

COMMUNITY LAND GRANT INTERIM LEGISLATIVE HEARING

AUGUST 25, 2011

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SECTION 1 LEGAL OPINION

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MEMORANDUM

TO: Community Land Grants within the State of New Mexico
FROM: Jay Hone, Director, Risk Management Division *JRH*
DATE: July 1, 2011
RE: RMD Coverage for Land Grants

This letter is to inform you of the coverage that is available to Land Grants from the Risk Management Division (RMD) of the General Services Department.

As enacted by the second session of the 49th legislature, 2010 and signed by the Governor of the State of New Mexico, Senate Bill 94 authorizes the Risk Management Division of the General Services Department to provide Torts Claim Coverage to Certain Community Land Grants. This Liability Insurance Coverage is to Community Land Grants which are governed as Political Subdivisions of the State.

Section 1. of Senate Bill 94, is a new section of the Tort Claims Act that has been enacted to read:

(NEW MATERIAL) LIABILITY COVERAGE—CERTAIN COMMUNITY LAND GRANTS.—Notwithstanding the provisions of Paragraph (1) of Subsection A of Section 41-4-25 NMSA 1978 to the contrary, a community land grant governed as a political subdivision of the state upon application to the risk management division of the general services department shall be authorized to purchase coverage for any risk for which immunity has been waived under the Torts Claims Act through public liability fund, exclusive of coverage of an activity conducted by the community land grant that is determined by the director of the risk management division pursuant to division rules to be a business enterprise.

Community Land Grants governed as political subdivisions of the state will be eligible for RMD tort claims coverage effective July 1, 2010.

RMD tort coverage includes coverage for most civil causes of action; with the most obvious exception being civil causes of action that are based in contract. Hence, RMD tort coverage includes civil rights claims and actions based on negligence. Please note that RMD tort coverage does not include property damage coverage. RMD is not authorized to provide property damage coverage to local public bodies (it is available only to state agencies). See Insurance on Public Buildings Act, NMSA Sections 13-5-1 to 13-5-3.1.

RMD is in process of determining the appropriate public liability fund assessment for each Community Land Grant. You will be requested to submit claim history and other pertinent information for your Community Land Grant.

SECTION 2 CERTIFICATE OF COVERAGE

STATE OF NEW MEXICO LIABILITY CERTIFICATE OF COVERAGE

Certificate of Coverage No. 10004 L - Issued 07-30-2010

SECTION 1

I. PURPOSE AND NATURE OF THIS CERTIFICATE OF COVERAGE

This Certificate of Coverage does not provide insurance, but instead provides an explanation to the **Governmental Entities** of the State of New Mexico about the intent of the use of funds from the **Public Liability Fund**. This Certificate of Coverage shall be applied giving full effect to the intent of the **Torts Claims Act**, as interpreted and determined in accordance with the Section V of this Certificate of Coverage. As the **Public Liability Fund** is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide separate counsel to a **covered party** in disputed coverage situations. Finally, failure to provide notice to a **covered party** of any coverage dispute **shall not operate to waive any of the provisions of this Certificate of Coverage**.

II. COVERAGE DEFINED

- A. The **Public Liability Fund** will pay those sums for **ultimate net loss** that the **covered parties** become legally obligated to pay as damages because of the liabilities and waiver of immunity under Sections 41-4-4 through 41-4-12 of the **Torts Claims Act** caused by an **occurrence**, except as otherwise excluded under Section IV, below. The duty to defend under this Certificate of Coverage extends to liabilities and waivers of immunity expressly contained in Sections 41-4-4 through 41-4-12 of the **Torts Claims Act**; there is no duty to defend other claims.
- B. The **Director**, acting on behalf of the General Services Department, Risk Management Division, through the **Public Liability Fund**, will have the right and the duty to defend the **covered party** against a claim or suit for damages covered under Section II, paragraph A, above. Such duty, however, shall cease upon final disposition of such claim.

III. COVERED PARTY

- A. Each of the **Governmental Entities** of the State of New Mexico is a **covered party** under this Certificate of Coverage. While acting within the scope of their duties, any official, officer, employee, or volunteer of the **Governmental Entity**, is also a **covered party** to the extent the **Governmental Entity** owes indemnification and defense as defined in Section 41-4-4 of the **Torts Claims Act**.
- B. Any other entity to which the General Services Department, Risk Management Division has issued a Certificate of Coverage is also a **covered party** under this Certificate of Coverage.

- C. Any person using an automobile owned by a **Governmental Entity** or other Certificate of Coverage holder, or which is employee **Property of Others**, but only if such use is with the consent of the **Governmental Entity** or Certificate of Coverage holder is also a **covered party** under this Certificate of Coverage. As to employee **Property of Others** vehicles, this Certificate is extended to cover secondary **loss** coverage in excess of the employees' own vehicle liability coverage, provided that the employee's vehicle has been authorized to be used in the scope of that employee's duties. The employee's personal automobile liability policy is primary, including applicable personal insurance deductibles to be paid by the employee, and coverage is extended only in an amount to provide secondary coverage for the remaining financial exposure, if any, up to the Tort Claims Act limit. This Certificate does not reimburse an employee for their personal insurance deductibles.

