common law and does not intend to enact  
11 a nullity.” *Benavidez v. Sierra Blanca Motors*, 1996-NMSC-045, ¶ 18, 122 N.M.  
12 209, 922 P.2d 1205. We are precluded from interpreting a statute in a manner that  
13 excludes terminology chosen by the Legislature or adds terminology not chosen by  
14 the Legislature. Rather, it is our task to discern the plain language using ordinary  
15 definitions of a given legislative enactment, and effectuate its purpose based upon  
16 those words and applicable precedent. “New Mexico courts have long honored this  
17 statutory command through application of the plain meaning rule, recognizing that  
18 when a statute contains language which is clear and unambiguous, we must give  
19 effect to that language and refrain from further statutory interpretation.” *Quynh*  
20 *Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶ 37, 147 N.M. 583, 227 P.3d 73

1 (alteration, internal quotation marks, and citation omitted). Because the Legislature  
2 did not include a requirement that the heirs or assigns of a former defendant owner  
3 possess title to exercise or assign redemption rights, we cannot add such a  
4 requirement to Section 39-5-18.

5 {22} Finally, in New Mexico, a foreclosure sale is subject to redemption by the  
6 former defendant owner until the redemption period expires. *See* § 39-5-18(A). The  
7 statutory right to redeem treats certain categories of non-owners, such as assignees,  
8 as well as heirs, as defendant owners. *See* § 39-5-18(D). It provides a right “to regain  
9 actual physical possession of the property” by the identified categories of defendant  
10 owner. *Woodall*, 2006-NMCA-129, ¶ 8. As such, the “right to possess” property is  
11 not destroyed by a foreclosure sale until the period of redemption expires because a  
12 former defendant owner still has the right to possess the whole until then. *See id.*  
13 Because the defendant owners hold the right to possess the property until the  
14 expiration of the redemption period, it would be impractical to require an assignee  
15 to obtain title during such period. For these reasons, the district court erred in  
16 concluding that Joseph and Raymond needed to first obtain title prior to the  
17 assignment of their redemption rights, and Kaushal was therefore assigned invalid  
18 rights of redemption.

1 **III. The Trust and Kaushal Substantially Complied With the Statutory**  
2 **Requirements for Redemption**

3 {23} Kaushal finally contends that the Trust’s redemption petition is invalid and  
4 unenforceable for two reasons. First, he argues that the plain language of the  
5 amended redemption statute provides that a junior lien holder’s redemption right  
6 only accrues if the property owner does not exercise his or her right. Second, he  
7 contends that the Trust’s petition was rendered invalid by the Trust’s failure to  
8 deposit money in the district court’s registry as required by the foreclosure  
9 redemption statute. The Trust does not appear to dispute the priority of its  
10 redemption petition, but argues that it substantially complied with the statutory  
11 requirements for redemption even though it failed to deposit money in the court  
12 registry. The Trust also argues that Kaushal did not serve his petition for redemption  
13 on any of the parties to the foreclosure proceedings, particularly any representative  
14 of the Trust, and therefore his petition is defective.

15 {24} The plain language of the New Mexico redemption statute provides two  
16 requirements that must be met to redeem property. *See* § 39-5-18(A) (2); *Chapel v.*  
17 *Nevitt*, 2009-NMCA-017, ¶ 27, 145 N.M. 674, 203 P.3d 889. Under Section 39-5-  
18 18(A)(2), “the debtor must (1) petition the district court and (2) deposit a sum of  
19 money in the court registry within nine months from the date of the sale.” *Nevitt*,  
20 2009-NMCA-017, ¶ 27 (emphasis omitted). “Our cases have consistently held that  
21 substantial compliance with both statutory requirements is required in order to

