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HOUSE BILL 65

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

Andrea Romero

AN ACT

RELATING TO HOUSING; CLARIFYING THE REQUIREMENT FOR A WRITTEN STATEMENT OF DEDUCTIONS IN CERTAIN CIRCUMSTANCES; INCREASING CERTAIN CIVIL PENALTIES; INCREASING THE TIME PERMITTED TO REMEDY NONPAYMENT OF RENT FOR A RENTAL AGREEMENT; INCREASING PERIODS OF TIME REQUIRED FOR NONPAYMENT NOTICES; REQUIRING THE ISSUANCE OF A JUDGMENT OF RESTITUTION PRIOR TO A WRIT OF RESTITUTION; CLARIFYING THAT ISSUANCE AND EXECUTION OF A WRIT OF RESTITUTION ARE STAYED DURING AN APPEAL; PROHIBITING AN OWNER FROM REFUSING TO RENEW OR SEEKING TO TERMINATE A RENTAL AGREEMENT DURING A DECLARED EMERGENCY OR DISASTER; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 47-8-1 NMSA 1978 (being Laws 1975, Chapter 38, Section 1, as amended) is amended to read:

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1 "47-8-1. SHORT TITLE.--[Sections 47-8-1 through 47-8-51]  
2 Chapter 47, Article 8 NMSA 1978 may be cited as the "Uniform  
3 Owner-Resident Relations Act"."

4 SECTION 2. Section 47-8-15 NMSA 1978 (being Laws 1975,  
5 Chapter 38, Section 15, as amended) is amended to read:

6 "47-8-15. PAYMENT OF RENT.--

7 A. The resident shall pay rent in accordance with  
8 the rental agreement. In the absence of an agreement, the  
9 resident shall pay as rent the fair rental value for the use of  
10 the premises and occupancy of the dwelling unit.

11 B. Rent is payable without demand or notice at the  
12 time and place agreed upon by the parties. Unless otherwise  
13 agreed, rent is payable at the dwelling unit. Unless otherwise  
14 agreed, periodic rent is payable at the beginning of any term  
15 of one month or less and otherwise in equal monthly  
16 installments at the beginning of each monthly period. The date  
17 of one month to the same date of the following month shall  
18 constitute a term of one month.

19 C. Unless the rental agreement fixes a definite  
20 term, the residency is week-to-week in the case of a person who  
21 pays weekly rent and in all other cases month-to-month.

22 D. If the rental agreement provides for the  
23 charging of a late fee and if the resident does not pay rent in  
24 accordance with the rental agreement, the owner may charge the  
25 resident a late fee in an amount not to exceed ten percent of

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1 the ~~[total rent payment for each rental period that the~~  
2 ~~resident is in default]~~ monthly rent payment. If the  
3 resident's rent is subsidized by a government agency, the  
4 maximum late fee shall be ten percent of the portion of the  
5 rent that the resident pays for the dwelling unit and shall not  
6 include the portion paid by the government agency. To assess a  
7 late fee, the owner shall provide notice of the late fee  
8 charged no later than the last day of the next rental period  
9 immediately following the period in which the default occurred.

10 E. An owner may not assess a fee from the resident  
11 for occupancy of the dwelling unit by a reasonable number of  
12 guests for a reasonable length of time. This shall not  
13 preclude charges for use of premises or facilities other than  
14 the dwelling unit by guests.

15 F. An owner may increase the rent payable by the  
16 resident in a month-to-month residency by providing written  
17 notice to the resident of the proposed increase at least thirty  
18 days prior to the periodic rental date specified in the rental  
19 agreement or, in the case of a fixed term residency, at least  
20 thirty days prior to the end of the term. In the case of a  
21 periodic residency of less than one month, written notice shall  
22 be provided at least one rental period in advance of the first  
23 rental payment to be increased.

24 G. Unless agreed upon in writing by the owner and  
25 the resident, a resident's payment of rent may not be allocated

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1 to any deposits or damages.

2 H. For each cash or money order payment made by a  
3 resident or on a resident's behalf, an owner shall provide the  
4 resident a written or electronic receipt that shall include the  
5 amount of the payment, the date of payment and the resident's  
6 name."

