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HOUSE BILL 48

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

AN ACT

RELATING TO REAL PROPERTY; REVISING THE TERMS AND CONDITIONS OF RENTAL AGREEMENTS; AMENDING THE UNIFORM OWNER-RESIDENT RELATIONS ACT.

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

Section 1. Section 47-8-3 NMSA 1978 (being Laws 1975, Chapter 38, Section 3, as amended) is amended to read:

"47-8-3. DEFINITIONS.--As used in the Uniform Owner-Resident Relations Act:

A. "abandonment" means absence of the resident from the dwelling, without notice to the owner, in excess of seven continuous days; providing such absence occurs only after rent for the dwelling unit is delinquent;

B. "action" includes recoupment, counterclaim, set off, suit in equity and any other proceeding in which rights

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1 are determined, including an action for possession;

2 C. "codes" includes building codes, housing codes,
3 health and safety codes, sanitation codes and any law,
4 ordinance or governmental regulation concerning fitness for
5 habitation or the construction, maintenance, operation,
6 occupancy or use of a dwelling unit;

7 D. "deposit" means an amount of currency or
8 instrument delivered to the owner by the resident as a pledge
9 to abide by terms and conditions of the rental agreement;

10 E. "dwelling unit" means a structure, mobile home
11 or the part of a structure, including a hotel or motel, that
12 is used as a home, residence or sleeping place by one person
13 who maintains a household or by two or more persons who
14 maintain a common household and includes a parcel of land
15 leased by its owner for use as a site for the parking of a
16 mobile home;

17 F. "eviction" means any action initiated by the
18 owner to regain possession of a dwelling unit and use of the
19 premises under terms of the Uniform Owner-Resident Relations
20 Act;

21 G. "fair rental value" is that value that is
22 comparable to the value established in the market place;

23 H. "good faith" means honesty in fact in the
24 conduct of the transaction concerned as evidenced by all
25 surrounding circumstances;

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1 I. "normal wear and tear" means deterioration that
2 occurs based upon the use for which the rental unit is
3 intended, without negligence, carelessness, accident, abuse or
4 intentional damage of the premises, equipment or chattels of
5 the owner by the residents or by any other person in the
6 dwelling unit or on the premises with the resident's consent;
7 however, uncleanliness does not constitute normal wear and
8 tear;

9 J. "organization" includes a corporation,
10 government, governmental subdivision or agency thereof,
11 business trust, estate, trust, partnership or association, two
12 or more persons having a joint or common interest or any other
13 legal or commercial entity;

14 K. "owner" means one or more persons, jointly or
15 severally, in whom is vested:

16 (1) all or part of the legal title to
17 property, but shall not include the limited partner in an
18 association regulated under the Uniform Limited Partnership
19 Act; or

20 (2) all or part of the beneficial ownership
21 and a right to present use and enjoyment of the premises and
22 agents thereof and includes a mortgagee in possession and the
23 lessors, but shall not include a person or persons, jointly or
24 severally, who as owner leases the entire premises to a lessee
25 of vacant land for apartment use;

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1 L. "person" includes an individual, corporation,
2 entity or organization;

3 M. "premises" means facilities, facilities and
4 appurtenances, areas and other facilities held out for use of
5 the resident or whose use is promised to the resident
6 coincidental with occupancy of a dwelling unit;

7 N. "rent" means any payments in currency or in-
8 kind under terms and conditions of the rental agreement for
9 use of a dwelling unit or premises, to be made to the owner by
10 the resident, and includes late charges, fees and utility
11 charges but does not include deposits;

12 O. "rental agreement" means all [~~written~~]
13 agreements between an owner and resident and valid rules and
14 regulations adopted under Section 47-8-23 NMSA 1978 embodying
15 the terms and conditions concerning the use and occupancy of a
16 dwelling unit or premises;

17 P. "resident" means a person entitled under a
18 rental agreement to occupy a dwelling unit in peaceful
19 possession to the exclusion of others and includes the owner
20 of a mobile home renting premises, other than a lot or parcel
21 in a mobile home park, for use as a site for the location of
22 the mobile home;

23 Q. "roomer" means a person occupying a dwelling
24 unit that lacks a major bathroom or kitchen facility in a
25 structure where one or more major facilities are used in

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1 common by occupants of the dwelling units. As referred to in
2 this subsection, "major facility", in the case of a bathroom,
3 means toilet and either a bath or shower and, in the case of a
4 kitchen, means refrigerator, stove or sink;

5 R. "single family residence" means a structure
6 maintained and used as a single dwelling unit. Notwithstanding
7 that a dwelling unit shares one or more walls with another
8 dwelling unit, it is a single family residence if it has
9 direct access to a street or thoroughfare and shares neither
10 heating facilities, hot water equipment nor any other
11 essential facility or service with any other dwelling unit;

12 S. "substantial violation" means any ~~[act or~~
13 ~~series of acts that occur in the dwelling unit or on the~~
14 ~~premises by the resident or with the resident's consent and;~~

15 ~~(1) is a felony under the Controlled~~
16 ~~Substances Act;~~

17 ~~(2) involves a deadly weapon and is a felony~~
18 ~~under the Criminal Code;~~

19 ~~(3) is assault with intent to commit a~~
20 ~~violent felony, murder, criminal sexual penetration, robbery~~
21 ~~or burglary under the Criminal Code; or~~

22 ~~(4) is criminal damage to property and a~~
23 ~~felony under the Criminal Code] violation of the rental~~

24 agreement or rules and regulations by the resident or by a

25 person on the premises with the resident's consent that

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1 includes:

2 (1) possession, use or sale of a controlled
3 substance;

4 (2) use of a deadly weapon;

5 (3) actual or threatened physical harm to
6 another person;

7 (4) actual or threatened sexual assault or
8 sexual molestation of another person; or

9 (5) intentional or reckless damage to
10 property in excess of five hundred dollars (\$500) ;

11 T. "term" is the period of occupancy specified in
12 the rental agreement; and

13 U. "transient occupancy" means occupancy of a
14 dwelling unit for which rent is paid on less than a weekly
15 basis or where the resident has not manifested an intent to
16 make the dwelling unit a residence or household. "

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

19 "47-8-4. PRINCIPLES OF LAW AND EQUITY. -- Unless displaced
20 by the provisions of the Uniform Owner-Resident Relations Act,
21 the principles of law and equity, including the law relating
22 to capacity to contract, mutuality of obligations, [equitable
23 abatement] principal and agent, real property, public health,
24 safety and fire prevention, estoppel, fraud,
25 misrepresentation, duress, coercion, mistake, bankruptcy or

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1 other validating or invalidating cause supplement its
2 provisions. "

3 Section 3. Section 47-8-9 NMSA 1978 (being Laws 1975,
4 Chapter 38, Section 9, as amended) is amended to read:

5 "47-8-9. EXEMPTIONS. -- Unless created to avoid the
6 application of the Uniform Owner-Resident Relations Act, the
7 following arrangements are exempted by that act:

8 A. residence at an institution, public or private,
9 if incidental to detention or the provision of medical,
10 geriatric, counseling, religious, educational, when room and
11 board are an entity, or similar service;

12 B. occupancy under a contract of sale of a
13 dwelling unit or the property of which it is part, if the
14 occupant is the purchaser or a person who succeeds to his
15 interest;

16 C. occupancy by a member of a fraternal or social
17 organization in the portion of a structure operated for the
18 benefit of the organization;

19 D. transient occupancy in a hotel or motel;

20 E. occupancy by an employee of an owner pursuant
21 to a written rental or employment agreement that specifies the
22 employee's right to occupancy is conditional upon employment
23 in and about the premises; [and]

24 F. occupancy under a rental agreement covering
25 premises used by the occupant primarily for agricultural

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1 purposes; and

2 G. occupancy by a roomer. "

3 Section 4. Section 47-8-10 NMSA 1978 (being Laws 1975,
4 Chapter 38, Section 10) is amended to read:

5 "47-8-10. JUDICIAL JURISDICTION. -- [A-] The district or
6 magistrate court of this state may exercise jurisdiction over
7 any person with respect to [any] conduct in this state
8 governed by the Uniform Owner-Resident Relations Act or with
9 respect to [any] a claim arising from a transaction subject to
10 [this] that act for a dwelling unit located within its
11 jurisdictional boundaries. [In addition to any other method
12 provided by rule or by statute, personal jurisdiction over a
13 person may be acquired in a civil action or proceeding
14 instituted in the district or magistrate court by the service
15 of process in the manner provided by this section.]