IV. EXCLUSIONS

Without limiting the **Director's** power to make a written determination if this Certificate of Coverage applies to any claim presented, this Certificate of Coverage does not apply to:

A. **Bid Specifications/Cost Overruns**

1. Claims arising out of estimates of probable costs or costs estimates being exceeded or faulty preparation of bid specifications or plans including architectural plans.
2. Mechanic's lien claims, stop notice claims, change order claims, or similar claims by contractors for the value of services or materials provided.

B. **Contractual Obligations**

Claims arising out of:

1. A failure to perform or breach of a contractual obligation; or
2. A **covered party's** obligation to pay damages by reason of assumption of liability under contract or agreement. However, this exclusion does not apply to liability for damages the **covered party** would have in the absence of the contract or agreement.

C. **Employee Benefit Plans**

Benefits payable under any employee benefit plan.

D. **Fines, Penalties, and Punitive Damages**

Fines, assessments, penalties, restitution, disgorgement, exemplary, or punitive damages. However, pursuant to Section 41-4-4 (C) of the **Tort Claims Act**, this exclusion does not apply to exemplary or punitive damages awarded by a jurisdiction

other than New Mexico against a public employee if such employee was acting within the scope of his employment.

E. Injunctive Relief

Ultimate net loss arising out of relief or redress in any form other than money damages.

F. Intentional Conduct

Claims for damages caused by expected or intentional conduct done by the **covered party** with willful or conscious disregard of the rights or safety of others, or with malice. However, this exclusion does not apply to a **covered party** whose liability is based solely on its vicarious liability arising out of its relationship to one acting with such willful or conscious disregard of the rights or safety of others, or with malice.

G. Abuse and Molestation.

Claims arising, directly, or indirectly, out of:

1. a **covered party's** actual or threatened abuse or molestation of any person while in the care, custody, or control of any **covered party**, or
2. the negligent employment, investigation, supervision, retention, or reporting to the proper authorities, or failure to so report, of a person for whom any **covered party** is or ever was legally responsible and whose conduct would be excluded by subparagraph G1., above.

H. Land Use

Claims arising out of, or in connection with, land use regulation, land use planning, or the principles of eminent domain or condemnation proceedings.

I. Pollution Cleanup

Any loss, cost or expense, including defense costs, arising out of any:

1. request, demand, or order that a **covered party** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**, or
2. claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, testing, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

J. Property of a Covered Party

Property damage to:

1. property owned by the covered party,
2. property rented to or leased to the covered party where it has assumed liability for damage to or destruction of such property,
3. aircraft, watercraft, or any automobile in the **covered party's** care, custody, or control.

K. Reasonable Accommodations

Any expenses or costs incurred by a **covered party** arising from a reasonable accommodation of a disabled person, including any employee of the **covered party**.

L. Restitution from Officials or Employees

Claims by a **covered party** against its own past or present elected or appointed officials, employees, or volunteers, where such claim seeks damages or restitution payable to the **covered party**.

M. Willful Violation of Statute

Claims arising out of the willful violation of a statute or ordinance committed by the **covered party** or with its knowledge and consent.

N. Workers' Compensation/Employers Liability

Claims for bodily injury to employees arising out of and in the course of employment by the **covered party** that is covered by the **Workers' Compensation Fund** and/or the workers' compensation laws of the State of New Mexico, of any other state, of the federal laws of the United States, or any similar laws.

O. Wages and Salaries

Claims for past or future salary or wage loss or claims for attorney fees by any potential, present, or former employee or official of the **covered party**, arising out of, but not limited to, employment-related practices, policies, acts, or omissions, including termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person. This exclusion extends to claims of a spouse, child, parent, grandparent, brother, sister, or any other relative legally recognized in the State of New Mexico to have legal standing to bring a cause of action, of that person as a consequence of injury to the person at whom any of the employment-related practices, policies, acts, or omissions described above are directed.

P. Medical Payments

Claims for medical payments arising out of an employee's negligence when acting in the scope of their duties and using a personal Vehicle .

V. CONDITIONS

A. Covered Party's Duties in the Event of an Occurrence

1. The **covered party** will notify the **Director** in writing as soon as practicable of an **occurrence** that is likely to result in a claim under this Certificate of Coverage. Such notice will include particulars sufficient to identify the **covered party**

involved and, to the extent possible, information regarding the time, place, and circumstances of the **occurrence**, and the names and addresses of any witnesses.

2. The covered party shall provide to the Director written notice of any claim received by the covered party as soon as possible but in no event more than seven days from receipt.
3. The **covered party** shall cooperate with the **Director** and, upon request, assist in making settlement, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **covered party**, and shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

B. Right of the Director to Control Claim

1. The Director has the right to control the defense and settlement of a claim covered under this Certificate of Coverage. The Director shall have the right to select the attorney to represent the covered party and such attorney shall be directed by, and report to, the Director with regard to the defenses, procedural decisions and settlement of a claim.
2. The Director shall also have the right to determine if separate legal representation is needed where there is more than one covered party involved in a suit.
3. The **Director** shall have the exclusive right to settle a claim for which proceeds are to be paid out or are payable out of the **Public Liability Fund**.