7 SECTION 3. Section 47-8-18 NMSA 1978 (being Laws 1975,  
8 Chapter 38, Section 18, as amended) is amended to read:

9 "47-8-18. DEPOSITS.--

10 A. An owner is permitted to demand from the  
11 resident a reasonable deposit to be applied by the owner to  
12 recover damages, if any, caused to the premises by the resident  
13 during [~~his~~] the term of residency. [~~(1)~~] Under the terms of  
14 an annual rental agreement, if the owner demands or receives of  
15 the resident [~~such~~] a deposit in an amount greater than one  
16 month's rent, the owner shall be required to pay to the  
17 resident annually an interest equal to the passbook interest  
18 permitted to savings and loan associations in this state by the  
19 federal home loan bank board on such deposit. [~~(2)~~] Under the  
20 terms of a rental agreement of a duration less than one year,  
21 an owner shall not demand or receive from the resident [~~such~~] a  
22 deposit in an amount in excess of one month's rent.

23 B. It is not the intention of this section to  
24 include the last month's prepaid rent, which may be required by  
25 the rental agreement as a deposit as defined in Subsection [D]

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1 E of Section 47-8-3 NMSA 1978. Any deposit as defined in  
2 [~~Paragraph (1) of~~] Subsection A of this section shall not be  
3 construed as prepaid rent.

4 C. Upon termination of the residency, property or  
5 money held by the owner as deposits may be applied by the owner  
6 to the payment of rent and the amount of damages [~~which~~] that  
7 the owner has suffered by reason of the resident's  
8 noncompliance with the rental agreement or Section 47-8-22 NMSA  
9 1978. No deposit shall be retained to cover normal wear  
10 and tear. In the event actual cause exists for retaining any  
11 portion of the deposit for nonpayment of rent, late fees,  
12 utilities, repairs, cleaning or other legitimate damages or  
13 charges, the owner shall provide the resident with an itemized  
14 written list of the deductions from the deposit and the balance  
15 of the deposit, if any, within thirty days of the date of  
16 termination of the rental agreement or resident departure,  
17 whichever is later. The owner is deemed to have complied with  
18 this section by mailing, emailing or hand delivering the  
19 statement and any payment required to the last known address of  
20 the resident. [~~Nothing in this section shall preclude the~~  
21 ~~owner from retaining portions of the deposit for nonpayment of~~  
22 ~~rent or utilities, repair work or other legitimate damages]~~ If  
23 the statement and any payment are mailed but returned as  
24 undeliverable or if the last known address is the vacated  
25 dwelling unit, the owner shall mail, email or hand deliver at

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1 least one additional notice if an alternative address has been  
2 provided to the owner by the resident or the resident's  
3 representative.

4 D. If the owner fails to provide the resident with  
5 a written statement of deductions from the deposit and the  
6 balance shown by the statement to be due, within thirty days of  
7 the termination of the tenancy, the owner:

8 (1) shall forfeit the right to withhold any  
9 portion of the deposit for any charge, including rent other  
10 than the minimum periodic payment due under the lease for a  
11 dwelling accrued through the date of termination or resident  
12 departure, whichever is later, late fees, utilities, repairs,  
13 cleaning or other damages or charges;

14 (2) shall forfeit the right to assert [~~any~~] a  
15 counterclaim in [~~any~~] an action brought to recover that  
16 deposit;

17 (3) shall be liable to the resident for court  
18 costs and reasonable [~~attorneys'~~] attorney fees; and

19 (4) shall forfeit the right to assert an  
20 independent action against the resident for [~~damages to the~~  
21 ~~rental property~~] any charge, including rent other than the  
22 minimum periodic payment due under the lease for a dwelling  
23 accrued through the date of termination or resident departure,  
24 whichever is later, late fees and other penalties, utilities,  
25 repairs, cleaning or other damages or charges. Notwithstanding

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1 any other provision of law, nothing in this section shall  
2 prevent the owner from retaining a portion of the deposit or  
3 bringing a separate action for the minimum periodic payment due  
4 under the lease for a dwelling actually due prior to the  
5 resident vacating the premises.

6 E. An owner who ~~[in bad faith]~~ retains a deposit,  
7 or any portion thereof, knowing that retention to be in  
8 violation of this section is liable to the resident for a civil  
9 penalty in the amount of ~~[two hundred fifty dollars (\$250)~~  
10 ~~payable to the resident]~~ twice the amount improperly withheld."