16 ~~B. If a person is not a resident of this state or~~
17 ~~is a corporation not authorized to do business in this state~~
18 ~~and engages in any conduct in this state governed by the~~
19 ~~Uniform Owner-Resident Relations Act, or engages in a~~
20 ~~transaction subject to this act, he may designate an agent~~
21 ~~upon whom service of process may be made in this state. The~~
22 ~~agent shall be a resident of this state or a corporation~~
23 ~~authorized to do business in this state. The designation~~
24 ~~shall be in writing and shall be filed with the secretary of~~
25 ~~state. If no designation is made and filed or if process~~

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1 ~~cannot be served in this state upon the designated agent,~~
2 ~~process may be served upon the secretary of state, but service~~
3 ~~upon him is not effective unless the plaintiff or petitioner~~
4 ~~immediately mails a copy of the process and pleading by~~
5 ~~registered or certified mail to the defendant or respondent at~~
6 ~~his last reasonably ascertainable address. An affidavit of~~
7 ~~compliance with this section shall be filed with the clerk of~~
8 ~~the court on or before the return day of the process, if any,~~
9 ~~or within any further time the court allows.] Provided,~~
10 nothing in the Uniform Owner-Resident Relations Act confers
11 jurisdiction over claims for injunctive or declaratory relief
12 upon a court that would otherwise lack such jurisdiction. "

13 Section 5. Section 47-8-13 NMSA 1978 (being Laws 1975,
14 Chapter 38, Section 13, as amended) is amended to read:

15 "47-8-13. SERVICE OF NOTICE. --

16 [A. ~~A person has notice of a fact if:~~

17 (1) ~~he has actual knowledge of it;~~

18 (2) ~~he has received a notice or notification~~
19 ~~of it; or~~

20 (3) ~~from all facts and circumstances known to~~
21 ~~him at the time in question he has reason to know that it~~
22 ~~exists.~~

23 B. ~~A person notifies or gives a notice or~~
24 ~~notification to another by taking steps reasonably calculated~~
25 ~~to inform the other in ordinary course, whether or not the~~

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1 ~~other actually comes to know of it.~~

2 ~~C.]~~ A. A person receives a notice or notification:

3 [~~(1) when it comes to his attention;~~

4 ~~(2)]~~ (1) where written notice to the owner is
5 required, when it is mailed or otherwise delivered at the
6 place of business of the owner through which the rental
7 agreement was made or at any place held out by him as the
8 place for receipt of the communication; or

9 [~~(3)]~~ (2) if written notice to the resident
10 is required, when it is delivered in hand to the resident or
11 mailed to him at the place held out by him as the place for
12 receipt of the communication, or in the absence of such
13 designation, to his last known place of residence.

14 ~~D.]~~ B. Notwithstanding any other provisions of
15 this section, notice to a resident for nonpayment of rent
16 shall be effective only when hand delivered or mailed to the
17 resident or posted on an exterior door of the dwelling unit.
18 In all other cases where written notice to the resident is
19 required, even if there is a notice by posting, there [~~must~~]
20 shall also be a mailing of the notice by first class mail or
21 hand delivery of the notice to the resident. The date of a
22 posting shall be included in any notice posted, mailed or hand
23 delivered and shall constitute the effective date of the
24 notice. A posted notice shall be affixed to a door by taping
25 all sides or placed in a fixture or receptacle designed for

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1 notices or mail.

2 [E. ~~Notice, knowledge or a notice or notification~~
3 ~~received by the resident or person is effective for a~~
4 ~~particular transaction from the time it is brought to the~~
5 ~~attention of the resident or person conducting that~~
6 ~~transaction, and in any event from the time it would have been~~
7 ~~brought to the resident's or person's attention if the~~
8 ~~resident or person had exercised reasonable diligence.~~

9 F. ~~Where service of notice is required under the~~
10 ~~Uniform Owner-Resident Relations Act and the item is mailed~~
11 ~~but returned as undeliverable or where the last known address~~
12 ~~is the vacated dwelling unit, the owner shall serve at least~~
13 ~~one additional notice if an alternative address has been~~
14 ~~provided to the owner by the resident.]"~~

15 Section 6. Section 47-8-15 NMSA 1978 (being Laws 1975,
16 Chapter 38, Section 15, as amended) is amended to read:

17 "47-8-15. PAYMENT OF RENT. --

18 A. The resident shall pay rent in accordance with
19 the rental agreement. In the absence of an agreement, the
20 resident shall pay as rent the fair rental value for the use
21 of the premises and occupancy of the dwelling unit.

22 B. Rent is payable without demand or notice at the
23 time and place agreed upon by the parties. Unless otherwise
24 agreed, rent is payable at the dwelling unit. Unless
25 otherwise agreed, periodic rent is payable at the beginning of

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1 any term of one month or less and otherwise in equal monthly
2 installments at the beginning of each monthly period. The
3 date of one month to the same date of the following month
4 shall constitute a term of one month.

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

8 D. If the rental agreement provides for the
9 charging of a late fee and if the resident does not pay rent
10 in accordance with the rental agreement, the owner may charge
11 the resident a late fee in an amount not to exceed ten percent
12 of the total rent payment for each rental period that the
13 resident is in default. To assess a late fee, the owner shall
14 provide notice of the late fee charged no later than the last
15 day of the next rental period immediately following the period
16 in which the default occurred.

17 ~~[E. An owner may not assess a fee from the~~
18 ~~resident for occupancy of the dwelling unit by a reasonable~~
19 ~~number of guests for a reasonable length of time. This shall~~
20 ~~not preclude charges for use of premises or facilities other~~
21 ~~than the dwelling unit by guests.]~~

22 ~~F.]~~ E. An owner may increase the rent payable by
23 the resident in a month-to-month residency by providing
24 written notice to the resident of the proposed increase at
25 least thirty days prior to the periodic rental date specified

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1 in the rental agreement or, in the case of a fixed term
2 residency, at least thirty days prior to the end of the term.
3 In the case of a periodic residency of less than one month,
4 written notice shall be provided at least one rental period in
5 advance of the first rental payment to be increased.

6 [~~G-~~] F. Unless agreed upon in writing by the owner
7 and the resident, a resident's payment of rent may not be
8 allocated to any deposits or damages. "

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

11 "47-8-18. DEPOSITS. --

12 A. An owner is permitted to demand from the
13 resident a reasonable deposit to be applied by the owner to
14 recover damages, if any, caused to the premises by the
15 resident during his term of residency.

16 (1) Under the terms of an annual rental
17 agreement, if the owner demands or receives of the resident
18 such a deposit in an amount greater than one month's rent, the
19 owner shall be required to pay to the resident annually an
20 interest equal to the passbook interest permitted to savings
21 and loan associations in this state by the federal home loan
22 bank board on such deposit.

23 (2) Under the terms of a rental agreement of
24 a duration less than one year, an owner shall not demand or
25 receive from the resident such a deposit in an amount in

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1 excess of one month's rent.

2 B. It is not the intention of this section to
3 include the last month's prepaid rent, which may be required
4 by the rental agreement as a deposit as defined in Subsection
5 D of Section 47-8-3 NMSA 1978. Any deposit as defined in
6 Paragraph (1) of Subsection A of this section shall not be
7 construed as prepaid rent.

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

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

5 (1) shall forfeit the right to withhold any
6 portion of the deposit; and

7 ~~[(2) shall forfeit the right to assert any~~
8 ~~counterclaim in any action brought to recover that deposit;~~

9 ~~(3)]~~ (2) shall be liable to the resident for
10 court costs and reasonable [~~attorneys'~~] attorney fees [~~and~~

11 ~~(4) shall forfeit the right to assert an~~
12 ~~independent action against the resident for damages to the~~
13 ~~rental property].~~

14 E. An owner who in bad faith retains a deposit in
15 violation of this section is liable for a civil penalty in the
16 amount of two hundred fifty dollars (\$250) payable to the
17 resident.

18 F. Not later than ninety days from the date of the
19 owner's itemized written list of deductions from the deposit,
20 the resident shall provide to the owner a written statement of
21 any disputed items deducted from the deposit. The resident is
22 deemed to have complied with this subsection by mailing the
23 statement and any payment required to the last known address
24 of the owner furnished to the resident. If the resident does
25 not timely provide the written statement disputing the amounts

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1 withheld, the resident shall forfeit the right to dispute any
2 charge for which a portion of the deposit was withheld. "

3 Section 8. Section 47-8-20 NMSA 1978 (being Laws 1975,
4 Chapter 38, Section 20, as amended) is amended to read:

5 "47-8-20. OBLIGATIONS OF OWNER. --

6 A. The owner shall:

7 (1) substantially comply with requirements of
8 the applicable minimum housing codes materially affecting
9 health and safety;

10 (2) make repairs and do whatever is necessary
11 to put and keep the [~~premises~~] dwelling unit in a safe
12 condition as provided by applicable law and rules and
13 regulations as provided in Section 47-8-23 NMSA 1978;

14 (3) keep common areas of the premises in a
15 safe condition;

16 (4) maintain in good and safe working order
17 and condition electrical, plumbing, sanitary, heating,
18 ventilating, air conditioning and other facilities and
19 appliances in the dwelling unit, including elevators providing
20 access to the dwelling unit, if any, supplied or required to
21 be supplied by him;

22 (5) provide and maintain appropriate
23 receptacles and conveniences for the removal of ashes,
24 garbage, rubbish and other waste incidental to the occupancy
25 of the dwelling unit and arrange for their removal from the

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1 appropriate receptacle; and

2 (6) supply running water and a reasonable
3 amount of hot water at all times and reasonable heat to the
4 dwelling unit, except where the building that includes the
5 dwelling unit is not required by law to be equipped for that
6 purpose or the dwelling unit is so constructed that heat or
7 hot water is generated by an installation within the exclusive
8 control of the resident and supplied by a direct public
9 utility connection.

