Renter's Guide

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Acknowledgments

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Chapter 1

INTRODUCTION

A. About this guide

Renting a place to live presents many important questions and can have legal consequences. Landlords and tenants often suffer from inaccurate information. A lack of information, or the wrong information, may cause disputes that turn into eviction actions. When tenants do not have information about their rights and duties, it hurts their ability to provide their families with a safe and secure place to live. This purpose of this guide is to:

- Provide information about the landlord-tenant relationship
- Tell you about your rights in that relationship
- Help you avoid some of the problems that sometimes occur in renting houses or apartments

B. The law that applies to rental housing

This guide is based on the New Mexico law that covers landlord-tenant relations for residential housing. The law is called the "Uniform Owner-Resident Relations Act," and may be found within the New Mexico Statutes Annotated (NMSA) at § 47-8-1 through § 47-8-52. Under the Act, the landlord is referred to as "the owner," and the tenant is called "the resident." In this guide, we will use the terms *landlord* and *tenant*.

There are other laws that are important to the landlord-tenant relationship, depending on the kind of housing the tenant rents. If you rent a mobile home space, many of your rights and duties will be covered by the Mobile Home Park Act, which may be found at NMSA § 47-10-1 through § 47-10-23. The Mobile Home Park Act is discussed in Chapter 12 of this guide. If you live in public housing, or if your rent is subsidized by the government, you will want to look at Chapter 14 of this guide. Public housing and rent subsidies involve both federal law and New Mexico law, and your rights and duties are affected by those laws when the government is helping you pay for your rental housing. Particular issues affecting mobile home parks or public housing tenants will also be discussed as they come up in other sections of this guide.

The Fair Housing Act, which may be found at United States Code Title 42 Chapter 45 (42 USC § 3601 et seq.), is a federal law that protects many tenants who are discriminated against based on race, color, national origin, religion, gender, family status or disability. The New Mexico Human Rights Act, which may be found at NMSA § 28-1-1 through § 28-1-14, further protects many tenants from discrimination based on sexual orientation, gender identity, or spousal affiliation. (See Chapter 13.)

There are also Federal laws that protect tenants if the police help a landlord evict tenants without a court order. These police are violating the tenants' constitutional rights.

C. Exempt housing

The Uniform Owner-Resident Relations Act (UORRA) covers most kinds of residential rental housing. There are certain types of housing that are exempt from the UORRA. In exempt housing, you are not covered by the UORRA. For instance, the

Act does not cover stays in a hotel or motel if rent is paid more often than weekly (NMSA § 47-8-9(D)). The Act also does not generally cover dormitories, hospital rooms, or places where people stay while receiving medical or mental health treatment (NMSA § 47-8-9(A)). It does not apply to religious or educational institutions (NMSA § 47-8-9(A)). If you are buying a house or mobile home under a land or real estate contract, the UORRA does not apply (NMSA § 47-8-9(B)). Housing provided to an employee is not covered *if there is a written agreement conditioning the housing on continued employment* (NMSA § 47-8-9(E)). Housing used primarily for agricultural purposes is exempt (NMSA § 47-8-9(F)). This guide does not deal with those types of living arrangements.

Eviction from some of these exempt housing arrangements is covered by the Forcible Entry and Detainer Statute (NMSA § 35-10-1 through § 35-10-6). If the owner believes the occupant no longer has the right to go on living in the home, the owner must give the occupant 3 days' written notice to leave, and after the 3 days have expired, file in court to have the occupant removed (NMSA § 47- 8-24). As with the UORRA, this statute does require court process before eviction.

If you are an occupant or an owner in one of the exempt categories of housing, you should consult a lawyer about your legal rights and responsibilities.

D. Some thoughts on record keeping

There are two very important points to remember as you use this guide.

First, the information contained in the guide is general, and it is not a substitute for getting legal advice.

Second, there are steps tenants and landlords should take that are not always mentioned in this guide, and they usually involve the need to keep careful records of your dealings. For example, it is particularly important that there be a written lease when renting an apartment or house. Not only is this required by the law (NMSA § 47-8-20(G)), but it ensures that the tenant and landlord know exactly what the rental agreement is. Whenever possible, put all tenant- landlord communications in writing and keep copies of everything!

We have tried to help you with both of these important issues. At the end of the guide is an Appendix called "Resources" and you can start there when you need to find legal help. There are many papers that may not seem important at the time you get them but will be important to have if you wind up with a problem in your rental housing.

One final word of advice to both landlords/owners and tenants: Always keep receipts or some other form of proof of payments. Many disputes arise from the failure to keep written proof of payment of rent, deposit or damages.

Chapter 2

FINDING A PLACE TO LIVE

A. How to look for housing

There are many ways to find apartments, rooms, or houses to rent. Looking for housing can take a lot of time, and you need to think about what you are doing. For example, you need to think about the kind of place you want, its size, its cost, and the services you would like to have. Looking for housing is a lot like buying a car, and you should approach a rental deal the way you would approach dealing for a car. You should always try to get the best deal you can. This means you will have to be prepared to negotiate. Always remember, some items in a housing rental agreement might be negotiable.

There are a number of ways to find out about available housing. Some of the common ways are:

1. Newspaper classified ads
2. FOR RENT signs on houses and apartment buildings
3. Internet and Yellow Pages listings for property management companies
4. Craig's List
5. Rent.com, rentals.com and gosection8.com
6. Commercial rental agencies
7. Public housing authorities
8. HUD lists of subsidized housing
9. College and university bulletin boards
10. Word of mouth

With all the other ways to find housing, you don't need to pay a broker or an agency just to look through their listings. It is usually not a good idea to pay any fee to an agency to find your rental housing, because most of their listings are available elsewhere at no charge. No agency guarantees it will find you a place.