11 SECTION 4. Section 47-8-33 NMSA 1978 (being Laws 1975,  
12 Chapter 38, Section 33, as amended) is amended to read:

13 "47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY  
14 OWNER.--

15 A. Except as provided in the Uniform Owner-Resident  
16 Relations Act, if there is noncompliance with Section 47-8-22  
17 NMSA 1978 materially affecting health and safety or upon the  
18 initial material noncompliance by the resident with the rental  
19 agreement or ~~[any]~~ a separate agreement, the owner shall  
20 deliver a written notice to the resident specifying the acts  
21 and omissions constituting the breach, including the dates and  
22 specific facts describing the nature of the alleged breach, and  
23 stating that the rental agreement will terminate upon a date  
24 not less than seven days after receipt of the notice if the  
25 breach is not remedied in seven days.

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1           B. Upon the second material noncompliance with the  
2 rental agreement or any separate agreement by the resident,  
3 within six months of the initial breach, the owner shall  
4 deliver a written notice to the resident specifying the acts  
5 and omissions constituting the breach, including the dates and  
6 specific facts describing the nature of the alleged breach, and  
7 stating that the rental agreement shall terminate upon a date  
8 not less than seven days after receipt of the notice. If the  
9 subsequent breach occurs more than six months after the initial  
10 breach, it shall constitute an initial breach for purposes of  
11 applying the provisions of this section.

12           C. The initial notice provided in this section  
13 shall state that the rental agreement will terminate upon the  
14 second material noncompliance with the rental agreement or any  
15 separate agreement by the resident, within six months of the  
16 initial breach. To be effective, ~~[any]~~ a notice pursuant to  
17 this subsection shall be given within thirty days of the breach  
18 or knowledge thereof.

19           D. If rent is unpaid when due and the resident  
20 fails to pay rent within ~~[three]~~ eleven days after written  
21 notice from the owner of nonpayment, ~~[and his]~~ the owner may  
22 terminate the rental agreement pursuant to this subsection.  
23 The notice shall state the owner's intention to terminate the  
24 rental agreement. The owner may terminate the rental agreement  
25 and the resident shall ~~[immediately deliver possession of the~~

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1 ~~dwelling unit; provided that~~ deliver possession of the  
2 dwelling unit or seek redress in court in response to the  
3 owner's action for writ of restitution. The tender of the full  
4 amount due, in the manner stated in the notice, prior to the  
5 expiration of the ~~[three-day]~~ eleven-day notice shall bar any  
6 action for nonpayment of rent.

7 E. In any court action for possession for  
8 nonpayment of rent or other charges where the resident disputes  
9 the amount owed because:

10 (1) the resident has abated rent pursuant to  
11 Section 47-8-27.2 or 47-8-4 NMSA 1978; or

12 (2) the owner has allocated rent paid by the  
13 resident as payment for damages to the premises, then, if the  
14 owner is the prevailing party, the court shall enter a ~~[writ of~~  
15 ~~restitution]~~ judgment conditioned upon the right of the  
16 resident to remedy by depositing the judgment amount with the  
17 court within ~~[three]~~ twenty-one days of entry of judgment. If  
18 the resident has satisfied the judgment within ~~[three]~~ twenty-  
19 one days, the ~~[writ]~~ judgment shall be vacated and the petition  
20 as to that issue shall be dismissed. If the resident has not  
21 satisfied the judgment ~~[within three days, the owner may~~  
22 ~~execute upon the writ without further order of the court]~~ as  
23 set by the court, the court shall issue the writ of restitution  
24 without further order.

25 F. Except as provided in the Uniform Owner-Resident

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1 Relations Act, the owner may recover damages and obtain  
2 injunctive or other relief for ~~[any]~~ noncompliance by the  
3 resident with the rental agreement or this section or Section  
4 47-8-22 NMSA 1978.

5 G. In a judicial action to enforce a remedy for  
6 which prior written notice is required, relief may be granted  
7 based only upon the grounds set forth in the written notice  
8 served; provided, however, that this shall not bar a defendant  
9 from raising any and all defenses or counterclaims for which  
10 written notice is not otherwise required by the Uniform Owner-  
11 Resident Relations Act.