10 B. If there exists a minimum housing code
11 applicable to the premises, the owner's maximum duty under
12 this section shall be determined by Paragraph (1) of
13 Subsection A of this section. The obligations imposed by this
14 section are not intended to change existing tort law in the
15 state.

16 C. The owner and resident of a single family
17 residence may agree that the resident perform the owner's
18 duties specified in Paragraphs (5) and (6) of Subsection A of
19 this section and also specified repairs, maintenance tasks,
20 alterations and remodeling, but only if the transaction is in
21 writing, for consideration, entered into in good faith and not
22 for the purpose of evading the obligations of the owner.

23 D. The owner and resident of a dwelling unit other
24 than a single family residence may agree that the resident is
25 to perform specified repairs, maintenance tasks, alterations

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1 or remodeling only if:

2 (1) the agreement of the parties is entered
3 into in good faith and not for the purpose of evading the
4 obligations of the owner and is set forth in a separate
5 writing signed by the parties and supported by consideration;
6 and

7 (2) the agreement does not diminish or affect
8 the obligation of the owner to other residents in the
9 premises.

10 E. Notwithstanding any provision of this section,
11 an owner may arrange with a resident to perform the
12 obligations of the owner. Any such arrangement between the
13 owner and the resident will not serve to diminish the owner's
14 obligations as set forth in this section, nor shall the
15 failure of the resident to perform the obligations of the
16 owner serve as a basis for eviction or in any way be
17 considered a material breach by the resident of his
18 obligations under the Uniform Owner-Resident Relations Act or
19 the rental agreement.

20 F. In multi-unit housing, if there is separate
21 utility metering for each unit, the resident shall receive a
22 copy of the utility bill for his unit upon request made to the
23 owner or his agent. If the unit is submetered, the resident
24 shall then be entitled to receive a copy of the apartment's
25 utility bill. When utility bills for common areas are

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1 separately apportioned between units and the costs are passed
2 on to the residents of each unit, each resident may, upon
3 request, receive a copy of all utility bills being
4 apportioned. The calculations used as the basis for
5 apportioning the cost of utilities for common areas and
6 submetered apartments shall be made available to any resident
7 upon request. The portion of the common area cost that would
8 be allocated to an empty unit if it were occupied shall not be
9 allocated to the remaining residents. It is solely the
10 owner's responsibility to supply the items and information in
11 this subsection to the [~~tenant~~] resident upon request. The
12 owner may charge an administrative fee not to exceed [~~two~~
13 ~~dollars (\$2.00)~~] five dollars (\$5.00) for each monthly request
14 of the items in this subsection.

15 G. The owner shall provide a written rental
16 agreement to each [~~tenant~~] resident prior to the beginning of
17 occupancy. "

18 Section 9. Section 47-8-22 NMSA 1978 (being Laws 1975,
19 Chapter 38, Section 22, as amended) is amended to read:

20 "47-8-22. OBLIGATIONS OF RESIDENT. --The resident shall:

21 A. comply with obligations imposed upon residents
22 by applicable minimum standards of housing codes materially
23 affecting health or safety;

24 B. keep that part of the premises that he occupies
25 and uses as clean and safe as the condition of the premises

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1 permit, and, upon termination of the residency, place the
2 dwelling unit in as clean condition, excepting ordinary wear
3 and tear, as when residency commenced;

4 C. dispose from his dwelling unit all ashes,
5 rubbish, garbage and other waste in a clean and safe manner;

6 D. keep all plumbing fixtures in the dwelling unit
7 or used by the resident as clean as their condition permits;

8 E. use in a reasonable manner all electrical,
9 plumbing, sanitary, heating, ventilation, air conditioning and
10 other facilities and appliances, including elevators, if any,
11 in the premises;

12 F. not deliberately or negligently destroy,
13 deface, damage, impair or remove any part of the premises or
14 knowingly permit any person to do so;

15 G. conduct himself and require other persons on
16 the premises with his consent to conduct themselves in a
17 manner that will not disturb his neighbors' peaceful enjoyment
18 of the premises; will not disturb, abuse, threaten or harass
19 any person rightfully on the premises; and will not
20 unreasonably interfere with the management of the premises;

21 H. abide by all bylaws, covenants, rules or
22 regulations of any applicable condominium regime, cooperative
23 housing agreement or neighborhood association not inconsistent
24 with owner's rights or duties; and

25 I. not knowingly commit or consent to any other

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1 person knowingly committing a substantial violation."

2 Section 10. Section 47-8-26 NMSA 1978 (being Laws 1975,
3 Chapter 38, Section 26) is amended to read:

4 "47-8-26. DELIVERY OF POSSESSION. -- ~~[At the commencement~~
5 ~~of the rental period as specified in the rental agreement]~~

6 A. At the time specified in the rental agreement
7 for the commencement of occupancy, the owner shall deliver
8 possession of the premises to the resident in compliance with
9 the rental agreement and Section [20 of the Uniform Owner-
10 Resident Relations Act] 47-8-20 NMSA 1978. The owner may
11 bring an action for possession against the resident or any
12 person wrongfully in possession and may recover the damages
13 provided in Subsection [E] F of Section [33 of the Uniform
14 Owner-Resident Relations Act. If the owner makes reasonable
15 efforts to obtain possession of the premises, he shall not be
16 liable for an action under this section] 47-8-33 NMSA 1978.

17 B. If the owner fails to deliver possession of the
18 premises to the prospective resident as provided in Subsection
19 A of this section, one hundred percent of the rent abates
20 until possession is delivered and the prospective resident
21 may:

22 (1) upon written notice to the owner,
23 terminate the rental agreement effective immediately. Upon
24 termination the owner shall return all prepaid rent, deposits
25 and fees; or

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1 (2) demand performance of the rental
2 agreement by the owner and, if the prospective resident
3 elects, maintain an action for possession of the premises
4 against any person wrongfully in possession or wrongfully
5 withholding possession and recover the damages sustained and
6 seek the remedies provided in Section 47-8-48 NMSA 1978.

7 C. If the owner makes reasonable efforts to obtain
8 possession of the premises and returns prepaid rent, deposits
9 and fees within seven days of receiving a prospective
10 resident's notice of termination, the owner shall not be
11 liable for damages under this section. "

12 Section 11. Section 47-8-27.2 NMSA 1978 (being Laws
13 1995, Chapter 195, Section 12) is amended to read:

14 "47-8-27.2. ABATEMENT. --

15 A. If there is a violation of Paragraph (4) of
16 Subsection A of Section 47-8-20 NMSA 1978 pertaining to the
17 dwelling unit and materially affecting health and safety, the
18 resident shall give written notice to the owner of the
19 conditions needing repair and stating that if the owner does
20 not make a reasonable attempt to remedy the conditions within
21 seven days of the notice, rent will be abated. If the owner
22 does not make a reasonable attempt to remedy the conditions
23 within seven days of the notice, the resident is entitled to
24 abate rent as set forth below:

25 (1) one-third of the pro-rata daily rent for

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1 each day from the date [~~the resident notified the owner of the~~
2 ~~conditions needing repair~~] of the resident's notice through
3 the day the conditions in the notice are remedied. If the
4 conditions complained of continue to exist without remedy
5 through any portion of a subsequent rental period, the
6 resident may abate at the same rate for each day that the
7 conditions are not remedied; and

8 (2) one hundred percent of the rent for each
9 day from the date the resident notified the owner of the
10 conditions needing repair until the date the breach is cured
11 if the dwelling is uninhabitable and the resident does not
12 inhabit the dwelling unit as a result of the condition.

13 B. For each rental period in which there is a
14 violation under Subsection A of this section, the resident may
15 abate the rent or may choose an alternate remedy in accordance
16 with the Uniform Owner-Resident Relations Act. The choice of
17 one remedy shall not preclude the use of an alternate remedy
18 for the same violation in a subsequent rental period.

19 C. If the resident's rent is subsidized in whole
20 or in part by a government agency, the abatement limitation of
21 one month's rent shall mean the total monthly rent paid for
22 the dwelling and not the portion of the rent that the resident
23 alone pays. Where there is a third party payor, either the
24 payor or the resident may authorize the remedy and may abate
25 rent payments as provided in this section.