C. Deductible

Pursuant to Risk Management Division rules and procedures, the **Director** may establish a deductible for each **Governmental Entity** that shall apply to each **occurrence** covered under Section II, above, by notifying the **Governmental Entity** in writing. However, in no event shall the deductible apply to an **occurrence** that commenced prior to the establishment of such deductible.

D. Other Coverage

The coverage provided by this Certificate of Coverage shall be excess over and not contribute with any insurance or other coverage that is available to the **covered party** whether such insurance or other coverage was purchased by the **covered party** or included such **covered party** as an additional insured or additional **covered party**.

E. Changes

The terms and conditions of this Certificate of Coverage shall not be altered or amended or waived, except by written notice signed by the **Director**. Such notice shall be provided at least thirty days prior to the effective date of the change, in writing to the **Governmental Entities**.

F. Coverage Disputes

1. The Director shall make a written determination if this Certificate of Coverage applies to any claim presented. The decision of the **Director** may only be appealed through arbitration. Such arbitration shall be requested by the **covered party** by written request to the **Director** within 30 days of the postmark of the written determination of the **Director**.
2. If such arbitration is requested, the **covered party** and the **Director**, on behalf of the **Public Liability Fund**, shall, within fifteen days from the date the written request is actually received in the office of the **Director**, select one arbitrator each and submit his or her name in writing to the other side. Within ten days after their selections, the two arbitrators shall select a third independent arbitrator. If the two arbitrators cannot agree on the selection of the third arbitrator within those ten days, either side may petition the First Judicial District Court in the County of Santa Fe for the appointment of the third arbitrator. The third arbitrator shall be an attorney and preside as the chairperson of the arbitration panel. No arbitrator shall be employed or affiliated with the **covered party** or the **General Services Department, Risk Management Division**.
3. The arbitration hearing shall commence within forty-five days from the date of the selection of the chairperson, unless both sides agree to an extension. The **covered party** and the **Public Liability Fund** shall pay the cost of its own selected arbitrator and one-half of the cost of the third selected arbitrator. In addition, each side shall be responsible for its own cost and expense of arbitration.
4. The arbitration panel will endeavor to confine the length of the hearing to two days. A decision of the arbitration panel shall be reported in writing. The written decision of the arbitration panel shall be given to both sides within thirty days of the close of the hearing.
5. During the course of the arbitration proceedings provided herein, the **Public Liability Fund** will be responsible for all fees and expenses for investigation, defense, or litigation of the claim or lawsuit in question. In the event the arbitration panel determines that coverage does not apply for such defense costs, the **covered party** shall reimburse the **Public Liability Fund** as directed by the arbitration panel.
6. All decisions of the arbitration panel shall be final and binding upon the parties and shall not be subject to any further appeal or court action.

G. Public Liability Fund Protection

Notwithstanding the duty of the **Director** to pay claims out of **Public Liability Fund** under Section II above, the **Director** may withhold payment in any one fiscal year pursuant to Section 41-4-23 (D) of the **Tort Claims Act**, if the **Director** believes that the **Public Liability Fund** would be exhausted by payment of all claims allowed during a fiscal year, and if so withheld, the **Director** shall notify all affected **covered parties** in writing as soon as practicable.

VI. DEFINITIONS

- A. The phrase “**covered party**” means those persons or entities stated in Section III, above.
- B. The phrase “**Governmental Entity**” or “**Governmental Entities**” means the state or any local public body as defined in Section 41-4-3 (B) of the **Tort Claims Act**.
- C. The term “occurrence” means an event, act, failure to act, or any other incident which results, or is likely to result, in a claim under this Certificate of Coverage.
- D. The term “pollutant” means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles or fibers, molds, asbestos, lead, and waste. Waste includes material to be recycled, reconditioned, or reclaimed. The term pollutant as used herein does not mean potable water, agricultural water, water furnished to commercial users, or water used for fire suppression. The term pollutant also does not mean police use of mace, oleoresin capsicum (O.C.), pepper gas, or tear gas; or to weed abatement or tree spraying.
- E. The phrase “Public Liability Fund” means the fund created under Section 41-4-23 of the Tort Claims Act.
- F. The term “Director” means the Director of the Risk Management Division of the General Services Department of the State of New Mexico.
- G. The phrase “Tort Claims Act” means NMSA 1978, Section 41-4-1 et seq. (1976), as may be amended from time to time.
- H. The phrase “ultimate net loss” means the total of all defense costs, defense attorney's fees and all damages for which the covered party is liable arising out of an occurrence for which coverage under this Certificate of Coverage applies.
- I. The phrase “Workers’ Compensation Fund” means the fund established under the Risk Management Division statute, NMSA 1978, Section 15-7-6 (1977), as may be amended from time to time, to fund the liabilities for injuries to the employees of the State of New Mexico under the Workers’ Compensation laws of the State of New Mexico.
- J. The phrase "Property of Others" means any property belonging to others for which a Governmental Entity has assumed care, custody and control.
- K. The term "Vehicle" means a land, water or air motorized vehicle, trailer or semi-trailer, including any machinery or apparatus attached thereto.

