

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 267

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO HOUSING; REQUIRING OWNERS TO PROVIDE NOTICE TO DWELLING UNIT APPLICANTS OF FEES RELATED TO APPLICANT SCREENING; REQUIRING OWNERS TO RETURN AN APPLICANT SCREENING FEE IN CERTAIN CIRCUMSTANCES; REQUIRING OWNERS TO PROVIDE NOTICE OF FEE INCREASES; EXTENDING THE NOTICE PERIOD FOR RENT INCREASES; REDUCING THE LIMIT ON LATE FEES; EXPANDING PRIVATE REMEDIES; PRESCRIBING CIVIL PENALTIES.

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

SECTION 1. Section 47-8-3 NMSA 1978 (being Laws 1975, Chapter 38, Section 3, as amended) is amended to read:

"47-8-3. DEFINITIONS.--As used in the Uniform Owner-Resident Relations Act:

A. "abandonment" means absence of the resident from the dwelling, without notice to the owner, in excess of seven

1 continuous days; providing such absence occurs only after rent
2 for the dwelling unit is delinquent;

3 B. "action" includes recoupment, counterclaim, set-
4 off, suit in equity and any other proceeding in which rights
5 are determined, including an action for possession;

6 C. "amenity" means a facility appurtenance or area
7 supplied by the owner and the absence of which would not
8 materially affect the health and safety of the resident or the
9 habitability of the dwelling unit;

10 D. "applicant" means a person who submits an
11 application to rent a dwelling unit to the owner and who agrees
12 to act as a guarantor or cosigner on a rental agreement;

13 [~~D.~~] E. "codes" includes building codes, housing
14 codes, health and safety codes, sanitation codes and any law,
15 ordinance or governmental regulation concerning fitness for
16 habitation or the construction, maintenance, operation,
17 occupancy or use of a dwelling unit;

18 [~~E.~~] F. "deposit" means an amount of currency or
19 instrument delivered to the owner by the resident as a pledge
20 to abide by terms and conditions of the rental agreement;

21 [~~F.~~] G. "dwelling unit" means a structure, mobile
22 home or the part of a structure, including a hotel or motel,
23 that is used as a home, residence or sleeping place by one
24 person who maintains a household or by two or more persons who
25 maintain a common household and includes a parcel of land

1 leased by its owner for use as a site for the parking of a
2 mobile home;

3 ~~[G.]~~ H. "eviction" means any action initiated by
4 the owner to regain possession of a dwelling unit and use of
5 the premises ~~[under]~~ pursuant to the terms of the Uniform
6 Owner-Resident Relations Act;

7 ~~[H.]~~ I. "fair rental value" is that value that is
8 comparable to the value established in the market place;

9 ~~[I.]~~ J. "good faith" means honesty in fact in the
10 conduct of the transaction concerned as evidenced by all
11 surrounding circumstances;

12 ~~[J.]~~ K. "normal wear and tear" means deterioration
13 that occurs based upon the use for which the rental unit is
14 intended, without negligence, carelessness, accident, abuse or
15 intentional damage of the premises, equipment or chattels of
16 the owner by the residents or by any other person in the
17 dwelling unit or on the premises with the resident's consent;
18 however, uncleanliness does not constitute normal wear and
19 tear;

20 ~~[K.]~~ L. "organization" includes a corporation,
21 government, governmental subdivision or agency thereof,
22 business trust, estate, trust, partnership or association, two
23 or more persons having a joint or common interest or any other
24 legal or commercial entity;

25 ~~[L.]~~ M. "owner" means one or more persons, jointly

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1 or severally, in whom is vested:

2 (1) all or part of the legal title to
3 property, but shall not include the limited partner in an
4 association regulated ~~[under]~~ pursuant to the Uniform Limited
5 Partnership Act; or

6 (2) all or part of the beneficial ownership
7 and a right to present use and enjoyment of the premises and
8 agents thereof and includes a mortgagee in possession and the
9 lessors, but shall not include a person or persons, jointly or
10 severally, who as owner leases the entire premises to a lessee
11 of vacant land for apartment use;