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1 D. ~~[Nothing in this section shall limit a court in~~
2 ~~its discretion to apply]~~ The abatement provided for in this
3 section shall be in lieu of any equitable abatement."

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

6 "47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY
7 OWNER. --

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

20 B. Upon the second material noncompliance with the
21 rental agreement or any separate agreement by the resident,
22 within six months of the initial breach, the owner shall
23 deliver a written notice to the resident specifying the acts
24 and omissions constituting the breach, including the dates and
25 specific facts describing the nature of the alleged breach,

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1 and stating that the rental agreement shall terminate upon a
2 date not less than seven days after receipt of the notice. If
3 the subsequent breach occurs more than six months after the
4 initial breach, it shall constitute an initial breach for
5 purposes of applying the provisions of this section.

6 C. The initial notice provided in this section
7 shall state that the rental agreement will terminate upon the
8 second material noncompliance with the rental agreement or any
9 separate agreement by the resident, within six months of the
10 initial breach. To be effective, any notice pursuant to this
11 subsection shall be given within thirty days of the breach or
12 knowledge thereof.

13 D. If rent or any other money owed by the resident
14 is unpaid when due and the resident fails to pay [~~rent~~] the
15 total amount due within three days after written notice from
16 the owner of nonpayment and his intention to terminate the
17 rental agreement, the owner may terminate the rental agreement
18 and the resident shall immediately deliver possession of the
19 dwelling unit; provided that tender of the full amount due, in
20 the manner stated in the notice, prior to the expiration of
21 the three-day notice shall bar any action for nonpayment of
22 rent.

23 E. In [~~any~~] a court action for possession for
24 nonpayment of rent or other charges where the resident
25 disputes the amount owed because:

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

3 (2) the owner has allocated rent paid by the
4 resident as payment for damages to the premises, then, if the
5 owner is the prevailing party, the court shall enter a writ of
6 restitution conditioned upon the right of the resident to
7 remedy within three days of entry of judgment. If the
8 resident has satisfied the judgment within three days, the
9 writ shall be dismissed. If the resident has not satisfied
10 the judgment within three days, the owner may execute upon the
11 writ without further order of the court.

12 F. Except as provided in the Uniform
13 Owner-Resident Relations Act, the owner may recover damages
14 and obtain injunctive or other relief for any noncompliance by
15 the resident with the rental agreement or this section or
16 Section 47-8-22 NMSA 1978.

17 G. In [~~any~~] a judicial action to enforce a remedy
18 for which prior written notice is required, relief may be
19 granted based only upon the grounds set forth in the written
20 notice served; provided, however, that this shall not bar a
21 defendant from raising any and all defenses or counterclaims
22 for which written notice is not otherwise required by the
23 Uniform Owner-Resident Relations Act.

24 H. When the last day for remedying any breach
25 pursuant to written notice required under [~~this~~] the Uniform

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1 Owner-Resident Relations Act occurs on a weekend or federal
2 holiday, the period to remedy shall be extended until the next
3 day that is not a weekend or federal holiday.

4 I. If the resident knowingly commits or consents
5 to [~~any other~~] another person in the dwelling unit or on the
6 premises knowingly committing a substantial violation, the
7 owner shall deliver a written notice to the resident
8 specifying the time, place and nature of the act constituting
9 the substantial violation and that the rental agreement will
10 terminate upon a date not less than three days after receipt
11 of the notice.

12 J. In any action for possession under Subsection I
13 of this section, it shall be a defense that the resident is a
14 victim of domestic violence. If the resident has filed for or
15 secured a temporary domestic violence restraining order as a
16 result of the incident that is the basis for the termination
17 notice or as a result of a prior incident, [~~then~~] the writ of
18 restitution shall not issue. In all other cases where
19 domestic violence is raised as a defense, the court shall have
20 the discretion to evict the resident accused of the violation,
21 while allowing the tenancy of the remainder of the residents
22 to continue undisturbed.

23 K. In any action for possession under Subsection I
24 of this section, it shall be a defense that the resident did
25 not know of, and could not have reasonably known of or

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1 prevented, the commission of a substantial violation by any
2 other person in the dwelling unit or on the premises.

3 L. In any action for possession under Subsection I
4 of this section, if the court finds that the action was
5 frivolous or brought in bad faith, the petitioner shall be
6 subject to a civil penalty equal to two times the amount of
7 the monthly rent, plus damages and costs. "

8 Section 13. Section 47-8-34.1 NMSA 1978 (being Laws
9 1995, Chapter 195, Section 15) is amended to read:

10 "47-8-34.1. DISPOSITION OF PROPERTY LEFT ON THE
11 PREMISES. --

12 A. Where the rental agreement terminates by
13 [~~abandonment pursuant to Section 47-8-34 NMSA 1978:~~

14 ~~(1) the owner shall store all personal~~
15 ~~property of the resident left on the premises for not less~~
16 ~~than thirty days;~~

17 ~~(2) the owner shall serve the resident with~~
18 ~~written notice stating the owner's intent to dispose of the~~
19 ~~personal property on a date not less than thirty days from the~~
20 ~~date of the notice. The notice shall also contain a telephone~~
21 ~~number and address where the resident can reasonably contact~~
22 ~~the owner to retrieve the property prior to the disposition~~
23 ~~date in the notice;~~

24 ~~(3) the notice of intent to dispose of~~
25 ~~personal property shall be personally delivered to the~~

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1 ~~resident or be sent by first class mail, postage prepaid, to~~
2 ~~the resident at his last known address. If the notice is~~
3 ~~returned as undeliverable or where the resident's last known~~
4 ~~address is the vacated dwelling unit, the owner shall also~~
5 ~~serve at least one notice to such other address as has been~~
6 ~~provided to the owner by the resident, including the address~~
7 ~~of the resident's place of employment or of a family member or~~
8 ~~emergency contact for which the owner has a record;~~

9 (4) ~~the resident may contact the owner to~~
10 ~~retrieve the property at any time prior to the date specified~~
11 ~~in the notice for disposition of the property;~~

12 (5) ~~the owner shall provide reasonable access~~
13 ~~and adequate opportunities for the resident to retrieve all of~~
14 ~~the property stored prior to any disposition; and~~

15 (6) ~~if the resident does not claim or make~~
16 ~~attempt to retrieve the stored personal property prior to the~~
17 ~~date specified in the notice of disposition of the property,~~
18 ~~the owner may dispose of the stored personal property.~~

19 B. ~~Where the rental agreement terminates by the~~
20 ~~resident's voluntary surrender of the premises] any means~~
21 ~~other than a judgment, the owner shall store any personal~~
22 ~~property left on the premises by the resident for a minimum of~~
23 ~~fourteen days from the date of surrender of the premises. The~~
24 ~~owner shall provide reasonable access to the resident for the~~
25 ~~purpose of the resident obtaining possession of the personal~~

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1 property stored. If after fourteen days from surrender of the
2 premises the resident has not retrieved all the stored
3 personal property, the owner may dispose of the stored
4 personal property as follows:

5 ~~[C. Where the rental agreement terminates by a~~
6 ~~writ of restitution, the owner shall have no obligation to~~
7 ~~store any personal property left on the premises after three~~
8 ~~days following execution of writ of restitution, unless~~
9 ~~otherwise agreed by the owner and resident. The owner may~~
10 ~~thereafter dispose of the personal property in any manner~~
11 ~~without further notice or liability.~~

12 ~~D.]~~ (1) where the property has a market value
13 of less than one hundred dollars (\$100), the owner has the
14 right to dispose of the property in any manner;

15 ~~E.]~~ (2) where the property has a market
16 value of more than one hundred dollars (\$100), the owner may:

17 ~~(1)]~~ (a) sell the personal property
18 ~~[under any provisions herein]~~ and the proceeds of the sale, if
19 in excess of money due and owing to the owner, shall be mailed
20 to the resident at his last known address, along with an
21 itemized statement of the amounts received and amounts
22 allocated to other costs, within ~~[fifteen]~~ thirty days of the
23 sale; or

24 ~~(2)]~~ (b) retain the property for his
25 own use or the use of others, in which case the owner shall

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1 credit the account of the resident for the fair market value
2 of the property against any money due and owing to the owner,
3 and any value in excess of money due and owing shall be mailed
4 to the resident at his last known address, along with an
5 itemized statement of the value allocated to the property and
6 the amount allocated to costs, within [fifteen] thirty days of
7 the retention of the property;

8 [F-] (3) if the last known address is the
9 dwelling unit, the owner shall also mail at least one copy of
10 the accounting and notice of the sums for distribution to the
11 other address, if provided to the owner by the resident, such
12 as place of employment, family members or emergency contact,
13 on record with the owner; and

14 [G-] (4) an owner may charge the resident
15 reasonable storage fees for any time that the owner provided
16 storage for the resident's personal property and the
17 prevailing rate of moving fees. The owner may require payment
18 of storage and moving costs prior to the release of the
19 property.