SECTION 2

COMMUNITY LAND GRANTS COVERAGE AND LIMITATIONS

I. COVERED COMMUNITY LAND GRANTS

- A. The General Services Department, Risk Management Division is authorized under Section 41-4-30 of the **Tort Claims Act** to issue a Certificate of Coverage to community land grants that are governed as a political subdivision of the State of New Mexico pursuant to 1978 NMSA, Chapter 49, Article 1.
- B. Coverage is contingent upon prompt payment by the community land grant of the community land grant's assessment to the **Public Liability Fund** as determined by the **Director** of the Risk Management Division.

II. COVERED ACTIVITIES OF COMMUNITY LAND GRANTS

- A. Coverage is provided for the official activities of the covered community land grant, which are those activities explicitly authorized by the board of trustees of the community land grant for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico, and that are not excluded by virtue of being business enterprise activity.
- B. Coverage is provided for the approved activities of the covered community land grant, which are those activities conducted at a community center that are approved through procedures established by the board of trustees of the community land grant, and that are not excluded by virtue of being business enterprise activity.

III. EXCLUSIONS

- A. Coverage for any community land grant does not include coverage for any enterprise or activities undertaken by any of the individual members of the community land grant, whether singly or in association with others.
- B. Coverage for any community land grant does not include coverage for any liability attributable to the business enterprise activities of a community land grant. Business enterprises activities include:
 - 1. Any activity undertaken for purposes of earning a monetary profit for the community land grant or for any of its members. The term "monetary

- profit" as used herein does not include reasonable incidental charges or fees, such as may be made to recoup costs of furnishing meals or refreshments at official activities, or such as a reasonable fee for conducting an approved activity at the community center.
2. Any activity involving the lease or sale of any property of the community land grant.
 3. Any activity organized to operate on a non-profit basis, which activity is typically operated on a for-profit basis when conducted by non-governmental entities, such as, but not limited to, the operation of a restaurant or inn, unless the director upon application specifically gives prior approval of coverage for such activity, and only in accordance with such conditions as the director may require.
 4. Any activity involving the provision, sale, or consumption of alcoholic beverages.
- C. Business enterprise activities are excluded from coverage regardless of whether they are authorized by the board of trustees of the community land grant, and regardless of whether they are undertaken by individual trustees, or by members, individually, as partnerships or as other types of associations, or in any corporate form.

SECTION 3 STATUTES

Chapter 15. Administration of Government

Article 7. Risk Management Division

§ 15-7-3. Additional powers and duties of the risk management division

- A. The risk management division of the general services department may:
- (1) enter into contracts;
 - (2) procure insurance, reinsurance or employee group benefits; provided that any proposal or contract for the procurement of any group health care benefits shall be subject to the provisions of the Health Care Purchasing Act; and provided further that reinsurance or excess coverage insurance may be placed by private negotiation, notwithstanding the provisions of the Procurement Code, if the insurance or reinsurance has a restricted number of interested carriers, the board determines that the coverage is in the interest of the state and cannot otherwise be procured for a reasonable cost and the director seeks the advice and review of the board in the placement and in designing private negotiation procedures;
 - (3) in the manner prescribed by [Subsection E of Section 9-17-5 NMSA 1978](#), after a notice and a public hearing, prescribe by regulation reasonable and objective underwriting and safety standards for governmental entities and reasonable standards for municipal self-insurance pooling agreements covering liability under the Tort Claims Act and adopt such other regulations as may be deemed necessary;
 - (4) compromise, adjust, settle and pay claims;
 - (5) pay expenses and costs;
 - (6) in the manner prescribed by [Subsection E of Section 9-17-5 NMSA 1978](#), prescribe by rule or regulation the rating bases, assessments, penalties and risks to be covered by the public liability fund, the workers' compensation retention fund and the public property reserve fund and the extent such risks are to be covered;
 - (7) issue certificates of coverage in accordance with Paragraph (6) of this subsection:
 - (a) to any governmental entity for any tort liability risk covered by the public liability fund;
 - (b) to any governmental entity for any personal injury liability risk or for the defense of any errors or act or omission or neglect or breach of duty, including the risks set forth in Paragraph (2) of Subsection B and [Paragraph \(2\) of Subsection D of Section 41-4-4 NMSA 1978](#); and
 - (c) to any governmental entity for any part of risk covered by the workers' compensation retention fund, the surety bond fund or the public property reserve fund;
 - (8) study the risks of all governmental entities;
 - (9) initiate the establishment of safety programs and adopt regulations to carry out such programs in the manner prescribed by [Subsection E of Section 9-17-5 NMSA 1978](#);
 - (10) hire a safety program director who shall coordinate all safety programs of all state agencies;
 - (11) consult with and advise local public bodies on their risk management problems; and
 - (12) employ full-time legal counsel who shall be under the exclusive control and supervision of the director and the secretary of general services.