12 ~~[M.]~~ N. "person" includes an individual,
13 corporation, entity or organization;

14 ~~[N.]~~ O. "premises" means facilities, facilities and
15 appurtenances, areas and other facilities held out for use of
16 the resident or whose use is promised to the resident
17 coincidental with occupancy of a dwelling unit;

18 ~~[O.]~~ P. "rent" means payments in currency or in-
19 kind ~~[under]~~ pursuant to terms and conditions of the rental
20 agreement for use of a dwelling unit or premises, to be made to
21 the owner by the resident ~~[but does not include deposits];~~

22 ~~[P.]~~ Q. "rental agreement" means all agreements
23 between an owner and resident and valid rules and regulations
24 adopted under Section 47-8-23 NMSA 1978 embodying the terms and
25 conditions concerning the use and occupancy of a dwelling unit

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1 or premises;

2 [Q-] R. "resident" means a person entitled [~~under~~]
3 pursuant to a rental agreement to occupy a dwelling unit in
4 peaceful possession to the exclusion of others and includes the
5 owner of a mobile home renting premises, other than a lot or
6 parcel in a mobile home park, for use as a site for the
7 location of the mobile home;

8 [R-] S. "roomer" means a person occupying a
9 dwelling unit that lacks a major bathroom or kitchen facility
10 in a structure where one or more major facilities are used in
11 common by occupants of the dwelling units. As referred to in
12 this subsection, "major facility", in the case of a bathroom,
13 means toilet and either a bath or shower and, in the case of a
14 kitchen, means refrigerator, stove or sink;

15 T. "screening fee" means a one-time charge that is
16 charged to an applicant by an owner to recoup the owner's cost
17 of purchasing a consumer credit report or reference check or
18 the assistance of a screening service to validate, review or
19 otherwise process an application for renting a dwelling unit;

20 [S-] U. "single family residence" means a structure
21 maintained and used as a single dwelling unit. Notwithstanding
22 that a dwelling unit shares one or more walls with another
23 dwelling unit, it is a single family residence if it has direct
24 access to a street or thoroughfare and shares neither heating
25 facilities, hot water equipment nor any other essential

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1 facility or service with any other dwelling unit;

2 [F-] V. "substantial violation" means a violation
3 of the rental agreement or rules and regulations by the
4 resident or occurring with the resident's consent that occurs
5 in the dwelling unit, on the premises or within three hundred
6 feet of the premises and that includes the following conduct,
7 which shall be the sole grounds for a substantial violation:

8 (1) possession, use, sale, distribution or
9 manufacture of a controlled substance, excluding misdemeanor
10 possession and use;

11 (2) unlawful use of a deadly weapon;

12 (3) unlawful action causing serious physical
13 harm to another person;

14 (4) sexual assault or sexual molestation of
15 another person;

16 (5) entry into the dwelling unit or vehicle of
17 another person without that person's permission and with intent
18 to commit theft or assault;

19 (6) theft or attempted theft of the property
20 of another person by use or threatened use of force; or

21 (7) intentional or reckless damage to property
22 in excess of one thousand dollars (\$1,000);

23 [U-] W. "term" is the period of occupancy specified
24 in the rental agreement; and

25 [V-] X. "transient occupancy" means occupancy of a

1 dwelling unit for which rent is paid on less than a weekly
 2 basis or where the resident has not manifested an intent to
 3 make the dwelling unit a residence or household."

4 **SECTION 2.** A new section of the Uniform Owner-Resident
 5 Relations Act is enacted to read:

6 "[NEW MATERIAL] OWNER DISCLOSURE TO APPLICANTS.--An owner
 7 shall disclose to applicants in plain language all costs of a
 8 rental agreement in a published listing of the dwelling unit,
 9 including the base rent that will be assessed and a description
 10 of all fees or charges that will be assessed during the
 11 residency, which shall be itemized and readily identifiable in
 12 the listing. An owner shall not be liable for violating the
 13 provisions of the Uniform Owner-Resident Relations Act for a
 14 third-party website's failure to represent all costs provided
 15 by the owner."