1 redeem property.” *Id.* It is a violation of public policy “to prevent redemption that is  
2 in accordance with the statute.” *Dalton v. Franken Const. Cos.*, 1996-NMCA-041,  
3 ¶ 9, 121 N.M. 539, 914 P.2d 1036 (internal quotation marks and citation omitted).  
4 {25} Kaushal asserts that our courts have been reluctant to honor “reasonable  
5 attempts” or “substantial compliance,” in this context, and when they have honored  
6 such attempts they have required absolute proof that attempted compliance would  
7 have been successful and that no other bars to a successful petition exist. Kaushal  
8 points to *Dalton* to support this assertion, where we held that the tender of an  
9 unendorsed cashier’s check did not satisfy the statute. *Id.* ¶ 12. The cashier’s check  
10 in *Dalton* could only be negotiated after an endorsement “by all three payees[, b]ut  
11 the bank refused to endorse the check.” *Id.* We also noted that *Dalton*’s “failure to  
12 deposit cash with the district court clerk was more than merely a technical  
13 deficiency[,]” and that “[i]t is effective action, not good intentions, that the statute  
14 calls for.” *Id.* ¶¶ 14, 19 (internal quotation marks and citation omitted). Kaushal also  
15 relies on *Chapel*, in which our New Mexico Supreme Court held that a redeeming  
16 petitioner did not substantially comply when that petitioner never deposited any sum  
17 of money in the district court registry. *See* 2009-NMCA-017, ¶ 30. Rather, the  
18 petitioner’s only attempt at compliance was the tender of a \$2,000 check (one  
19 percent of the purchase price) and the execution of a promissory note. *Id.* ¶¶ 7, 30.

1 {26} The Trust argues that its actions constitute substantial compliance and  
2 distinguishes its effort from that of the petitioners in *Dalton* and *Chapel*. We agree.  
3 It is undisputed that the Trust petitioned the district court and met the first  
4 requirement of New Mexico’s redemption statute. *See* § 39-5-18(A). Additionally,  
5 the Trust attempted to tender a cashier’s check made out to the First Judicial District  
6 Court in the amount of \$155,091. Because the district court clerk refused to accept  
7 the cashier’s check, the Trust filed a motion requesting that the district court issue  
8 an order permitting the Trust to deposit funds for the property. Unlike the petitioner  
9 in *Dalton* who attempted to deposit an unendorsed nonnegotiable check, the Trust  
10 tendered a fully negotiable instrument. Additionally, unlike the petitioner in *Chapel*  
11 who attempted compliance by delivering a check for \$2,000, the Trust attempted to  
12 submit a check for the entire purchase price. The Trust’s failure to deposit the check  
13 in the district court registry—because its check was rejected by the district court—  
14 was therefore “merely a technical deficiency.” *Dalton*, 1996-NMCA-041, ¶ 14.

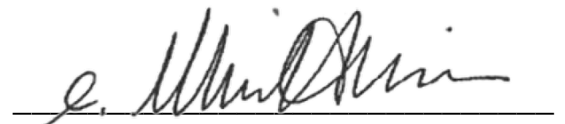
15 {27} Despite the Trust’s contentions to the contrary, we similarly conclude that  
16 Kaushal substantially complied with the redemption statute requirements. The  
17 amended redemption statute provides that “[c]opies of the petition for redemption  
18 shall be served upon the purchaser of the real estate at the judicial foreclosure sale  
19 and upon all parties who appeared in the judicial foreclosure case[.]” Section 39-5-  
20 18(A)(2). Our review of the record reveals that although Kaushal failed to serve his

1 redemption petition on the Trust, he petitioned the district court and did serve  
2 Pacheco's heirs and the Bank. *See* § 39-5-18(A). He also deposited a fully negotiable  
3 instrument for the fully required amount of the foreclosure sale within the  
4 redemption period. Because Kaushal served the parties other than the Trust,  
5 petitioned the district court and tendered a fully negotiable instrument, he  
6 substantially complied with the redemption statute requirements. *See Nevitt*, 2009-  
7 NMCA-017, ¶ 27. Kaushal's failure to serve his redemption petition on the Trust  
8 was not more than "merely a technical deficiency." *Dalton*, 1996-NMCA-041, ¶ 14.  
9 For these reasons, we conclude that both Kaushal and the Trust substantially  
10 complied with the statutory redemption requirements and therefore the parties'  
11 redemption petitions were valid.

12 **CONCLUSION**

13 {28} For the foregoing reasons, we reverse the district court's order granting the  
14 Trust's redemption petition and summary judgment for the Trust and remand to the  
15 district court to allow for the exercise of Kaushal's, along with the Trust's, rights to  
16 redemption consistent with this opinion.

17 {29} **IT IS SO ORDERED.**

18   
19 **J. MILES HANISEE, Chief Judge**

1 WE CONCUR:

2 *Kristina Bogardus*  
3 KRISTINA BOGARDUS, Judge

4 *Jacqueline R. Medina*  
5 JACQUELINE R. MEDINA, Judge