- B. The risk management division of the general services department shall provide liability coverage for the following risks:
- (1) a claim made pursuant to the provisions of [42 U.S.C. Section 1983](#) against a nonprofit corporation, members of its board of directors or its employees when the claim is based upon action taken pursuant to the provisions of a contract between the corporation and the department of health under which the corporation provides developmental disability services to clients of the department and the claim is made by or on behalf of a client; and
 - (2) a claim made pursuant to the provisions of [42 U.S.C. Section 1983](#) against a nonprofit corporation, members of its board of directors or its employees when the corporation operates a facility licensed by the department of health as an intermediate care facility for the mentally retarded and the claim is based upon action taken pursuant to the provisions of the license and is made by or on behalf of a resident of the licensed facility.
- C. The director shall report his findings and recommendations, if any, for the consideration of each legislature. The report shall include the amount and name of any person receiving payment from the public liability fund of any claim paid during the previous fiscal year exceeding one thousand dollars (\$1,000). The report shall be made available to the legislature on or before December 15 preceding each regular legislative session.

Chapter 41. Torts

Article 4. Tort Claims

§ 41-4-23. Public liability fund created; purposes

- A. There is created the “public liability fund”. The fund and any income from the fund shall be held in trust, deposited in a segregated account and invested by the general services department with the prior approval of the state board of finance.
- B. Money deposited in the public liability fund may be expended by the risk management division of the general services department:
- (1) to purchase tort liability insurance for state agencies and their employees and for any local public body participating in the public liability fund and its employees;
 - (2) to contract with one or more consulting or claims adjusting firms pursuant to the provisions of [Section 41-4-24 NMSA 1978](#);
 - (3) to defend, save harmless and indemnify any state agency or employee of a state agency or a local public body or an employee of such local public body for any claim or liability covered by a valid and current certificate of coverage to the limits of such certificate of coverage;
 - (4) to pay claims and judgments covered by a certificate of coverage;
 - (5) to contract with one or more attorneys or law firms on a per-hour basis, or with the attorney general, to defend tort liability claims against governmental entities and public employees acting within the scope of their duties;
 - (6) to pay costs and expenses incurred in carrying out the provisions of this section;
 - (7) to create a retention fund for any risk covered by a certificate of coverage;
 - (8) to insure or provide certificates of coverage to school bus contractors and their employees, notwithstanding [Subsection F of Section 41-4-3 NMSA 1978](#), for any comparable risk for which immunity has been waived for public employees pursuant to [Section 41-4-5 NMSA 1978](#), if the coverage is commercially unavailable; except that coverage for exposure created by [Sections 41-4-9, 41-4-10 and 41-4-12 NMSA 1978](#) shall be provided to its member public school districts and participating other educational entities of the public school insurance authority, by the authority, and except that coverage shall be provided to a contractor and his employees only through the public school insurance authority or its successor, unless the district to which the contractor provides services has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services; and
 - (9) to insure or provide certificates of coverage for any ancillary coverage typically found in commercially available liability policies provided to governmental entities, if the coverage is commercially unavailable.
- C. No settlement of any claim covered by the public liability fund in excess of twenty-five thousand dollars (\$25,000) shall be made unless the settlement has first been approved in writing by the director of the risk management division of the general services department. This subsection shall not be construed to limit the authority of an insurance carrier, covering any liability under the Tort Claims Act, to compromise, adjust and settle

claims against governmental entities or their public employees.

D. Claims against the public liability fund shall be made in accordance with rules or regulations of the director of the risk management division of the general services department. If the director of the risk management division has reason to believe that the fund would be exhausted by payment of all claims allowed during a particular state fiscal year, pursuant to regulations of the risk management division, the amounts paid to each claimant and other parties obtaining judgments shall be prorated, with each party receiving an amount equal to the percentage his own payment bears to the total of claims or judgments outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal years

Chapter 41. Torts

Article 4. Tort Claims

§ 41-4-30. Liability coverage; certain community land grants

Notwithstanding the provisions of Paragraph (1) of Subsection A of Section 41-4-25 NMSA 1978 to the contrary, a community land grant governed as a political subdivision of the state upon application to the risk management division of the general services department shall be authorized to purchase coverage for any risk for which immunity has been waived under the Tort Claims Act through the public liability fund, exclusive of coverage of an activity conducted by the community land grant that is determined by the director of the risk management division pursuant to division rules to be a business enterprise.