16 **SECTION 3.** A new section of the Uniform Owner-Resident
 17 Relations Act is enacted to read:

18 "[NEW MATERIAL] DWELLING UNIT APPLICANT SCREENING FEE--
 19 PROHIBITED FEES.--

20 A. An owner may charge an applicant a screening fee
 21 that shall not exceed fifty dollars (\$50.00) to cover the cost
 22 of obtaining information about the applicant, including the
 23 cost of a consumer credit report, a reference check or a
 24 screening service; provided that the owner:

25 (1) provides the applicant with written or

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1 digital notice of the screening fee and the applicant agrees in
2 writing to pay the screening fee;

3 (2) shall not charge the applicant a screening
4 fee when the owner knows or should know that a dwelling unit is
5 not available for rent at that time or will not be available at
6 the beginning of the residency;

7 (3) provides the applicant with a written or
8 digital receipt for the screening fee paid by the applicant;

9 (4) shall place a hold on a credit card or
10 wait to deposit cash or checks for an applicant's screening fee
11 until all prior applicants have either been screened and
12 rejected or offered the dwelling unit and declined to enter
13 into a rental agreement; and

14 (5) aside from a screening fee, shall not
15 charge other fees to process an application.

16 B. An owner shall return the screening fee within
17 thirty calendar days to an applicant if:

18 (1) a prior applicant is offered the dwelling
19 unit and agrees to enter into a rental agreement; or

20 (2) the owner does not:
21 (a) obtain a consumer credit report;
22 (b) perform a reference check; or
23 (c) use a screening service to obtain
24 information about the applicant.

25 C. A screening fee that is returned as provided in

1 Subsection B of this section shall be:

- 2 (1) returned by mail;
- 3 (2) destroyed upon the applicant's request if
- 4 paid by check; or
- 5 (3) made available for the applicant to
- 6 retrieve.

7 D. An owner shall not assess a fee for:

- 8 (1) processing, reviewing or accepting rental
- 9 applications; or
- 10 (2) move-in prior to the start of a residency
- 11 that is not a security deposit or screening fee."

12 **SECTION 4.** A new section of the Uniform Owner-Resident
13 Relations Act is enacted to read:

14 "[NEW MATERIAL] BACKGROUND CHECKS.--

15 A. An owner may require a background check of an
16 applicant before entering a rental agreement; provided that a
17 resident may provide the resident's own background check or
18 credit report to an owner if the reports were obtained within
19 ninety calendar days of the application date. An owner shall
20 provide the resident with a copy of any reports used to screen
21 the applicant, along with a receipt of payment for the reports
22 if the owner paid for screening reports.

23 B. An owner shall not charge an applicant for
24 reports for applicant screening if the applicant can provide
25 the reports. An owner that charges for reports for applicant

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1 screening shall provide copies of all reports to the applicant.
2 The screening fee shall be refunded if the application is not
3 processed."

4 **SECTION 5.** A new section of the Uniform Owner-Resident
5 Relations Act is enacted to read:

6 "[NEW MATERIAL] NOTICE OF FEE CHANGES REQUIRED.--An owner
7 may increase a fee that is provided pursuant to the terms of a
8 rental agreement by providing written notice at least sixty
9 days prior to the periodic rental date specified in the rental
10 agreement or at least sixty days prior to the end of the term
11 of a fixed term residency. In the case of a periodic residency
12 of less than one month, written notice shall be provided at
13 least one rental period in advance of the first fee payment to
14 be increased."

15 **SECTION 6.** Section 47-8-15 NMSA 1978 (being Laws 1975,
16 Chapter 38, Section 15, as amended) is amended to read:

17 "47-8-15. PAYMENT OF RENT.--

18 A. The resident shall pay rent in accordance with
19 the rental agreement. In the absence of an agreement, the
20 resident shall pay as rent the fair rental value for the use of
21 the premises and occupancy of the dwelling unit.

22 B. Rent is payable without demand or notice at the
23 time and place agreed upon by the parties. Unless otherwise
24 agreed, rent is payable at the dwelling unit. Unless otherwise
25 agreed, periodic rent is payable at the beginning of any term

1 of one month or less and otherwise in equal monthly
2 installments at the beginning of each monthly period. The date
3 of one month to the same date of the following month shall
4 constitute a term of one month.

