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HOUSE BILL 74

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Roberto "Bobby" J. Gonzales

ENDORSED BY THE MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT
COMMITTEE

AN ACT

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

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

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

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

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

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

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1 A. The attorney general shall investigate an
2 alleged violation of the Affordable Housing Act reported by the
3 authority. As used in this section, "person" means an
4 individual, including a municipal or county government employee
5 or elected official.

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18 matter of public record and shall not be published by the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

20 C. If the attorney general has reasonable belief
21 that a person has, in the conduct of the person's official
22 duties, violated a provision of the Affordable Housing Act and
23 that instituting a proceeding against that person would be in
24 the public interest, the attorney general may bring a civil
25 action on behalf of the state alleging a violation of the

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1 Affordable Housing Act. The action may be brought in the
2 district court of the county in which the person alleged to
3 have violated the act resides or in which the person's
4 principal place of business is located. The attorney general
5 shall not be required to post bond when seeking a temporary or
6 permanent injunction in the civil action.

7 D. The attorney general may, in addition to or as
8 an alternative to pursuing a civil action, as provided in this
9 section, pursue criminal charges against a person for an
10 alleged violation of the Affordable Housing Act that, under the
11 applicable provisions of state law, constitutes fraud, bribery,
12 embezzlement or larceny.

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

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

22 "6-27-8. PROVISIONS TO ENSURE SUCCESSFUL COMPLETION OF
23 AFFORDABLE HOUSING PROJECTS--~~[INVESTIGATION]~~ SALE AFTER
24 FORECLOSURE--RELEASE OF AFFORDABILITY RESTRICTION.--

25 A. State, county and municipal housing assistance

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1 grants pursuant to the Affordable Housing Act shall be applied
2 for and awarded to qualifying grantees pursuant to the rules
3 promulgated by the authority subject to the requirements of
4 that act.

5 B. The authority shall adopt rules covering:

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

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

14 (3) contents of the application, including an
15 independent evaluation of the:

16 (a) financial and management stability
17 of the applicant;

18 (b) demonstrated commitment of the
19 applicant to the community;

20 (c) cost-benefit analysis of the project
21 proposed by the applicant;

22 (d) benefits to the community of a
23 proposed project;

24 (e) type or amount of assistance to be
25 provided;

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1 (f) scope of the affordable housing
2 project;

3 (g) substantive or matching contribution
4 by the applicant to the proposed project; and

5 (h) performance schedule for the
6 qualifying grantee with performance criteria;

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

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

17 (6) provisions for adequate security against
18 the loss of public funds or property in the event that a
19 qualifying grantee abandons or otherwise fails to complete a
20 project;

21 (7) a requirement for review and approval of a
22 housing grant project budget by the grantor before any
23 expenditure of grant funds or transfer of granted property;

24 (8) a requirement that, unless the period is
25 extended for good cause shown, the authority shall act on an

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1 application within forty-five days of the date of receipt of an
2 application that the authority deems to be complete and, if not
3 acted upon, the application shall be deemed approved;

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

7 (10) provisions defining "low- and
8 moderate-income" and setting out requirements for verification
9 of income levels;

10 (11) a requirement that a county or
11 municipality that makes a housing assistance grant shall have
12 an existing valid affordable housing plan or housing elements
13 contained in its general plan; and

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

19 C. In addition to the rulemaking duties provided in
20 Subsection B of this section, the authority shall adopt rules
21 covering provisions necessary to ensure the timely sale of an
22 affordable housing project, including the land or buildings, if
23 the project:

24 (1) is subject to a long-term affordability
25 contract executed by a governmental entity pursuant to the

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1 Affordable Housing Act;

2 (2) is abandoned by the qualified grantee or
3 otherwise fails;

4 (3) is determined by the authority not to be
5 marketable for a price that would sufficiently recover the
6 public funds invested in the project; and

7 (4) has a title that is subsequently
8 transferred by or to the contracting governmental entity
9 through:

10 (a) a foreclosure sale;

11 (b) a transfer of title by deed in lieu
12 of foreclosure; or

13 (c) any other manner.

14 D. The rules adopted by the authority pursuant to
15 Subsection C of this section shall require that a governmental
16 entity shall exercise reasonable efforts to ensure that all
17 proceeds from the sale of a property pursuant to Subsection C
18 of this section are used solely for purposes pursuant to the
19 Affordable Housing Act. The rules shall provide the terms for:

20 (1) the sale of the property at fair market
21 value; and

22 (2) the removal of the contractual obligation
23 requiring long-term occupancy of the property by low- or
24 moderate-income households.

25 ~~[G.]~~ E. In addition to the rulemaking mandated in

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1 ~~[Subsection B]~~ Subsections B, C and D of this section, the
2 authority may adopt additional rules to carry out the purposes
3 of the Affordable Housing Act. Rulemaking procedures pursuant
4 to the Affordable Housing Act shall:

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

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

10 ~~[D. The attorney general shall investigate any~~
11 ~~alleged violation of the Affordable Housing Act as reported~~
12 ~~by the authority.]"~~