Lines of Coverage

- 21 General Ledger
- 22 Law Enforcement
- 23 Medical Malpractice
- 24 Civil Rights
- 35 Auto Liability

West's New Mexico Statutes Annotated
Chapter 49. Land Grants
Article 1. General Provisions (Refs & Annos)

As used in Chapter 49 NMSA 1978:

A. "heir" means a person who is a descendent of the original grantees and has an interest in the common land of a land grant-merced through inheritance, gift or purchase;

B. "land grant-merced" means a grant of land made by the government of Spain or by the government of Mexico to a community, town, colony or pueblo or to a person for the purpose of founding or establishing a community, town, colony or pueblo; and

C. "qualified voting member" means an heir who is registered to vote in a land grant-merced as prescribed in the land grant-merced bylaws.

Credits

L. 2004, Ch. 124, § 1, eff. July 1, 2004.

Current through the First Regular Session of the 50th Legislature (2011)

SECTION 4 RULE

Title 1. General Government Administration
Chapter 6. Risk Management
Part 6. Tort Claims Coverage for Community Land Grants; Excluding Coverage for Business Enterprise Activities (Refs & Annos)

**1.6.6. TORT CLAIMS COVERAGE FOR COMMUNITY LAND GRANTS;
EXCLUDING COVERAGE FOR BUSINESS ENTERPRISE ACTIVITIES**

1.6.6.1 ISSUING AGENCY: General Services Department, Risk Management Division.

[1.6.6.1 NMAC - N, 7/30/2010]

1.6.6.2 SCOPE: This rule applies to community land grants governed as a political subdivision of the state in making application to and obtaining coverage from the risk management division of the general services department for coverage for any risk for which immunity has been waived under the Tort Claims Act, through the public liability fund.

[1.6.6.2 NMAC - N, 7/30/2010]

1.6.6.3 STATUTORY AUTHORITY: This rule is statutorily authorized and promulgated pursuant to NMSA 1978, Section 15-7-3(A)(7)(which authorizes the risk management division to issue certificates of coverage in accordance with the rulemaking procedures contained in NMSA 1978, Section 9-17-5(E), granting the secretary of the general services department the general power to make and adopt such reasonable administrative and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions, including the risk management division). In addition, Section 41-4-23(D) of the Tort Claims Act authorizes the general services department, risk management division to regulate claims made against the public liability fund. Pursuant to NMSA 1978, Section 41-4-30, community land grants governed as political subdivisions of the state may obtain Tort Claims Act coverage from the risk management division, exclusive of coverage for activities determined by the director to be a business enterprise.

[1.6.6.3 NMAC - N, 7/30/2010]

Credits

1.6.6.4 DURATION: Permanent.

[1.6.6.4 NMAC- N, 7/30/2010]

1.6.6.5 EFFECTIVE DATE: July 30, 2010, unless a later date is cited at the end of a section.

[1.6.6.5 NMAC - N, 7/30/2010]

1.6.6.6 OBJECTIVE: This rule describes the activities of community land grants that are

business enterprise activities, and that are thereby excluded from coverage through the public liability fund of risks for which immunity has been waived under the Tort Claims Act. Coverage will be provided to community land grants governed as political subdivisions of the state, for such official activities as are typically undertaken by governmental entities in New Mexico.

[1.6.6.6 NMAC - N, 7/30/2010]

1.6.6.7 DEFINITIONS:

A. 'Approved activities' means activities conducted at a community center that are approved through procedures established by the board of trustees.

B. 'Board of trustees' means the governing body of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

C. 'Certificate of coverage' means the liability certificate issued by the director pursuant to Title 1, Chapter 6, Part 5 NMAC.

D. 'Community center' means any structure that is owned by a community land grant and managed by and at the direction of the community land grant's board of trustees for the benefit of the community land grant as a whole, and excludes any structure used or designated for habitation, whether or not currently inhabited.

E. 'Community land grant' means a land grant governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

F. 'Coverage' means the type of protection provided against specific risks or losses.

G. 'Director' means the general services department, risk management division director.

H. 'Division' means the general services department, risk management division.

I. 'Member' means a person who is a member of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

J. 'Official activity' or 'official activities' means activities of the community land grant that are approved by, and undertaken at the direction of, the board of trustees of the community land grant, for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico.

K. 'Public liability fund' means the fund described in 1978 NMSA, Section 41-4-23 of the Tort Claims Act.

L. 'Trustee' means a member of a board of trustees of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

[1.6.6.7 NMAC - N, 7/30/2010]

1.6.6.8 PROVIDING COVERAGE UPON APPLICATION AND PAYMENT FOR OFFICIAL ACTIVITIES AND APPROVED ACTIVITIES OF COMMUNITY LAND GRANTS GOVERNED AS A POLITICAL SUBDIVISION OF THE STATE:

A. Community land grants that wish to obtain tort claims coverage from the division shall make application for such coverage by providing information requested by the director.

B. The director shall annually determine the assessment which the community land grant is to pay for tort claims coverage to the public liability fund. In conjunction with this assessment, the director may require purchase of supplemental events coverage for specified approved activities, such as an event with large attendance.

C. Tort claims coverage for any community land grant is contingent upon prompt payment of the annual assessment by the community land grant to the public liability fund.

D. Tort claims coverage for any community land grant is contingent upon the community land grant continuing to be managed, controlled and governed by a board of trustees consistent with 1978 NMSA, Chapter 49, Article 1.