12 H. When the last day for remedying any breach  
13 pursuant to written notice required under the Uniform Owner-  
14 Resident Relations Act occurs on a weekend or federal holiday,  
15 the period to remedy shall be extended until the next day that  
16 is not a weekend or federal holiday.

17 I. If the resident knowingly commits or consents to  
18 another person in the dwelling unit or on the premises  
19 knowingly committing a substantial violation, the owner shall  
20 deliver a written notice to the resident specifying the time,  
21 place and nature of the act constituting the substantial  
22 violation and that the rental agreement will terminate upon a  
23 date not less than three days after receipt of the notice.

24 J. In any action for possession ~~[under]~~ pursuant to  
25 Subsection I of this section, it shall be a defense that the

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1 resident is a victim of domestic violence. If the resident has  
2 filed for or secured a temporary domestic violence restraining  
3 order as a result of the incident that is the basis for the  
4 termination notice or as a result of a prior incident, the writ  
5 of restitution shall not issue. In all other cases ~~[where]~~ in  
6 which domestic violence is raised as a defense, the court shall  
7 have the discretion to evict the resident accused of the  
8 violation, while allowing the tenancy of the remainder of the  
9 residents to continue undisturbed.

10 K. In any action for possession ~~[under]~~ pursuant to  
11 Subsection I of this section, it shall be a defense that the  
12 resident did not know of, and could not have reasonably known  
13 of or prevented, the commission of a substantial violation by  
14 any other person in the dwelling unit or on the premises.

15 L. In ~~[an]~~ any action for possession ~~[under]~~  
16 pursuant to Subsection I of this section, it shall be a defense  
17 that the resident took reasonable and lawful actions in defense  
18 of ~~[himself]~~ the resident, others or ~~[his]~~ the resident's  
19 property.

20 M. In any action for possession ~~[under]~~ pursuant to  
21 Subsection I of this section, if the court finds that the  
22 action was frivolous or brought in bad faith, the petitioner  
23 shall be subject to a civil penalty equal to two times the  
24 amount of the monthly rent, plus damages and costs."

25 SECTION 5. Section 47-8-37 NMSA 1978 (being Laws 1975,

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1 Chapter 38, Section 37) is amended to read:

2 "47-8-37. NOTICE OF TERMINATION AND DAMAGES.--

3 A. The owner or the resident may terminate a week-  
4 to-week residency by a written notice given to the other at  
5 least seven days prior to the termination date specified in the  
6 notice.

7 B. The owner or the resident may terminate a month-  
8 to-month residency by a written notice given to the other at  
9 least thirty days prior to the periodic rental date specified  
10 in the notice.

11 C. If the resident remains in possession without  
12 the owner's consent after expiration of the term of the rental  
13 agreement or its termination, the owner may bring an action for  
14 possession, and, if the resident's holdover is willful and not  
15 in good faith, the owner, in addition, may recover the damages  
16 sustained by ~~[him]~~ the owner and reasonable ~~[attorney's]~~  
17 attorney fees. If the owner consents to the resident's  
18 continued occupancy, Subsection C of Section ~~[15 of the Uniform~~  
19 ~~Owner-Resident Relations Act]~~ 47-8-15 NMSA 1978 applies."

20 SECTION 6. Section 47-8-39 NMSA 1978 (being Laws 1975,  
21 Chapter 38, Section 39, as amended) is amended to read:

22 "47-8-39. OWNER RETALIATION PROHIBITED.--

23 A. An owner may not retaliate against a resident  
24 who is in compliance with the rental agreement and not  
25 otherwise in violation of any provision of the Uniform Owner-

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1 Resident Relations Act. [~~by increasing rent, decreasing~~  
2 ~~services or by bringing or threatening to bring an action for~~  
3 ~~possession because~~] A resident may prove retaliation if:

4 (1) an owner brings or threatens to bring an  
5 action for possession, decreases services, increases rent,  
6 refuses to renew a rental agreement or serves a notice of  
7 termination under Section 47-8-37 NMSA 1978; and

8 (2) the resident has within the previous six  
9 months:

10 [(1)] (a) complained to a government  
11 agency charged with responsibility for enforcement of a minimum  
12 building or housing code of a violation applicable to the  
13 premises materially affecting health and safety;

14 [(2)] (b) organized or become a member  
15 of a residents' union, association or similar organization;

