

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 74

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

AN ACT

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

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

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

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

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

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

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

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21 matter of public record and shall not be published by the  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

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

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

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

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

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

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

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

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

8 B. The authority shall adopt rules covering:

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

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

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

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

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

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

25 (d) benefits to the community of a

.192482.1SA

1 proposed project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 affordable housing project, including the land or buildings:

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

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

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

13 (a) a foreclosure sale;

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

16 (c) any other manner.

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

.192482.1SA

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

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

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

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

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

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

19                   SECTION 4. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2013.

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