20 [~~H. The owner may not hold the property for any~~
21 ~~other debts claimed due or owing or for judgments for which~~
22 ~~an application for writ of execution has not previously been~~
23 ~~filed. The owner may not retain exempt property where an~~
24 ~~application for a writ of execution has been granted.]~~

25 B. When a judgment has been entered terminating

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1 the rental agreement, the owner shall have no obligation to
2 store any personal property left on the premises after three
3 days following the date specified in the judgment for the
4 issuance of a writ of restitution, unless otherwise agreed by
5 the owner and resident. The owner may thereafter dispose of
6 the personal property in any manner whatsoever without further
7 notice or liability. "

8 Section 14. Section 47-8-35 NMSA 1978 (being Laws 1975,
9 Chapter 38, Section 35) is amended to read:

10 "47-8-35. CLAIM FOR RENT AND DAMAGES. --If the rental
11 agreement is terminated, [~~the owner is entitled to possession~~
12 ~~and may have a claim for rent and a separate claim for damages~~
13 ~~for breach of the rental agreement and reasonable attorney's~~
14 ~~fees as provided in Subsection C of Section 33 of the Uniform~~
15 ~~Owner-Resident Relations Act] as provided in Section 47-8-33
16 NMSA 1978, the owner is entitled to possession and may have a
17 claim for rent through the date of the writ of restitution,
18 and a separate claim for rent or other amounts lost as a
19 result of the resident's failure to complete the term of the
20 rental agreement, for damages for breach of the rental
21 agreement and for reasonable attorney fees as provided in
22 Section 47-8-48 NMSA 1978. In lieu of lost rents and other
23 amounts due as a result of the resident's failure to complete
24 the term of the rental agreement, the owner and the resident
25 may agree upon an amount to be paid as liquidated damages for~~

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1 early termination of the rental agreement. "

2 Section 15. Section 47-8-36 NMSA 1978 (being Laws 1975,
3 Chapter 38, Section 36, as amended) is amended to read:

4 "47-8-36. UNLAWFUL REMOVAL AND DIMINUTION OF SERVICES
5 PROHIBITED. --

6 A. Except in case of abandonment, surrender or as
7 otherwise permitted in the Uniform Owner-Resident Relations
8 Act, an owner or any person acting on behalf of the owner
9 shall not knowingly exclude the resident or remove, threaten
10 or attempt to remove or dispossess [a] the resident from the
11 dwelling unit without a court order by:

- 12 [~~(1)~~] (1) plugging, changing, adding or
- 13 removing any lock or latching device;
- 14 [~~(2)~~] (2) blocking any entrance into the
- 15 dwelling unit;
- 16 [~~(3)~~] (3) interfering with services or normal
- 17 and necessary utilities to the unit [~~pursuant to Section~~
- 18 ~~47-8-32 NMSA 1978~~], including [~~but not limited to~~
- 19 electricity, gas, hot or cold water, plumbing, heat or
- 20 telephone service, provided that this section shall not impose
- 21 a duty upon the owner to make utility payments or otherwise
- 22 prevent utility interruptions resulting from nonpayment of
- 23 utility charges by the resident;
- 24 [~~(4)~~] (4) removing the resident's personal
- 25

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1 property from the dwelling unit or its premises;

2 [~~(6)~~] (5) removing or incapacitating
3 appliances or fixtures, except for making necessary and
4 legitimate repairs; or

5 [~~(7)~~] (6) any willful act rendering a
6 dwelling unit or any personal property located in the dwelling
7 unit or on the premises inaccessible or uninhabitable.

8 B. The provisions of Subsection A of this section
9 shall not apply if an owner temporarily interferes with
10 possession while making legitimate repairs or inspections as
11 provided for in the Uniform Owner-Resident Relations Act.

12 C. If an owner commits any of the acts stated in
13 Subsection A of this section, the resident may:

14 (1) abate one hundred percent of the rent for
15 each day in which the resident is denied possession of the
16 premises for any portion of the day or each day where the
17 owner caused termination or diminishment of any service for
18 any portion of the day;

19 (2) be entitled to civil penalties as
20 provided in Subsection B of Section 47-8-48 NMSA 1978;

21 (3) seek restitution of the premises pursuant
22 to Sections 47-8-41 and [~~Section~~] 47-8-42 NMSA 1978 or
23 terminate the rental agreement; and

24 (4) be entitled to damages. "

25 Section 16. Section 47-8-36.1 NMSA 1978 (being Laws

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1 1995, Chapter 195, Section 17) is amended to read:

2 "47-8-36.1. LANDLORD LIEN. --

3 ~~[A. There shall be no landlord's lien arising out~~
4 ~~of the rental of a dwelling unit to which the Uniform~~
5 ~~Owner-Resident Act applies.]~~

6 ~~B. Nothing in this section shall prohibit the~~
7 ~~owner from levy and execution on a judgment arising out of a~~
8 ~~claim for rent or damages.]~~ Owners have a lien on any property
9 of a resident left on the premises for rent or other amounts
10 owed under the rental agreement. No property shall be removed
11 from the premises without the consent of the owner until the
12 amount owed is paid or secured. "

13 Section 17. Section 48-8-39 NMSA 1978 (being Laws 1975,
14 Chapter 38, Section 39, as amended) is amended to read:

15 "47-8-39. OWNER RETALIATION PROHIBITED. --

16 A. An owner may not retaliate against a resident
17 who is in compliance with the rental agreement and not
18 otherwise in violation of any provision of the Uniform
19 Owner-Resident Relations Act by increasing rent, decreasing
20 services or by bringing or threatening to bring an action for
21 possession because the resident has within the previous three
22 months:

23 (1) complained to a government agency charged
24 with responsibility for enforcement of a minimum building or
25 housing code of a violation applicable to the premises

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1 materially affecting health and safety;

2 (2) organized or become a member of a
3 residents' union, association or similar organization;

4 (3) ~~[acted in good faith to exercise his~~
5 ~~rights provided under the Uniform Owner-Resident Relations~~
6 ~~Act, including when the resident makes]~~ made a written request
7 or complaint to the owner to make repairs to comply with the
8 owner's obligations under Paragraph (4) of Subsection A of
9 Section 47-8-20 NMSA 1978 with respect to the dwelling unit;

10 (4) made a fair housing complaint to a
11 government agency charged with authority for enforcement of
12 laws or regulations prohibiting discrimination in rental
13 housing;

14 (5) prevailed in a lawsuit as either
15 plaintiff or defendant or has a lawsuit pending against the
16 owner relating to the residency;

17 (6) testified on behalf of another resident;
18 or

19 (7) properly abated rent in accordance with
20 the provisions of ~~[Sections]~~ Section 47-8-27.1 or 47-8-27.2
21 NMSA 1978.

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

underscored material = new
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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 the terms of the rental
5 agreement if the owner can establish that the increased rent
6 or changes in services are consistent with those imposed on
7 other residents of similar rental units and are not directed
8 at the particular resident, but are uniform "

9 Section 18. Section 47-8-43 NMSA 1978 (being Laws 1975,
10 Chapter 38, Section 43, as amended) is amended to read:

11 "47-8-43. ISSUANCE OF SUMMONS. --

12 A. The summons shall be issued and directed, with
13 a copy of the petition attached to the summons, and shall
14 state the cause of the complaint, the answer day for other
15 causes of action and notice that if the defendant fails to
16 appear, judgment shall be entered against him. The summons
17 may be served pursuant to the New Mexico rules of civil
18 procedure and returned as in other cases. Trial of the action
19 for possession shall be set [as follows:-

20 (1) ~~for any matter brought by the owner for~~
21 ~~possession]~~ not less than seven or more than ten days after
22 the service of summons [or

23 (2) ~~for any matter brought by the resident~~
24 ~~for possession, not less than three or more than five days~~
25 ~~after the service of summons].~~

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1 B. Upon finding of good cause, the court may
2 continue the date of hearing on the action for possession for
3 up to seven days from the date of the initial hearing. "

4 Section 19. Section 47-8-46 NMSA 1978 (being Laws 1975,
5 Chapter 38, Section 46, as amended) is amended to read:

6 "47-8-46. WRIT OF RESTITUTION. --

7 A. Upon petition for restitution filed by the
8 owner if judgment is rendered against the defendant for
9 restitution of the premises, the court shall declare the
10 forfeiture of the rental agreement and shall, at the request
11 of the plaintiff or his attorney, issue a writ of restitution
12 directing the sheriff to restore possession of the premises to
13 the plaintiff on a [~~specified~~] date specified in the judgment
14 of not [~~less than three nor~~] more than [~~seven~~] three days
15 after entry of judgment.