16 [(3)] (c) acted in good faith to  
17 exercise [~~his~~] the resident's rights provided [~~under~~] pursuant  
18 to the Uniform Owner-Resident Relations Act or any other law,  
19 order or regulation governing owner-resident relations,  
20 including when the resident makes a written request or  
21 complaint to the owner to make repairs to comply with the  
22 owner's obligations [~~under~~] pursuant to Section 47-8-20 NMSA  
23 1978 or any other law, order or regulation governing  
24 owner-resident relations;

25 [(4)] (d) made a fair housing complaint

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1 to a government agency charged with authority for enforcement  
2 of laws or [~~regulations~~] rules prohibiting discrimination in  
3 rental housing;

4 [~~(5)~~] (e) prevailed in a lawsuit as  
5 either plaintiff or defendant or has a lawsuit pending against  
6 the owner relating to the residency;

7 [~~(6)~~] (f) testified on behalf of another  
8 resident; [~~or~~

9 ~~(7)~~] (g) abated rent in accordance with  
10 the provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978;

11 (h) complained to a gas, electric or  
12 water utility company about the functioning or safety of a  
13 mechanical device, utility service or owner-supplied appliance;  
14 or

15 (i) requested a reasonable accommodation  
16 for disability under the federal Fair Housing Act, Section 504  
17 of the federal Rehabilitation Act of 1973, the federal  
18 Americans with Disabilities Act of 1990, the Human Rights Act  
19 or any other applicable federal, state or local fair housing or  
20 human rights law.

21 B. If the owner acts in violation of Subsection A  
22 of this section, the resident [~~is~~] shall be entitled to the  
23 remedies provided in Section 47-8-48 NMSA 1978 and the  
24 violation shall be a defense in [~~any~~] an action against [~~him~~]  
25 the resident for possession.

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1 C. Notwithstanding the provisions of Subsection A  
2 of this section, the owner may increase the rent or change  
3 services upon appropriate notice at the end of the term of the  
4 rental agreement or as provided [~~under~~] pursuant to the terms  
5 of the rental agreement if the owner can establish that the  
6 increased rent or changes in services are consistent with those  
7 imposed on other residents of similar rental units and are not  
8 directed at the particular resident, but are uniform.

9 D. The order of proof for any action or affirmative  
10 defense under this section shall be that the resident shall be  
11 required to prove that the resident has engaged in conduct  
12 protected by this section. The owner shall then be required to  
13 articulate a reason for the action that is not protected by  
14 this section, and the resident shall then be required to prove  
15 that the reason given by the owner is a pretext for retaliation  
16 prohibited by this section."

17 SECTION 7. Section 47-8-40 NMSA 1978 (being Laws 1975,  
18 Chapter 38, Section 40, as amended) is amended to read:

19 "47-8-40. ACTION FOR POSSESSION BY OWNER.--

20 A. Notwithstanding Subsections A, [~~and~~] B and C of  
21 Section 47-8-39 NMSA 1978, an owner may bring an action for  
22 possession, and dispute a claim of retaliation asserted by the  
23 tenant, if:

24 (1) the violation of the applicable minimum  
25 building or housing code was caused primarily by lack of

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1 reasonable care by the resident or other person in [~~his~~] the  
2 resident's household or upon the premises with the resident's  
3 consent;

4 (2) the resident is in default in rent;

5 (3) there is a material noncompliance with the  
6 rental agreement that would otherwise give rise to the owner's  
7 right to terminate the rental agreement;

8 (4) a resident knowingly commits or consents  
9 to any other person in the dwelling unit or on the premises  
10 knowingly committing a substantial violation; or

11 (5) compliance with the applicable building or  
12 housing code requires alteration, remodeling or demolition that  
13 would effectively deprive the resident of use of the dwelling  
14 unit.

15 B. The maintenance of an action under Subsection A  
16 of this section does not release the owner from liability under  
17 Section 47-8-20 NMSA 1978.

18 C. Any right of an owner to bring an action under  
19 this section shall be subject to the federal Fair Housing Act  
20 and other applicable fair housing and human rights laws."