5 C. Unless the rental agreement fixes a definite
6 term, the residency is week-to-week in the case of a person who
7 pays weekly rent and in all other cases month-to-month.

8 D. If the rental agreement provides for the
9 charging of a late fee and if the resident does not pay rent in
10 accordance with the rental agreement, the owner may charge the
11 resident a late fee in an amount not to exceed [~~ten~~] five
12 percent of the [~~total rent payment~~] rent for each rental period
13 that the resident is in default. Late fees shall be calculated
14 only based on rent. Rent calculations to determine late fees
15 shall not include deposits, additional fees or utilities. To
16 assess a late fee, the owner shall provide notice of the late
17 fee charged no later than the last day of the next rental
18 period immediately following the period in which the default
19 occurred.

20 E. An owner may not assess a fee from the resident
21 for occupancy of the dwelling unit by a reasonable number of
22 guests for a reasonable length of time. This shall not
23 preclude charges for use of premises or facilities other than
24 the dwelling unit by guests.

25 F. An owner may increase the rent payable by the

1 resident in a month-to-month residency by providing written
2 notice to the resident of the proposed increase at least thirty
3 days prior to the periodic rental date specified in the rental
4 agreement or, in the case of a fixed term residency, at least
5 thirty days prior to the end of the term. In the case of a
6 periodic residency of less than one month, written notice shall
7 be provided at least one rental period in advance of the first
8 rental payment to be increased.

9 G. Unless agreed upon in writing by the owner and
10 the resident, a resident's payment of rent may not be allocated
11 to any deposits or damages."

12 SECTION 7. Section 47-8-48 NMSA 1978 (being Laws 1975,
13 Chapter 38, Section 48, as amended) is amended to read:

14 "47-8-48. PREVAILING PARTY RIGHTS IN ~~[LAW SUIT]~~
15 LAWSUIT--~~[CIVIL PENALTIES]~~ PRIVATE ENFORCEMENT.--

16 A. If suit is brought by an applicant or any party
17 to the rental agreement to enforce the terms and conditions of
18 the rental agreement or to enforce any provisions of the
19 Uniform Owner-Resident Relations Act, the prevailing party
20 shall be entitled to reasonable attorneys' fees and court costs
21 to be assessed by the court.

22 B. An owner who charges an unauthorized screening
23 fee shall be liable for two hundred fifty dollars (\$250) and
24 shall return all fees paid by the applicant.

25 [~~B. Any~~] C. An owner who violates a provision of

underscored material = new
[bracketed material] = delete

1 Section 47-8-36 or 47-8-39 NMSA 1978 shall be [~~subject to a~~
2 ~~civil penalty equal to~~] liable for two times the amount of the
3 monthly rent.

4 [~~G. Any~~] D. A resident who intentionally violates
5 a provision of Subsection F of Section 47-8-22 NMSA 1978 shall
6 be [~~subject to a civil penalty equal to~~] liable for two times
7 the amount of the monthly rent."

8 **SECTION 8.** A new section of the Uniform Owner-Resident
9 Relations Act is enacted to read:

10 "[NEW MATERIAL] CIVIL PENALTIES--ENFORCEMENT.--

11 A. It is an unfair or deceptive trade practice
12 pursuant to the Unfair Practices Act for an owner to charge a
13 fee from an applicant that is not a screening fee or deposit or
14 that was not published in a listing for rental of a dwelling
15 unit in violation of the Uniform Owner-Resident Relations Act.
16 The attorney general may bring an action pursuant to the Unfair
17 Practices Act against an owner regarding this practice.

18 B. It is an unfair or deceptive trade practice
19 pursuant to the Unfair Practices Act for an owner to charge
20 rent or fees that are not included in the rental agreement in
21 violation of the Uniform Owner-Resident Relations Act. The
22 attorney general may bring an action pursuant to the Unfair
23 Practices Act against an owner regarding this practice."