16 B. Upon a petition for restitution filed by the
17 resident, if judgment is rendered against the defendant for
18 restitution of the premises, the court shall, at the request
19 of the plaintiff or his attorney, issue a writ of restitution
20 directing the sheriff to restore possession of the premises to
21 the plaintiff [~~within twenty-four hours~~] on a specified date
22 not more than three days after entry of judgment. "

23 Section 20. Section 47-8-47 NMSA 1978 (being Laws 1975,
24 Chapter 38, Section 47, as amended) is amended to read:

25 "47-8-47. APPEAL STAYS EXECUTION. --

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1 A. If either party feels aggrieved by the
2 judgment, ~~[he]~~ that party may appeal as in other civil
3 actions. An appeal by the defendant shall stay the execution
4 of any writ of restitution; provided that in cases in which
5 the resident is the appellant, the execution of the writ of
6 restitution shall not be stayed unless the resident ~~[shall]~~,
7 within five days of the filing of the notice of appeal, ~~[pay~~
8 ~~into an escrow account established by the trial court]~~ pays to
9 the owner an amount equal to the rental amount that shall come
10 due from the day following the judgment through the end of
11 that rental period. The resident shall continue to pay the
12 monthly rent established by the rental agreement at the time
13 the complaint was filed, ~~[into the escrow account]~~ on a
14 monthly basis on the date rent would otherwise become due.
15 Payments ~~[into an escrow account]~~ pursuant to this subsection
16 by a subsidized resident shall not exceed the actual amount of
17 monthly rent paid by that resident. ~~[Such amounts shall be~~
18 ~~paid over to the owner monthly unless otherwise ordered by the~~
19 ~~trial court. Upon the resident's failure to make any monthly~~
20 ~~escrow deposit on the first day rent would otherwise come due,~~
21 ~~the owner shall serve a three-day written notice on the~~
22 ~~resident pursuant to Subsection B of Section 47-8-33 NMSA~~
23 ~~1978. If the resident fails to deposit the rent within three~~
24 ~~days, a hearing on the issue shall be scheduled within ten~~
25 ~~days from the date the court is notified of the failure to~~

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1 ~~deposit rent. The trial court shall lift the stay and issue~~
2 ~~the writ of restitution forthwith, unless the resident~~
3 ~~demonstrates a legal justification for failing to comply with~~
4 ~~the escrow requirement.] Upon the resident's failure to make~~
5 any monthly rent payment on the first day rent would otherwise
6 be due, the owner may serve a three-day written notice on the
7 resident pursuant to Subsection D of Section 47-8-33 NMSA
8 1978. If the resident fails to pay the rent within the three
9 days, a hearing on the issue shall be scheduled within ten
10 days from the date the court is notified of the failure to pay
11 rent. The hearing shall be before the court in which the
12 appeal was filed, in the case of an appeal de novo, or before
13 the trial court, in the case of an appeal that is not de novo.
14 If, at the hearing, the court finds that rent has not been
15 paid, the court shall immediately lift the stay and issue the
16 writ of restitution.

17 B. In order to stay the execution of a money
18 judgment, the trial court, within its discretion, may require
19 an appellant to deposit with the clerk of the trial court the
20 amount of judgment and costs or to give a supersedeas bond in
21 the amount of judgment and costs with or without surety. Any
22 bond or deposit shall not be refundable during the pendency of
23 any appeal.

24 [C. ~~If judgment is rendered in favor of the owner,~~
25 ~~all money remaining in the escrow account established by the~~

1 ~~court shall be paid over by the court, following judgment, to~~
2 ~~the owner without penalty or charges.]"~~

3 Section 21. REPEAL. -- Section 47-8-28 NMSA 1978 (being
4 Laws 1975, Chapter 38, Section 28, as amended) is repealed.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4
5
6 February 15, 1999

7
8 Mr. Speaker:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 48

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16 HOUSE JUDICIARY COMMITTEE SUBSTITUTE
17 FOR HOUSE BILL 48

18
19 DO PASS.
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

Page 43

Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Godbey, Luna, Mallory, Sanchez, Thompson, T.

Absent: None

J:\99BillsWP\H0048

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 48

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO REAL PROPERTY; REVISING THE TERMS AND CONDITIONS
OF RENTAL AGREEMENTS; AMENDING THE UNIFORM OWNER-RESIDENT
RELATIONS ACT.

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

Section 1. Section 47-8-3 NMSA 1978 (being Laws 1975,
Chapter 38, Section 3, as amended) is amended to read:

"47-8-3. DEFINITIONS. -- As used in the Uniform
Owner-Resident Relations Act:

A. "abandonment" means absence of the resident
from the dwelling, without notice to the owner, in excess of
seven continuous days; providing such absence occurs only
after rent for the dwelling unit is delinquent;

B. "action" includes recoupment, counterclaim,
set-off, suit in equity and any other proceeding in which
rights are determined, including an action for possession;

C. "amenity" means a facility appurtenance or area
supplied by the owner and the absence of which would not

materially affect the health and safety of the resident or the habitability of the dwelling unit;

1 ~~[C.]~~ D. "codes" includes building codes, housing
2 codes, health and safety codes, sanitation codes and any law,
3 ordinance or governmental regulation concerning fitness for
4 habitation or the construction, maintenance, operation,
5 occupancy or use of a dwelling unit;

6 ~~[D.]~~ E. "deposit" means an amount of currency or
7 instrument delivered to the owner by the resident as a pledge
8 to abide by terms and conditions of the rental agreement;

9 ~~[E.]~~ F. "dwelling unit" means a structure, mobile
10 home or the part of a structure, including a hotel or motel,
11 that is used as a home, residence or sleeping place by one
12 person who maintains a household or by two or more persons who
13 maintain a common household and includes a parcel of land
14 leased by its owner for use as a site for the parking of a
15 mobile home;

16 ~~[F.]~~ G. "eviction" means any action initiated by
17 the owner to regain possession of a dwelling unit and use of
18 the premises under terms of the Uniform Owner-Resident
19 Relations Act;

20 ~~[G.]~~ H. "fair rental value" is that value that is
21 comparable to the value established in the market place;

22 ~~[H.]~~ I. "good faith" means honesty in fact in the
23 conduct of the transaction concerned as evidenced by all
24 surrounding circumstances;

25 ~~[I.]~~ J. "normal wear and tear" means deterioration
that occurs based upon the use for which the rental unit is
intended, without negligence, carelessness, accident, abuse or
intentional damage of the premises, equipment or chattels of
the owner by the residents or by any other person in the
dwelling unit or on the premises with the resident's consent;

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1 however, uncleanliness does not constitute normal wear and
2 tear;

3 ~~[J.]~~ K. "organization" includes a corporation,
4 government, governmental subdivision or agency thereof,
5 business trust, estate, trust, partnership or association, two
6 or more persons having a joint or common interest or any other
7 legal or commercial entity;

8 ~~[K.]~~ L. "owner" means one or more persons, jointly
9 or severally, in whom is vested:

10 (1) all or part of the legal title to
11 property, but shall not include the limited partner in an
12 association regulated under the Uniform Limited Partnership
13 Act; or

14 (2) all or part of the beneficial ownership
15 and a right to present use and enjoyment of the premises and
16 agents thereof and includes a mortgagee in possession and the
17 lessors, but shall not include a person or persons, jointly or
18 severally, who as owner leases the entire premises to a lessee
19 of vacant land for apartment use;

20 ~~[L.]~~ M. "person" includes an individual,
21 corporation, entity or organization;

22 ~~[M.]~~ N. "premises" means facilities, facilities
23 and appurtenances, areas and other facilities held out for use
24 of the resident or whose use is promised to the resident
25 coincidental with occupancy of a dwelling unit;

~~[N.]~~ O. "rent" means payments in currency or in-
kind under terms and conditions of the rental agreement for
use of a dwelling unit or premises, to be made to the owner by

1 the resident, but does not include deposits;

2 [Ø.] P. "rental agreement" means all [~~written~~]
3 agreements between an owner and resident and valid rules and
4 regulations adopted under Section 47-8-23 NMSA 1978 embodying
5 the terms and conditions concerning the use and occupancy of a
6 dwelling unit or premises;

7 [P.] Q. "resident" means a person entitled under a
8 rental agreement to occupy a dwelling unit in peaceful
9 possession to the exclusion of others and includes the owner
10 of a mobile home renting premises, other than a lot or parcel
11 in a mobile home park, for use as a site for the location of
12 the mobile home;

13 [Q.] R. "roomer" means a person occupying a
14 dwelling unit that lacks a major bathroom or kitchen facility
15 in a structure where one or more major facilities are used in
16 common by occupants of the dwelling units. As referred to in
17 this subsection, "major facility", in the case of a bathroom,
18 means toilet and either a bath or shower and, in the case of a
19 kitchen, means refrigerator, stove or sink;

