

1 HOUSE BILL 413

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Alonzo Baldonado

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10 AN ACT

11 RELATING TO RENTAL PROPERTY; AMENDING THE UNIFORM OWNER-
12 RESIDENT RELATIONS ACT TO LIFT THE STAY OF EXECUTION ON AN
13 APPEAL BY A RESIDENT OF A WRIT OF RESTITUTION AND ALLOWING A
14 COURT TO REQUIRE AN APPELLANT TO POST A BOND PENDING THE
15 APPEAL.

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

18 SECTION 1. Section 47-8-46 NMSA 1978 (being Laws 1975,
19 Chapter 38, Section 46, as amended) is amended to read:

20 "47-8-46. WRIT OF RESTITUTION.--

21 A. Upon petition for restitution filed by the owner
22 if judgment is rendered against the defendant for restitution
23 of the premises, the court shall declare the forfeiture of the
24 rental agreement and shall, at the request of the plaintiff or
25 [~~his~~] the plaintiff's attorney, issue a writ of restitution

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1 directing the sheriff to restore possession of the premises to
2 the plaintiff on a specified date not less than three ~~[nor]~~ or
3 more than seven days after entry of judgment. The defendant
4 and all other occupants shall be enjoined and prohibited from
5 reentering the premises without the permission of the owner for
6 one hundred eighty days following the execution of the writ.
7 This prohibition on return shall not affect the owner's duty to
8 make any personal property of the defendant left in the unit
9 available for three days following the execution of the writ of
10 restitution.

11 B. Upon a petition for restitution filed by the
12 resident, if judgment is rendered against the defendant for
13 restitution of the premises, the court shall, at the request of
14 the plaintiff or ~~[his]~~ the plaintiff's attorney, issue a writ
15 of restitution directing the sheriff to restore possession of
16 the premises to the plaintiff within twenty-four hours after
17 entry of judgment."

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

20 "47-8-47. APPEAL ~~[STAYS EXECUTION]~~.--

21 A. If either party feels aggrieved by the judgment,
22 that party may appeal as in other civil actions. ~~[An appeal by~~
23 ~~the defendant shall stay the execution of any]~~ A writ of
24 restitution ~~[provided that in]~~ may be subject to stay pending
25 appeal upon such terms as set by the court pursuant to the

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1 rules of court, which terms may include a bond or other
2 conditions designed to protect the interests of the appellee
3 and, in the case of an appeal by the resident, protecting the
4 interests of other residents living near the appellant. In
5 cases in which the resident is the appellant, the execution of
6 the writ of restitution shall not be stayed by the court
7 unless, in addition to a bond or other terms imposed by the
8 court, the resident, within five days of the filing of the
9 notice of appeal, pays to the owner or into an escrow account
10 with a professional escrow agent an amount equal to the rental
11 amount that shall come due from the day following the judgment
12 through the end of that rental period. The resident shall
13 continue to pay the monthly rent established by the rental
14 agreement at the time the complaint was filed, on a monthly
15 basis on the date rent would otherwise become due. Payments
16 pursuant to this subsection by a subsidized resident shall not
17 exceed the actual amount of monthly rent paid by that resident.
18 When the resident pays the owner directly, the owner shall
19 immediately provide a written receipt to the resident upon
20 demand. When the resident pays into an escrow account the
21 resident shall cause such amounts to be paid over to the owner
22 immediately upon receipt unless otherwise ordered by the court.
23 Upon the failure of the resident or the escrow agent to make a
24 monthly rent payment on the first day rent would otherwise be
25 due, the owner may serve a three-day written notice on the

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1 resident pursuant to Subsection D of Section 47-8-33 NMSA 1978.
2 If the resident or the resident's escrow agent fails to pay the
3 rent within the three days, a hearing on the issue shall be
4 scheduled within ten days from the date the court is notified
5 of the failure to pay rent. In the case of an appeal de novo,
6 the hearing shall be in the court in which the appeal will be
7 heard. If, at the hearing, the court finds that rent has not
8 been paid, the court shall immediately lift the stay and issue
9 the writ of restitution unless the resident demonstrates a
10 legal justification for failing to comply with the rent payment
11 requirement. There shall be no right to abate the rental
12 payments required of the resident under this section to
13 maintain possession of the property during appeal.

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