E. Tort claims coverage for any community land grant is limited to:

(1) official activities of the community land grant as explicitly authorized by its board of trustees for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico, and that are not excluded by virtue of being business enterprise activity; and

(2) approved activities of the community land grant that are not excluded by virtue of being business enterprise activity.

F. The tort claims coverage provided to a community land grant for any risk for which immunity has been waived under the Tort Claims Act, shall be as described in the liability certificate of coverage promulgated by the division.

[1.6.6.8 NMAC - N, 7/30/2010]

1.6.6.9 EXCLUDING COVERAGE OF INDIVIDUAL MEMBERS: Tort claims coverage for any community land grant does not include coverage for any enterprise or activities undertaken by any of the individual members of the community land grant, whether singly or in association with others.

[1.6.6.9 NMAC - N, 7/30/2010]

1.6.6.10 EXCLUDING COVERAGE OF BUSINESS ENTERPRISE ACTIVITIES:

A. Tort claims coverage for a community land grant does not include coverage for any liability attributable to the business enterprise activities of a community land grant.

B. Business enterprise activities include the following:

(1) any activity undertaken for purposes of earning a monetary profit for the community land grant or for any of its members; the term 'monetary profit' as used herein does not include reasonable incidental charges or fees, such as may be made to recoup costs of furnishing meals or refreshments at official activities, or such as a reasonable fee for conducting an approved activity at the community center;

(2) any activity involving the lease or sale of any property of the community land grant;

(3) any activity organized to operate on a non-profit basis, which activity is typically operated on a for-profit basis when conducted by non-governmental entities, such as, but not limited to, the operation of a restaurant or inn, unless the director upon application specifically gives prior approval of coverage for such activity, and only in accordance with such conditions as the director may require; or

(4) any activity involving the provision, sale, or consumption of alcoholic beverages.

C. Business enterprise activities are excluded from coverage regardless of whether they are authorized by the board of trustees, and regardless of whether they are undertaken by individual trustees, or by members, individually, as partnerships or as other types of associations, or in any corporate form.

[1.6.6.10 NMAC - N, 7/30/2010]

HISTORY OF 1.6.6 NMAC: [RESERVED]

All new rules, amendments, and repeals effective prior to July 1, 2011

N.M. Admin. Code 1.6.6, NM ADC 1.6.6

End of Document

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SECTION 5 QUESTIONNAIRE

COMMUNITY LAND GRANT QUESTIONNAIRE

Name of Community Land Grant:

Mailing Address:

1. Number of Trustees on the Board:
2. Do you plan to apply for liability coverage with RMD?
3. The total acreage of your Community Land Grant:
4. The approximate number of members in your Community Land Grant:
5. If your Community Land Grant has employees, state how many are full-time, and how many are part-time?
6. Does your Community Land Grant have a community center? And if so, how many people are employed by the community center?
7. Does the Community Land Grant conduct business and/or commercial activities? If so, please generally describe the kinds of activities and businesses that the Community Land Grant conducts. For example: Is the activity for-profit or non-profit? Does the Community Land Grant run the business outright, or is there a corporation that actually owns the business?
8. Are there business enterprises on Community Land Grant property, that are not owned and/or operated by the Community Land Grant? If so, please describe in a general way the relationship and arrangements between the Community Land Grant and those business enterprises. For example: Does the Community Land Grant lease property to the business enterprise? Does the Community Land Grant Board of Trustees have the right to grant or withhold approval for business operations? Do members of the Community Land Grant own the business?
9. How many Tort Claims has your Community Land Grant had the past 5 years (i.e., slip and fall, negligent maintenance of a building, etc...)?¹ For each claim, please briefly describe the type of claim, the claimant, and the manner in which the claim was resolved.

¹ For further reference of what types of claims the Community Land Grants will be covered for under the Torts Claim Act, please review NMSA 1978, §41-4-4.