20 [R.] S. "single family residence" means a
21 structure maintained and used as a single dwelling unit.
22 Notwithstanding that a dwelling unit shares one or more walls
23 with another dwelling unit, it is a single family residence if
24 it has direct access to a street or thoroughfare and shares
25 neither heating facilities, hot water equipment nor any other
essential facility or service with any other dwelling unit;

[S.] T. "substantial violation" means [~~any act or~~
~~series of acts that occur in the dwelling unit or on the~~

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1 ~~premises by the resident or with the resident's consent and:~~

2 ~~(1) is a felony under the Controlled~~
3 ~~Substances Act;~~

4 ~~(2) involves a deadly weapon and is a felony~~
5 ~~under the Criminal Code;~~

6 ~~(3) is assault with intent to commit a~~
7 ~~violent felony, murder, criminal sexual penetration, robbery~~
8 ~~or burglary under the Criminal Code; or~~

9 ~~(4) is criminal damage to property and a~~
10 ~~felony under the Criminal Code] a violation of the rental~~
11 ~~agreement or rules and regulations by the resident or~~
12 ~~occurring with the resident's consent that occurs in the~~
13 ~~dwelling unit, on the premises or within three hundred feet of~~
14 ~~the premises and that includes the following conduct, which~~
15 ~~shall be the sole grounds for a substantial violation:~~

16 (1) possession, use, sale, distribution or
17 manufacture of a controlled substance, excluding misdemeanor
18 possession and use;

19 (2) unlawful use of a deadly weapon;

20 (3) unlawful action causing serious physical
21 harm to another person;

22 (4) sexual assault or sexual molestation of
23 another person;

24 (5) entry into the dwelling unit or vehicle
25 of another person without that person's permission and with
intent to commit theft or assault;

(6) theft or attempted theft of the property
of another person by use or threatened use of force; or

1 (7) intentional or reckless damage to
2 property in excess of one thousand dollars (\$1,000) ;

3 [~~F.~~] U. "term" is the period of occupancy
4 specified in the rental agreement; and

5 [~~U.~~] V. "transient occupancy" means occupancy of a
6 dwelling unit for which rent is paid on less than a weekly
7 basis or where the resident has not manifested an intent to
8 make the dwelling unit a residence or household. "

9 Section 2. Section 47-8-20 NMSA 1978 (being Laws 1975,
10 Chapter 38, Section 20, as amended) is amended to read:

11 "47-8-20. OBLIGATIONS OF OWNER. --

12 A. The owner shall:

13 (1) substantially comply with requirements of
14 the applicable minimum housing codes materially affecting
15 health and safety;

16 (2) make repairs and do whatever is necessary
17 to put and keep the premises in a safe condition as provided
18 by applicable law and rules and regulations as provided in
19 Section 47-8-23 NMSA 1978;

20 (3) keep common areas of the premises in a
21 safe condition;

22 (4) maintain in good and safe working order
23 and condition electrical, plumbing, sanitary, heating,
24 ventilating, air conditioning and other facilities and
25 appliances, including elevators, if any, supplied or required
to be supplied by him;

 (5) provide and maintain appropriate
receptacles and conveniences for the removal of ashes,

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1 garbage, rubbish and other waste incidental to the occupancy
2 of the dwelling unit and arrange for their removal from the
3 appropriate receptacle; and

4 (6) supply running water and a reasonable
5 amount of hot water at all times and reasonable heat, except
6 where the building that includes the dwelling unit is not
7 required by law to be equipped for that purpose or the
8 dwelling unit is so constructed that heat or hot water is
9 generated by an installation within the exclusive control of
10 the resident and supplied by a direct public utility
11 connection.

12 B. If there exists a minimum housing code
13 applicable to the premises, the owner's maximum duty under
14 this section shall be determined by Paragraph (1) of
15 Subsection A of this section. The obligations imposed by this
16 section are not intended to change existing tort law in the
17 state.

18 C. The owner and resident of a single family
19 residence may agree that the resident perform the owner's
20 duties specified in Paragraphs (5) and (6) of Subsection A of
21 this section and also specified repairs, maintenance tasks,
22 alterations and remodeling, but only if the transaction is in
23 writing, for consideration, entered into in good faith and not
24 for the purpose of evading the obligations of the owner.

25 D. The owner and resident of a dwelling unit other
than a single family residence may agree that the resident is
to perform specified repairs, maintenance tasks, alterations
or remodeling only if:

1 (1) the agreement of the parties is entered
 2 into in good faith and not for the purpose of evading the
 3 obligations of the owner and is set forth in a separate
 4 writing signed by the parties and supported by consideration;
 5 and

6 (2) the agreement does not diminish or affect
 7 the obligation of the owner to other residents in the
 8 premises.

9 E. Notwithstanding any provision of this section,
 10 an owner may arrange with a resident to perform the
 11 obligations of the owner. Any such arrangement between the
 12 owner and the resident will not serve to diminish the owner's
 13 obligations as set forth in this section, nor shall the
 14 failure of the resident to perform the obligations of the
 15 owner serve as a basis for eviction or in any way be
 16 considered a material breach by the resident of his
 17 obligations under the Uniform Owner-Resident Relations Act or
 18 the rental agreement.

19 F. In multi-unit housing, if there is separate
 20 utility metering for each unit, the resident shall receive a
 21 copy of the utility bill for his unit upon request made to the
 22 owner or his agent. If the unit is submetered, the resident
 23 shall then be entitled to receive a copy of the apartment's
 24 utility bill. When utility bills for common areas are
 25 separately apportioned between units and the costs are passed
 on to the residents of each unit, each resident may, upon
 request, receive a copy of all utility bills being
 apportioned. The calculations used as the basis for

1 apportioning the cost of utilities for common areas and
 2 submetered apartments shall be made available to any resident
 3 upon request. The portion of the common area cost that would
 4 be allocated to an empty unit if it were occupied shall not be
 5 allocated to the remaining residents. It is solely the
 6 owner's responsibility to supply the items and information in
 7 this subsection to the [~~tenant~~] resident upon request. The
 8 owner may charge an administrative fee not to exceed [~~two~~
~~dollars (\$2.00)~~] five dollars (\$5.00) for each monthly request
 9 of the items in this subsection.

10 G. The owner shall provide a written rental
 11 agreement to each [~~tenant~~] resident prior to the beginning of
 12 occupancy. "

13 Section 3. Section 47-8-26 NMSA 1978 (being Laws 1975,
 14 Chapter 38, Section 26) is amended to read:

15 "47-8-26. DELIVERY OF POSSESSION. -- [~~At the commencement~~
 16 ~~of the rental period as specified in the rental agreement]~~

17 A. At the time specified in the rental agreement
 18 for the commencement of occupancy, the owner shall deliver
 19 possession of the premises to the resident in compliance with
 20 the rental agreement and Section [~~20 of the Uniform Owner-~~
 21 ~~Resident Relations Act]~~ 47-8-20 NMSA 1978. The owner may
 22 bring an action for possession against the resident or any
 23 person wrongfully in possession and may recover the damages
 24 provided in Subsection [~~€]~~ F of Section [~~33 of the Uniform~~
 25 ~~Owner-Resident Relations Act]~~ 47-8-33 NMSA 1978.

[~~If the owner makes reasonable efforts to obtain~~
~~possession of the premises, he shall not be liable for an~~

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1 ~~action under this section.]~~

2 B. If the owner fails to deliver possession of the
3 premises to the prospective resident as provided in Subsection
4 A of this section, one hundred percent of the rent abates
5 until possession is delivered and the prospective resident
6 may:

7 (1) upon written notice to the owner,
8 terminate the rental agreement effective immediately. Upon
9 termination the owner shall return all prepaid rent and
10 deposits; or

11 (2) demand performance of the rental
12 agreement by the owner and, if the prospective resident
13 elects, maintain an action for possession of the premises
14 against any person wrongfully withholding possession and
15 recover the damages sustained by him and seek the remedies
16 provided in Section 47-8-48 NMSA 1978.

17 C. If the owner makes reasonable efforts to obtain
18 possession of the premises and returns prepaid rents, deposits
19 and fees within seven days of receiving a prospective
20 resident's notice of termination, the owner shall not be
21 liable for damages under this section. "

22 Section 4. Section 47-8-27.2 NMSA 1978 (being Laws 1995,
23 Chapter 195, Section 12) is amended to read:

24 "47-8-27.2. ABATEMENT. --

25 A. If there is a violation of Subsection A of
Section 47-8-20 NMSA 1978, other than a failure or defect in
an amenity, the resident shall give written notice to the
owner of the conditions needing repair. If the owner does not

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1 remedy the conditions set out in the notice within seven days
2 of the notice, the resident is entitled to abate rent as set
3 forth below:

4 (1) one-third of the pro-rata daily rent for
5 each day from the date the resident notified the owner of the
6 conditions needing repair, through the day the conditions in
7 the notice are remedied. If the conditions complained of
8 continue to exist without remedy through any portion of a
9 subsequent rental period, the resident may abate at the same
rate for each day that the conditions are not remedied; and

10 (2) one hundred percent of the rent for each
11 day from the date the resident notified the owner of the
12 conditions needing repair until the date the breach is cured
13 if the dwelling is uninhabitable and the resident does not
inhabit the dwelling unit as a result of the condition.