21 SECTION 8. Section 47-8-43 NMSA 1978 (being Laws 1975,  
22 Chapter 38, Section 43, as amended) is amended to read:

23 "47-8-43. ISSUANCE OF SUMMONS AND TRIAL SETTING.--

24 A. The summons shall be issued and directed, with a  
25 copy of the petition attached to the summons, and shall state

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1 the cause of the complaint, the answer day for other causes of  
2 action and notice that if the defendant fails to appear,  
3 judgment shall be entered against [~~him~~] the defendant. The  
4 summons may be served pursuant to the New Mexico rules of civil  
5 procedure and returned as in other cases. Trial of the action  
6 for possession shall be set as follows:

7 (1) for any matter brought by the owner for  
8 possession, not less than [~~seven or~~] fourteen days nor more  
9 than [~~ten~~] twenty-one days after the service of summons; or

10 (2) for [~~any~~] a matter brought by the resident  
11 for possession, not less than three or more than five days  
12 after the service of summons.

13 B. Upon finding of good cause, the court may  
14 continue the date of hearing on the action for possession [~~for~~  
15 ~~up to seven days from the date of the initial hearing~~].

16 C. To the extent practicable, the court shall  
17 maintain a resource list of nonprofit legal service providers  
18 and state and local entities that provide rental assistance to  
19 qualifying applicants. A copy of the resource list shall be  
20 provided to the plaintiff at the time of filing of the petition  
21 and shall be served by the plaintiff along with the summons and  
22 copy of the complaint upon the defendant."

23 SECTION 9. Section 47-8-46 NMSA 1978 (being Laws 1975,  
24 Chapter 38, Section 46, as amended) is amended to read:

25 "47-8-46. WRIT OF RESTITUTION.--

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1           A. Upon petition for restitution filed by the owner  
2 if judgment is rendered against the defendant for restitution  
3 of the premises, the court shall declare the forfeiture of the  
4 rental agreement and shall, at the request of the plaintiff or  
5 ~~[his]~~ the plaintiff's attorney, issue a ~~[writ]~~ judgment of  
6 restitution ordering the resident to vacate the premises by a  
7 specified date; provided that the resident shall be allowed not  
8 less than fifteen days nor more than twenty days to vacate the  
9 premises after entry of judgment and, upon good cause shown,  
10 may be allowed additional time to vacate the premises, and for  
11 good cause shown in a restitution case based upon grounds  
12 involving dangerous or disruptive conduct by the resident, the  
13 time allowed the resident to vacate may be shortened to not  
14 less than seven days. If the resident does not vacate the  
15 premises within the time ordered by the judgment, the court  
16 shall issue a writ of restitution directing the sheriff to  
17 restore possession of the premises to the plaintiff ~~[on a~~  
18 ~~specified date not less than three nor more than seven days~~  
19 ~~after entry of judgment]~~.

20           B. Upon a petition for restitution filed by the  
21 resident, if judgment is rendered against the defendant for  
22 restitution of the premises, the court shall, at the request of  
23 the plaintiff or ~~[his]~~ the plaintiff's attorney, issue a writ  
24 of restitution directing the sheriff to restore possession of  
25 the premises to the plaintiff within twenty-four hours after

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1 entry of judgment.

2 C. In cases filed based on nonpayment of rent, if  
3 at any time prior to entry of judgment or prior to expiration  
4 of the period set by the court to vacate after entry of  
5 judgment, or for any longer period as ordered by the court, a  
6 resident tenders payment of all rent, costs, fees and interest  
7 accrued as of that date or as ordered by the court, the  
8 petition for writ of restitution shall be dismissed, any  
9 judgment shall be vacated and the tenancy shall continue under  
10 the rental agreement in place prior to the action by the owner.  
11 Tender of amounts due may be made to the owner or to the court  
12 to be held in escrow for distribution to the owner upon  
13 dismissal of the petition."

14 SECTION 10. Section 47-8-47 NMSA 1978 (being Laws 1975,  
15 Chapter 38, Section 47, as amended) is amended to read:

16 "47-8-47. APPEAL STAYS EXECUTION.--

17 A. If either party feels aggrieved by the judgment,  
18 that party may appeal as in other civil actions. An appeal by  
19 the defendant shall, automatically and without further order of  
20 the court, stay the issuance and execution of any writ of  
21 restitution. [provided that] After a notice of appeal is  
22 filed, no writ of restitution shall be executed except on order  
23 of the court entered after the filing date of the appeal.

