

1 SENATE BILL 563

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Daniel A. Ivey-Soto

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10 AN ACT

11 RELATING TO RENTAL PROPERTY; AMENDING SECTION 34-8A-6 NMSA 1978
12 (BEING LAWS 1979, CHAPTER 346, SECTION 6, AS AMENDED) TO REMOVE
13 METROPOLITAN COURTS AS COURTS OF RECORD FOR CIVIL ACTIONS
14 PURSUANT TO THE UNIFORM OWNER-RESIDENT RELATIONS ACT; AMENDING
15 THE UNIFORM OWNER-RESIDENT RELATIONS ACT TO LIMIT THE STAY OF
16 EXECUTION ON AN APPEAL BY A RESIDENT OF A WRIT OF RESTITUTION
17 AND ALLOWING A COURT TO REQUIRE AN APPELLANT TO POST A BOND
18 PENDING THE APPEAL.

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

21 SECTION 1. Section 34-8A-6 NMSA 1978 (being Laws 1979,
22 Chapter 346, Section 6, as amended) is amended to read:

23 "34-8A-6. METROPOLITAN COURT--RULES--APPEAL.--

24 A. The supreme court shall adopt separate rules of
25 procedure for the metropolitan courts. The rules shall provide

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1 simple procedures for the just, speedy and inexpensive
2 determination of any metropolitan court action.

3 B. Other than for actions brought pursuant to the
4 Uniform Owner-Resident Relations Act, the metropolitan court is
5 a court of record for civil actions. Any party aggrieved by a
6 judgment rendered by the metropolitan court in a civil action
7 may appeal to the district court of the county in which the
8 metropolitan court is located within fifteen days after the
9 judgment was rendered. The manner and method for the appeal
10 shall be set forth by supreme court rule.

11 C. The metropolitan court is not a court of record
12 for civil actions brought pursuant to the Uniform Owner-
13 Resident Relations Act. Any party aggrieved by a judgment
14 rendered by the metropolitan court in a civil action brought
15 pursuant to the Uniform Owner-Resident Relations Act may appeal
16 to the district court of the county in which the metropolitan
17 court is located within fifteen days after the judgment was
18 rendered. The appeal shall be de novo.

19 [~~G.~~] D. The metropolitan court is a court of record
20 for criminal actions involving driving while under the
21 influence of intoxicating [~~liquors~~] liquor or drugs or
22 involving domestic violence. A criminal action involving
23 domestic violence means an assault or battery under any state
24 law or municipal or county ordinance in which the alleged
25 victim is a household member as defined in the Family Violence

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1 Protection Act. Any party aggrieved by a judgment rendered by
2 the metropolitan court in a criminal action involving driving
3 while under the influence of intoxicating [~~liquors~~] liquor or
4 drugs or involving domestic violence may appeal to the district
5 court of the county in which the metropolitan court is located
6 within fifteen days after the judgment was rendered. The
7 manner and method of appeal shall be set forth by supreme court
8 rule.

9 [~~D-~~] E. The metropolitan court is not a court of
10 record for criminal actions other than driving while under the
11 influence of intoxicating [~~liquors~~] liquor or drugs or domestic
12 violence actions. Any party aggrieved by a judgment rendered
13 by the metropolitan court in a criminal action, other than
14 driving while under the influence of intoxicating [~~liquors~~]
15 liquor or drugs or domestic violence action, may appeal to the
16 district court of the county in which the metropolitan court is
17 located within fifteen days after the judgment was rendered.
18 The appeal shall be de novo.

19 [~~E-~~] F. All judgments rendered in civil actions in
20 the metropolitan court shall be subject to the same provisions
21 of law as those rendered in district court."

22 **SECTION 2.** Section 47-8-46 NMSA 1978 (being Laws 1975,
23 Chapter 38, Section 46, as amended) is amended to read:

24 "47-8-46. WRIT OF RESTITUTION.--

25 A. Upon petition for restitution filed by the owner

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1 if judgment is rendered against the defendant for restitution
2 of the premises, the court shall declare the forfeiture of the
3 rental agreement and shall, at the request of the plaintiff or
4 [~~his~~] the plaintiff's attorney, issue a writ of restitution
5 directing the sheriff to restore possession of the premises to
6 the plaintiff on a specified date not less than three [~~nor~~] or
7 more than seven days after entry of judgment. The defendant
8 and all other occupants shall be enjoined and prohibited from
9 reentering the premises without the permission of the owner for
10 one hundred eighty days following the execution of the writ.
11 This prohibition on return shall not affect the owner's duty to
12 make any personal property of the defendant left in the
13 dwelling unit available for three days following the execution
14 of the writ of restitution.

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

22 SECTION 3. Section 47-8-47 NMSA 1978 (being Laws 1975,
23 Chapter 38, Section 47, as amended) is amended to read:

24 "47-8-47. APPEAL [~~STAYS EXECUTION~~].--

25 A. If either party feels aggrieved by the judgment,

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1 that party may appeal as in other civil actions. An appeal by
2 the ~~[defendant]~~ resident shall stay the execution of any writ
3 of restitution; provided that:

4 (1) in a matter where the dispute solely
5 concerns a failure to pay rent, a stay pending appeal shall be
6 maintained only if the renter continues to pay rent;

7 (2) in a matter where an issue is in dispute
8 that does not concern rent, a stay pending appeal shall be on
9 such terms set by the court, including a bond or other
10 conditions designed to protect the interests of the owner; and

11 (3) in cases in which the resident is the
12 appellant, the execution of the writ of restitution shall not
13 be stayed unless, in addition to a bond or other terms imposed
14 by the court, the resident, within five days of the filing of
15 the notice of appeal, pays to the owner or into an escrow
16 account with a professional escrow agent an amount equal to the
17 rental amount that shall come due from the day following the
18 judgment through the end of that rental period. The resident
19 shall continue to pay the monthly rent established by the
20 rental agreement at the time the complaint was filed, on a
21 monthly basis on the date rent would otherwise become due.

22 Payments pursuant to this subsection by a subsidized resident
23 shall not exceed the actual amount of monthly rent paid by that
24 resident. When the resident pays the owner directly, the owner
25 shall immediately provide a written receipt to the resident

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1 upon demand. When the resident pays into an escrow account,
2 the resident shall cause such amounts to be paid over to the
3 owner immediately upon receipt unless otherwise ordered by the
4 court. Upon the failure of the resident or the escrow agent to
5 make a monthly rent payment on the first day rent would
6 otherwise be due, the owner may serve a three-day written
7 notice on the resident pursuant to Subsection D of Section
8 47-8-33 NMSA 1978. If the resident or the resident's escrow
9 agent fails to pay the rent within the three days, a hearing on
10 the issue shall be scheduled within ten days from the date the
11 court is notified of the failure to pay rent. In the case of
12 an appeal de novo, the hearing shall be in the court in which
13 the appeal will be heard. If, at the hearing, the court finds
14 that rent has not been paid, the court shall immediately lift
15 the stay and issue the writ of restitution unless the resident
16 demonstrates a legal justification for failing to comply with
17 the rent payment requirement. An order revoking the stay
18 granted during the appeal shall not be automatically stayed by
19 an appeal.

20 B. In order to stay the execution of a money
21 judgment, the trial court, within its discretion, may require
22 an appellant to deposit with the clerk of the trial court the
23 amount of judgment and costs or to give a supersedeas bond in
24 the amount of judgment and costs with or without surety. Any
25 bond or deposit shall not be refundable during the pendency of

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