14 B. For each rental period in which there is a
15 violation under Subsection A of this section, the resident may
16 abate the rent or may choose an alternate remedy in accordance
17 with the Uniform Owner-Resident Relations Act. The choice of
18 one remedy shall not preclude the use of an alternate remedy
19 for the same violation in a subsequent rental period.

20 C. If the resident's rent is subsidized in whole
21 or in part by a government agency, the abatement limitation of
22 one month's rent shall mean the total monthly rent paid for
23 the dwelling and not the portion of the rent that the resident
24 alone pays. Where there is a third party payor, either the
25 payor or the resident may authorize the remedy and may abate
rent payments as provided in this section.

1 D. Nothing in this section shall limit a court in
2 its discretion to apply equitable abatement.

3 E. Nothing in this section shall entitle the
4 resident to abate rent for the unavailability of an amenity. "

5 Section 5. Section 47-8-33 NMSA 1978 (being Laws 1975,
6 Chapter 38, Section 33, as amended) is amended to read:

7 "47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY
8 OWNER. --

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

21 B. Upon the second material noncompliance with the
22 rental agreement or any separate agreement by the resident,
23 within six months of the initial breach, the owner shall
24 deliver a written notice to the resident specifying the acts
25 and omissions constituting the breach, including the dates and
specific facts describing the nature of the alleged breach,
and stating that the rental agreement shall terminate upon a
date not less than seven days after receipt of the notice. If

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1 the subsequent breach occurs more than six months after the
2 initial breach, it shall constitute an initial breach for
3 purposes of applying the provisions of this section.

4 C. The initial notice provided in this section
5 shall state that the rental agreement will terminate upon the
6 second material noncompliance with the rental agreement or any
7 separate agreement by the resident, within six months of the
8 initial breach. To be effective, any notice pursuant to this
9 subsection shall be given within thirty days of the breach or
10 knowledge thereof.

11 D. If rent is unpaid when due and the resident
12 fails to pay rent within three days after written notice from
13 the owner of nonpayment and his intention to terminate the
14 rental agreement, the owner may terminate the rental agreement
15 and the resident shall immediately deliver possession of the
16 dwelling unit; provided that tender of the full amount due, in
17 the manner stated in the notice, prior to the expiration of
18 the three-day notice shall bar any action for nonpayment of
19 rent.

20 E. In any court action for possession for
21 nonpayment of rent or other charges where the resident
22 disputes the amount owed because:

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

25 (2) the owner has allocated rent paid by the
resident as payment for damages to the premises, then, if the
owner is the prevailing party, the court shall enter a writ of
restitution conditioned upon the right of the resident to

1 remedy within three days of entry of judgment. If the
 2 resident has satisfied the judgment within three days, the
 3 writ shall be dismissed. If the resident has not satisfied
 4 the judgment within three days, the owner may execute upon the
 writ without further order of the court.

5 F. Except as provided in the Uniform
 6 Owner-Resident Relations Act, the owner may recover damages
 7 and obtain injunctive or other relief for any noncompliance by
 8 the resident with the rental agreement or this section or
 9 Section 47-8-22 NMSA 1978.

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

16 H. When the last day for remedying any breach
 17 pursuant to written notice required under [~~this~~] the Uniform
 18 Owner-Resident Relations Act occurs on a weekend or federal
 19 holiday, the period to remedy shall be extended until the next
 day that is not a weekend or federal holiday.

20 I. If the resident knowingly commits or consents
 21 to [~~any other~~] another person in the dwelling unit or on the
 22 premises knowingly committing a substantial violation, the
 23 owner shall deliver a written notice to the resident
 24 specifying the time, place and nature of the act constituting
 25 the substantial violation and that the rental agreement will

1 terminate upon a date not less than three days after receipt
2 of the notice.

3 J. In any action for possession under Subsection I
4 of this section, it shall be a defense that the resident is a
5 victim of domestic violence. If the resident has filed for or
6 secured a temporary domestic violence restraining order as a
7 result of the incident that is the basis for the termination
8 notice or as a result of a prior incident, [~~then~~] the writ of
9 restitution shall not issue. In all other cases where
10 domestic violence is raised as a defense, the court shall have
11 the discretion to evict the resident accused of the violation,
12 while allowing the tenancy of the remainder of the residents
13 to continue undisturbed.

14 K. In any action for possession under Subsection I
15 of this section, it shall be a defense that the resident did
16 not know of, and could not have reasonably known of or
17 prevented, the commission of a substantial violation by any
18 other person in the dwelling unit or on the premises.

19 L. In an action for possession under Subsection I
20 of this section, it shall be a defense that the resident took
21 reasonable and lawful actions in defense of himself, others or
22 his property.

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

Section 6. Section 47-8-39 NMSA 1978 (being Laws 1975,

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1 Chapter 38, Section 39, as amended) is amended to read:

2 "47-8-39. OWNER RETALIATION PROHIBITED. --

3 A. An owner may not retaliate against a resident
4 who is in compliance with the rental agreement and not
5 otherwise in violation of any provision of the Uniform
6 Owner-Resident Relations Act by increasing rent, decreasing
7 services or by bringing or threatening to bring an action for
8 possession because the resident has within the previous
9 [~~three~~] six months:

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

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

16 (3) acted in good faith to exercise his
17 rights provided under the Uniform Owner-Resident Relations
18 Act, including when the resident makes a written request or
19 complaint to the owner to make repairs to comply with the
20 owner's obligations under Section 47-8-20 NMSA 1978;

21 (4) made a fair housing complaint to a
22 government agency charged with authority for enforcement of
23 laws or regulations prohibiting discrimination in rental
24 housing;

25 (5) prevailed in a lawsuit as either
plaintiff or defendant or has a lawsuit pending against the
owner relating to the residency;

(6) testified on behalf of another resident;

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1 or

2 (7) abated rent in accordance with the
3 provisions of [~~Sections~~] Section 47-8-27.1 or 47-8-27.2 NMSA
4 1978.

5 B. If the owner acts in violation of Subsection A
6 of this section, the resident is entitled to the remedies
7 provided in Section 47-8-48 NMSA 1978 and the violation shall
8 be a defense in any action against him for possession.

9 C. Notwithstanding the provisions of Subsection A
10 of this section, the owner may increase the rent or change
11 services upon appropriate notice at the end of the term of the
12 rental agreement or as provided under the terms of the rental
13 agreement if the owner can establish that the increased rent
14 or changes in services are consistent with those imposed on
15 other residents of similar rental units and are not directed
16 at the particular resident, but are uniform "

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

19 "47-8-47. APPEAL STAYS EXECUTION. --

20 A. If either party feels aggrieved by the
21 judgment, [~~he~~] that party may appeal as in other civil
22 actions. An appeal by the defendant shall stay the execution
23 of any writ of restitution; provided that in cases in which
24 the resident is the appellant, the execution of the writ of
25 restitution shall not be stayed unless the resident [~~shall~~],
within five days of the filing of the notice of appeal, [~~pay~~
~~into an escrow account established by the trial court~~] pays to
the owner or into an escrow account with a professional escrow

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

1 Section 47-8-33 NMSA 1978. If the resident or the resident's
2 escrow agent fails to pay the rent within the three days, a
3 hearing on the issue shall be scheduled within ten days from
4 the date the court is notified of the failure to pay rent. In
5 the case of an appeal de novo, the hearing shall be in the
6 court in which the appeal will be heard. If, at the hearing,
7 the court finds that rent has not been paid, the court shall
8 immediately lift the stay and issue the writ of restitution
9 unless the resident demonstrates a legal justification for
10 failing to comply with the rent payment requirement.

11 B. 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 [~~C. If judgment is rendered in favor of the owner,~~
19 ~~all money remaining in the escrow account established by the~~
20 ~~court shall be paid over by the court, following judgment, to~~
21 ~~the owner without penalty or charges.]"~~

22 Section 8. REPEAL. -- Section 47-8-28 NMSA 1978 (being
23 Laws 1975, Chapter 38, Section 28, as amended) is repealed.

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FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

March 10, 1999

Mr. Presi dent:

Your JUDI CIARY COMMI TTEE, to whom has been referred

HOUSE JUDI CIARY COMMI TTEE SUBSTI TUTE FOR
HOUSE BILL 48

has had it under consideration and reports same with
recommmendation that it DO PASS.

Respectfully submi tted,

Michael S. Sanchez, Chai rman

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HJC/HB 48

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Aragon

Absent: None

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