SECTION 6 MEMBERSHIP ROSTER

Land Grant	County	Governance Status	Contact Person	Phone	Address	City	State	Zip code	E-mail
Abiquiu	Rio Arriba	Political Sub-division	Delvin Garcia	685-4700/ 929-0566	PO Box 701	Abiquiu	NM	87510	abiquiugrant@yahoo.com
Anton Chico	Guadalupe/San Miguel	Political Sub-division	Chris Marquez	983-1230	626 Baca	Santa Fe	NM	87501	
Arroyo Hondo	Taos	Political Sub-division	David Arguello	776-2752	PO Box 277	Arroyo Seco	NM	87514	arguello@nmhu.edu ; arguellotd@kitcarson.net
Atrisco	Bernalillo	Reconstituting	Jerome Padilla	385-1788	3408 Calle Facio NW	Albuquerque	NM	87104	jpaddilla@padillas.com
Canon de Carnue	Bernalillo	Political Sub-division	Macario Griego	281-4047	34 Meadowlark Rd	Tijeras	NM	87059	fspgriego@aol.com
Cebolleta	Cibola	Political Sub-division	Martha Chavez	552-6069	HC 77 Box 6	Seboyeta	NM	87104	
Chilili	Bernalillo/ Torrance	Political Sub-division	Juan Sanchez	249-6759	14 Old Chilili Rd	Chilili	NM	87059	sanchezi@chilili.org
Cristobal de la Serna	Taos	Unknown	Joe Romero	737-9469 / 553-6346	PO Box 1470	Rancho de Taos	NM	87557	jrom771@msn.com
Cubero	Cibola	Political Sub-division	Ben Chavez	240-2235 / 552-0178	P O Box 216 LG/ or POBox 61	Cubero	NM	87014	bchavez_vom@hotmail.com
Don Fernando de Taos	Taos	Political Sub-division	Frank "Skit" Trujillo	751-3228	HC 68 Box 107 Ranchitos Rt	Taos	NM	87571	
Jacona	Rio Arriba	Land Grant Corporation	Alberto Barros	753-7774	2221 N Riverside	Espanola	NM	87532	
Juan Baptista Baldez	Rio Arriba	Political Sub-division	Higinia Gallegos	638-1063	PO Box 112	Canones	NM	87516	higinialgallegos@yahoo.com
La Majada	Sandoval	Unknown	Roberto Montoya	899-2983	PO Box 2475	Corrales	NM	87048	
La Merced El Ojito	Unknown	Unknown	Roberto Montoya	899-2883	PO Box 2475	Corrales	NM	87048	
La Petaca	Rio Arriba	Political Sub-division	Leroy & Pauline Gallegos	583-2380	General Delivery	Petaca	NM	87554	
Las Vegas	San Miguel	Statute Specific	Hilario Rubio	827-3822	536 Hermosa Circle	Las Vegas	Nm	87701	
Los Trigos Land Grant	San Miguel	Organizing	Joe & Clina Garcia	757-2265	PO Box 272	Rowe	NM	87562	
Manzano	Torrance	Statute Specific	Gloria Zamora	847-2841	HC 66 Box 197	Mountainair	NM	87036	
Plaza del Guadalupe	Taos	Unknown	Gilbert Segura	586-0623	PO Box 735	Cerro	NM	85719	
Santa Getrudis de lo de Mora	Mora	Political Sub-division	Paula Garcia	387-6493	PO Box 974	Mora	NM	87732	lamoraena@acequiaweb.org
Nuestra Senora del Rosario San Fernando y Santiago	Rio Arriba	Statute Specific	Eddie Vigil	474-7291		Truchas	NM		
San Antonio de Las Huertas	Sandoval	Political Sub-division	Tony Lucero	867-4563	841 Hwy 165	Placitas	NM	87043	tlucero317@aol.com
San Antonio del Rio Colorado	Taos	Un-adjudicated	Ester Garcia	586-0705	PO Box 302	Questa	NM	87556	egarcia@kitcarson.net
San Jaquin del Rio de Chama	Rio Arriba	Political Sub-division	Leonard Martinez	401-9355	PO Box 261	Gallina	NM	87017	lenmtznm@aol.com
San Miguel del Vado	San Miguel	Organizing	Gloria Luz Gonzales	421-2824	PO 465	Ribera	NM	87560	luzgrandedos@yahoo.com
Sangre de Cristo	Taos	Political Sub-division	Paul Martinez	586-1438	PO Box 127	Amalia	NM	87512	
Santa Cruz de La Canada	Rio Arriba/Santa Fe	Political Sub-division	John Chavez	929-3910	P O Box 242	Chimayo	NM	87522	ict Duchas@yahoo.com
Santo Domingo de Cundiyo	Rio Arriba	Political Sub-division	Carlos Vigil	351-1035 / 470-0460	HRC 80 Box 54	Cundiyo	NM	87522	
Santo Tomas Apostol del Rio De Las Trampas	Rio Arriba/Taos	Political Sub-division	Filemon Sanchez	689-2611/ 927-9252	HCR 65 Box 10	Ojo Sarco	NM	87521	
Sebastian Martin Land Grant	Unknown	Unknown	Elias Martinez		PO Box 476	Alcalde	NM	87511	
Tecolote	San Miguel	Statute Specific	Joe Herrera	427-1141	914 3rd St	Las Vegas	NM	87701	marchato@plateautel.net
Tierra Amarilla	Rio Arriba	Political Sub-division	Dennis Wells	756-4815	PO Box 482	Chama	NM	87520	
Torreón	Taos	Organizing	Jose Maria Perea	873-8238	3908 Calle de Prado SW	Albuquerque	NM	87105	
Town of Alameda	Sandoval	Unknown	Roberto Montoya	899-2983	PO Box 2475	Corrales	NM	87048	
Town of Bernalillo	Sandoval	Unknown	Roberto Montoya	899-2983	PO Box 2475	Corrales	NM	87048	
Town of Tome	Valencia	Political Sub-division	Lawrence Sanchez	864-3404	P O Box 688	Los Lunas	NM	87031	