24 B. In cases in which the resident is the appellant,  
25 [~~the execution of the writ of restitution shall not be stayed~~

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1 ~~unless~~] the resident shall, within five days of the filing of  
2 the notice of appeal, [~~pays~~] pay to the owner or into an escrow  
3 account with a professional escrow agent an amount equal to the  
4 rental amount that shall come due from the day following the  
5 judgment through the end of that rental period. The resident  
6 shall continue to pay the monthly rent established by the  
7 rental agreement at the time the complaint was filed, on a  
8 monthly basis on the date rent would otherwise become due.  
9 Payments pursuant to this subsection by a subsidized resident  
10 shall not exceed the actual amount of monthly rent paid by that  
11 resident. When the resident pays the owner directly, the owner  
12 shall immediately provide a written or electronic receipt to  
13 the resident upon demand. When the resident pays into an  
14 escrow account the resident shall cause such amounts to be paid  
15 over to the owner immediately upon receipt unless otherwise  
16 ordered by the court. Upon the failure of the resident or the  
17 escrow agent to make [~~a~~] the first partial payment within five  
18 days of the filing of a notice of appeal or a monthly rent  
19 payment on the first day rent would otherwise be due, the owner  
20 may serve [~~a three-day~~] an eleven-day written notice on the  
21 resident pursuant to Subsection D of Section 47-8-33 NMSA 1978.  
22 If the resident or the resident's escrow agent fails to pay the  
23 rent within the [~~three~~] eleven days, a hearing on the issue  
24 shall be scheduled within ten days from the date the court is  
25 notified of the failure to pay rent. In the case of an appeal

.221528.1

underscoring material = new  
~~[bracketed material]~~ = delete

1 de novo, the hearing shall be in the court in which the appeal  
2 will be heard. If, at the hearing, the court finds that rent  
3 has not been paid, the court shall immediately lift the stay  
4 and issue the writ of restitution unless the resident  
5 demonstrates a legal justification for failing to comply with  
6 the rent payment requirement.

7 C. If an owner refuses or is unavailable to accept  
8 a rent payment made pursuant to Subsection B of this section,  
9 the court shall permit the resident to pay the necessary amount  
10 to be held by the court.

11 ~~[B.]~~ D. In order to stay the execution of a money  
12 judgment, the trial court, within its discretion, may require  
13 an appellant to deposit with the clerk of the trial court the  
14 amount of judgment and costs or to give a supersedeas bond in  
15 the amount of judgment and costs with or without surety. Any  
16 bond or deposit shall not be refundable during the pendency of  
17 any appeal."

18 SECTION 11. A new section of the Uniform Owner-Resident  
19 Relations Act is enacted to read:

20 "[NEW MATERIAL] RENEWAL OF RENTAL AGREEMENT DURING A  
21 DECLARED EMERGENCY.--

22 A. In the event of a declaration of an emergency or  
23 disaster issued by the governor or a declaration of an  
24 emergency or disaster by joint resolution of the legislature  
25 that includes quarantine, isolation or social distancing

.221528.1

1 measures and a moratorium is issued prohibiting or staying the  
2 issuance of a writ of restitution based on nonpayment of rent,  
3 an owner shall not refuse to renew or seek to terminate any  
4 rental agreement that expires during, or for thirty days after,  
5 the termination of the declaration of emergency or disaster if  
6 the residence is located in the geographical region covered by  
7 the declaration of emergency or disaster, if the owner's  
8 motivation for seeking to terminate or not renew a tenancy is  
9 nonpayment of rent.

10 B. A rental agreement that is renewed during the  
11 period of time provided in Subsection A of this section shall  
12 be for a month-to-month residency, unless the resident and  
13 owner agree to a longer term.

14 C. Nothing in this section shall prohibit an owner  
15 from:

16 (1) refusing to renew a rental agreement if  
17 the owner, in good faith, seeks to take possession of the  
18 property for personal use and occupancy as a primary residence,  
19 or for the personal use and occupancy as a primary residence of  
20 a member of the owner's immediate family; or

21 (2) commencing an action for possession  
22 pursuant to Subsection A, B or I of Section 47-8-33 NMSA 1978."

23 SECTION 12. EMERGENCY.--It is necessary for the public  
24 peace, health and safety that this act take effect immediately.