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HOUSE BILL 31

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Roberto "Bobby" J. Gonzales and Lee S. Cotter

ENDORSED BY THE MORTGAGE FINANCE AUTHORITY ACT
OVERSIGHT COMMITTEE

AN ACT

RELATING TO HOUSING; AMENDING THE AFFORDABLE HOUSING ACT BY
PROVIDING TERMS FOR THE TIMELY SALE OF FORECLOSED OR FAILED
AFFORDABLE HOUSING PROJECTS WITHOUT RETAINING THE LONG-TERM
AFFORDABILITY RESTRICTIONS, PROVISIONS FOR ENFORCEMENT OF THE
ACT AND PENALTIES FOR VIOLATIONS OF THE ACT.

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

SECTION 1. Section 6-27-1 NMSA 1978 (being Laws 2004,
Chapter 104, Section 1) is amended to read:

"6-27-1. SHORT TITLE.--~~[This act]~~ Chapter 6, Article 27
NMSA 1978 may be cited as the "Affordable Housing Act"."

SECTION 2. A new section of the Affordable Housing Act is
enacted to read:

"[NEW MATERIAL] INVESTIGATION OF ACT VIOLATIONS--
PENALTIES--REMEDIES.--

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1 A. The attorney general shall investigate an
2 alleged violation of the Affordable Housing Act reported by the
3 authority. As used in this section, "person" means an
4 individual, including a municipal or county government employee
5 or elected official; or a corporate entity, including any
6 organization formed under state law to carry out business or
7 other activities.

8 B. If the attorney general has reasonable belief
9 that a person might be in possession, custody or control of an
10 original or copy of a document or recording, including a
11 record, report, memorandum, paper, communication, tabulation,
12 map, chart, photograph, mechanical transcription or other
13 tangible document or recording that the attorney general
14 believes to be relevant to the subject matter of an
15 investigation of a probable violation of the Affordable Housing
16 Act, the attorney general may, prior to the institution of a
17 civil proceeding, execute in writing and cause to be served
18 upon the person a civil investigative demand requiring the
19 person to produce for inspection or copying the document or
20 recording. The demand by the attorney general shall not be a
21 matter of public record and shall not be published by the
22 attorney general except by order of the court.

23 C. If the attorney general has reasonable belief
24 that a person has violated a provision of the Affordable
25 Housing Act and that instituting a proceeding against that

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1 person would be in the public interest, the attorney general
2 may bring a civil action on behalf of the state alleging a
3 violation of the Affordable Housing Act. The action may be
4 brought in the district court of the county in which the person
5 alleged to have violated that act resides or in which the
6 person's principal place of business is located. The attorney
7 general shall not be required to post bond when seeking a
8 temporary or permanent injunction in the civil action.

9 D. The attorney general may, in addition to or as
10 an alternative to pursuing a civil action, as provided in this
11 section, pursue criminal charges against a person for an
12 alleged violation of the Affordable Housing Act under the
13 applicable provisions of the Criminal Code. Venue for any
14 criminal action shall be in the judicial district where
15 the violation occurred.

16 E. In a civil action brought under this section for
17 an alleged violation of the Affordable Housing Act, if a court
18 finds that a person willfully committed an act in violation of
19 the Affordable Housing Act, the attorney general may seek to
20 recover a civil penalty not exceeding the amount of five
21 thousand dollars (\$5,000) per violation, in addition to any
22 equitable relief imposed by the court."

23 SECTION 3. Section 6-27-8 NMSA 1978 (being Laws 2004,
24 Chapter 104, Section 8, as amended) is amended to read:

25 "6-27-8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF

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1 AFFORDABLE HOUSING PROJECTS--~~[INVESTIGATION]~~ SALE AFTER
2 FORECLOSURE--RELEASE OF AFFORDABILITY RESTRICTION.--

3 A. State, county and municipal housing assistance
4 grants pursuant to the Affordable Housing Act shall be applied
5 for and awarded to qualifying grantees pursuant to the rules
6 promulgated by the authority subject to the requirements of
7 that act.

