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FISCAL IMPACT REPORT

SPONSOR Baldonado ORIGINAL DATE 1/26/18
LAST UPDATED 1/29/18 HB 110
SHORT TITLE Rental Property Writ of Restitution SB _____
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

New Mexico Attorney General (NMAG)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 110 amends the Uniform Owner-Resident Relations Act by removing the automatic stay of execution on an appeal by a tenant of a writ of restitution and now allows a court to grant a stay upon terms set by the court, including requiring the resident to post bond or other appropriate conditions. It also adds language that the tenant has no right to abate rent while in possession during the appeal.

HB 110 enjoins a tenant from reentering leased premises without permission of the owner for 180 days following the execution of the writ of restitution. The owner still has the duty to make personal property of the tenant left in the dwelling unit available for three days.

FISCAL IMPLICATIONS

None anticipated.

SIGNIFICANT ISSUES

AOC explains the residential eviction process starts with a written notice from the landlord to the tenant regarding the lease. After the time in the notice has expired, the landlord can pursue a lawsuit to evict the tenant by filing a Petition by Owner for Restitution with the Court. Currently, a significant number of appeals of Judgments on Writs of Restitution are filed by tenants in an effort to avoid an eviction.

The Rules of Civil Procedure for both the Metropolitan Court (Rule 3-706(G)) and the Magistrate Courts and the Rule 2-705 (G) NMRA, AOC advises, currently provide a mechanism for obtaining a supersedeas bond. A supersedeas bond is a type of surety bond that a court requires from an appellant who wants to delay payment of a judgment until the appeal is over. In pertinent part, those rules state:

In determining the sufficiency of the surety or sureties and the extent to which the surety or sureties shall be liable on the bond, or whether any surety will be required, the court shall take into consideration the type and value of any collateral that is in, or may be placed in, the custody or control of the court and that has the effect of securing payment of and compliance with the judgment.

AOC advises that, under existing law, a tenant is required by statute to pay rent during an appeal. AOC also notes that, although Section 1(A) requires a landlord to hold a tenant's property for three days following execution of a writ of restitution, another section of existing law imposes a separate obligation on a landlord to hold a tenant's property for 30 days when a tenant has abandoned the premises and has left property there. See NMSA 1978, Section 47-8-34.1. When a landlord does not have the sheriff evict the tenant, the landlord must give the tenant 30 day notice before disposing of that tenant's property.

NMAG calls attention to another provision of existing law that comes into play:

In a strict interpretation of NMSA 1978, Section 39-3-9 (1953), if a resident wants to maintain possession of the property pending appeal, "the trial court shall fix the amount of the supersedeas bond." The bond shall be for an amount that "will indemnify the appellee for all damages that may result from such supersedeas." *Id.* The statute further states the bond shall be in and to pay all damages and costs that may result to the appellee and [...] [i]n case the title to or possession of real estate is involved in such action, the **rental value**, and all damages to improvements and waste, **shall be considered** elements of damages.

The current statute also mandates the court to order the resident "to pay the monthly rent established by the rental agreement at the time the complaint was filed. *Id.* This mandate of the contractual "rent" amount to be included as part of the bond, does not allow for the court to exercise any discretion in determining if 1) there is no contract what the

rental value of the property is, and 2) in the case of substandard housing, the court must make the renter pay the contracted rent even if the property is uninhabitable. This lack of discretion leaves the court without authority to acknowledge, as the Court of Appeals has, that there may be a difference between the **rent paid** and the **rental value** of a home. *Holmes v. Faycus*, 1973-NMCA-147, ¶ 10, 85 N.M. 740 (the testimony that the rent being paid by plaintiffs exceeded the rental value of the premises was uncontradicted); see also NMSA 1978 § 47-8-15 (1995) (In the absence of an agreement, the resident shall pay as rent the fair rental value for the use of the premises and occupancy of the dwelling unit.”

NMAG suggests a court be allowed to use its discretion in setting the amount of a supersedeas bond as directed by court rule (Rule 1-062) and principles of New Mexico common law.

AMENDMENTS

To address the potential for ending cyclical appeals when a tenant continues not to pay rent, AOC suggests on page 4, line 11 following the word “requirement.” that a new sentence be inserted that reads “The order lifting the stay shall be a non-appealable order.”

MD/sb