8 B. The authority shall adopt rules covering:

9 (1) procedures to ensure that qualifying
10 grantees meet the requirements of the Affordable Housing Act
11 and rules promulgated pursuant to that act both at the time of
12 the award and through the term of the grant;

13 (2) establishment of an application and award
14 timetable for housing assistance grants to permit the selection
15 of the potential qualifying grantees prior to January of the
16 year in which the grants would be made;

17 (3) contents of the application, including an
18 independent evaluation of the:

19 (a) financial and management stability
20 of the applicant;

21 (b) demonstrated commitment of the
22 applicant to the community;

23 (c) cost-benefit analysis of the project
24 proposed by the applicant;

25 (d) benefits to the community of a

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1 proposed project;

2 (e) type or amount of assistance to be
3 provided;

4 (f) scope of the affordable housing
5 project;

6 (g) substantive or matching contribution
7 by the applicant to the proposed project; and

8 (h) performance schedule for the
9 qualifying grantee with performance criteria;

10 (4) a requirement for long-term affordability
11 of a state, county or municipal project so that a project
12 cannot be sold shortly after completion and taken out of the
13 affordable housing market [~~to ensure a quick profit for the~~
14 ~~qualifying grantee~~];

15 (5) a requirement that a grant for a state or
16 local project must impose a contractual obligation on the
17 qualifying grantee that the housing units in a state or local
18 project pursuant to the Affordable Housing Act be occupied by
19 low- or moderate-income households;

20 (6) provisions for adequate security [~~against~~]
21 to minimize the loss of public funds or property in the event
22 that a qualifying grantee defaults on a contractual obligation
23 for the project or abandons or otherwise fails to complete a
24 project;

25 (7) a requirement for review and approval of a

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1 housing grant project budget by the grantor before any
2 expenditure of grant funds or transfer of granted property;

3 (8) a requirement that, unless the period is
4 extended for good cause shown, the authority shall act on an
5 application within forty-five days of the date of receipt of an
6 application that the authority deems to be complete and, if not
7 acted upon, the application shall be deemed approved;

8 (9) a requirement that a condition of grant
9 approval be proof of compliance with all applicable state and
10 local laws, rules and ordinances;

11 (10) provisions defining "low- and moderate-
12 income" and setting out requirements for verification of income
13 levels;

14 (11) a requirement that a county or
15 municipality that makes a housing assistance grant shall have
16 an existing valid affordable housing plan or housing elements
17 contained in its general plan; and

18 (12) a requirement that the governmental
19 entity enter into a contract with a qualifying grantee
20 consistent with the Affordable Housing Act, which contract
21 shall include remedies and default provisions in the event of
22 the unsatisfactory performance by the qualifying grantee.

23 C. In addition to the rulemaking duties provided in
24 Subsection B of this section, the authority shall adopt rules
25 covering provisions necessary to ensure the timely sale of an

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1 affordable housing project as provided in Paragraph (6) of
2 Subsection B of this section, including the land or buildings:

3 (1) that is subject to a long-term
4 affordability contract executed by a governmental entity
5 pursuant to the Affordable Housing Act but that is determined
6 by the authority not to be marketable for a price that would
7 sufficiently recover the public funds invested in the project;

8 (2) in the event that the qualifying grantee
9 defaults on a contractual obligation or if the project is
10 abandoned by the qualifying grantee or otherwise fails; and

11 (3) that has a title that is subsequently
12 transferred by or to the contracting governmental entity
13 through:

14 (a) a foreclosure sale;

15 (b) a transfer of title by deed in lieu
16 of foreclosure; or

17 (c) any other manner.

18 D. The rules adopted by the authority pursuant to
19 Subsection C of this section shall require that a governmental
20 entity shall exercise reasonable efforts to ensure that all
21 proceeds from the sale of a property pursuant to Subsection C
22 of this section are used solely for purposes pursuant to the
23 Affordable Housing Act and that the qualifying grantee that
24 held title to the property shall not benefit from the sale of
25 the property or from the transfer of the affordable housing

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1 project. The rules shall provide the terms for:

2 (1) the sale of the property at fair market
3 value; and

4 (2) the removal of the contractual obligation
5 requiring long-term occupancy of the property by low-income or
6 moderate-income households.

7 ~~[G.]~~ E. In addition to the rulemaking mandated in
8 ~~[Subsection B]~~ Subsections B, C and D of this section, the
9 authority may adopt additional rules to carry out the purposes
10 of the Affordable Housing Act. Rulemaking procedures pursuant
11 to the Affordable Housing Act shall:

12 (1) provide a public hearing in accordance
13 with the state Administrative Procedures Act; and

14 (2) require concurrence in a rule having
15 application to local government by both the New Mexico
16 municipal league and the New Mexico association of counties.

17 ~~[D. The attorney general shall investigate any~~
18 ~~alleged violation of the Affordable Housing Act as reported~~
19 ~~by the authority.]"~~

20 SECTION 4. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2014.

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