An agency's reputation for honesty in dealing with people can be checked through the Better Business Bureau or the Consumer Protection Division of the Attorney General's Office. You can find out if realtors or property managers have had complaints against them by checking with the board of realtors.

Landlords are permitted to check on a tenant's background, including credit or criminal background checks. Landlords often turn down a tenant for having bad credit or a criminal history. A landlord does not have to accept a tenant with a HUD Section 8 voucher. A landlord with three or more rental units cannot refuse to rent to someone because of a disability, ethnicity, sexual orientation or other reasons protected by the Fair Housing Act or the New Mexico Human Rights law.

B. The real cost of renting

There are several questions to consider about the cost of rental housing, besides the monthly rent. You need to consider your own costs, such as the cost of traveling to work or school from the rental house, the costs of utilities not included in the rent, and whether you plan to have renter's insurance. If you can afford it, renter's insurance is a good thing to have. Insuring your own property against fire, theft, and the possibility of personal injury liability will help protect you should damage or loss occur to your property. A landlord's insurance policy seldom provides coverage for loss of the tenant's property.

If you have a disability and will need to modify the rental housing to make it accessible, you will need to figure out the costs of making the alterations. Ordinarily, you will have to pay both to make the

changes and to have them removed when you leave. See Chapter 13 of this guide on the fair housing rights of people with disabilities to make modifications in a rental dwelling.

Be careful to find out about costs the landlord may charge you in addition to the rent. Will you have to pay for water, sewer, or trash? Find out if utilities are included in the rent. If not, talk to other tenants and the landlord about the cost of utilities, how the costs are figured, and how utilities are metered. Ask the landlord to show you a list of rules and regulations because there may be other charges noted in the rules. This is especially important when renting space in a mobile home park, because rules and regulations for the park may require you to skirt the mobile home or perform other requirements that cost money beyond the rent charged.

Be sure to check on deposits. A damage deposit, as well as payment of the last month's rent may be required. Also, find out whether you will have to pay a deposit to hold the rental dwelling and whether the deposit is refundable if you change your mind about renting.

C. Be aware of exactly what you are getting

When you are looking, be sure you actually see the apartment or house that is available for rent. Don't settle for looking at a model apartment, which may not be the same one you and your family will be living in. If you notice things you don't like about the condition of the unit, you may be able to get the landlord to make repairs or changes. It is easier to do this while you are looking, because you have some bargaining power. You should also do a move-in inspection (see Chapter 5).

It is also important to learn about the location. Ask other tenants about the neighborhood, the general noise level around the apartment or house, schools your children will attend, and any other concerns you have. It is also wise to find out how other tenants feel about the landlord and how the landlord generally deals with tenants. If you can, try to find out why the previous tenants moved out. You may want to drive through the neighborhood at night to make observations of any possible dangers.

D. The availability of public and government-assisted housing

While you are looking, remember that there are several different kinds of government housing programs which offer rental assistance or rents to tenants with low incomes that are less than current market rents. Federal regulations provide extra rights and protection to tenants in these programs. These programs include public housing, HUD-subsidized apartment complexes, and Section 8 rental assistance vouchers. Public housing is owned and managed by public housing authorities, run by cities, counties or regions of the state. Section 8 voucher assistance is also administered by Public Housing Authorities. Subsidized apartment complexes are privately owned but subsidized by HUD, USDA or the IRS. These programs are discussed in Chapter 14 of this guide.

E. Discrimination in looking for housing

1. What is illegal discrimination?

Looking for housing is a demanding task for anyone, but it is especially hard and frustrating when a person is not treated fairly because of discrimination. Discrimination includes refusing to show a person an apartment or house for rent, telling a person that the apartment or house is not available when it is, quoting a higher rent to one person than to another, or having different terms and conditions for renting to certain people (42 USC § 3604). A landlord may not discriminate based on someone's physical or mental disability, race, religion, national origin, ancestry, sex, or because a person has children (42 USC § 3604).

Housing discrimination based on race, national origin, religion, sex, family status (families with children), and disability is illegal under federal law (42 USC § 3604). The federal law forbids practices

that, for example, deny tenants with children rental units because of an adults-only or a no-children policy. The law prohibits denying people with mental or physical disabilities housing, either because the landlord is concerned about "what other tenants might think" or because the landlord simply feels it might be easier to rent to someone who doesn't have a disability. New Mexico state law makes housing discrimination based on most of the same reasons illegal. This law is called the New Mexico Human Rights Act and may be found at NMSA § 28-1-1 through NMSA § 28-1-14. The New Mexico Human Rights Act also protects persons who are discriminated against because of sexual orientation, gender identity or spousal affiliation. Many cities, such as Albuquerque (Albuquerque Code of Ordinances Section 11-3-7), Santa Fe (Fair Housing Ordinance, City Code Chapter XXVI Section 26-4 Subsection 26-4.8), and Las Cruces (Las Cruces Code of Ordinances Part II Article I Section 13-5) also have local ordinances prohibiting housing discrimination.

2. What to do if you are a victim of discrimination

If you feel that a landlord or someone else you have contacted in your search for housing has discriminated against you because of your race, religion, national origin or ancestry, sex, family status (with children), or because of your disability, you should seek legal advice. It is important to seek help soon after the discrimination occurs. Housing discrimination cases are difficult to prove and it helps if you are able to explain what happened while the facts are clear in your mind. Also, you will need advice about which laws have been violated and the time limits for filing complaints under the various laws. You should also look at Chapter 13 of this guide, which provides additional information on fair housing law.

Chapter 3

WHEN THINGS GO WRONG BEFORE YOU MOVE IN

There are some things that can go wrong even before the tenant moves in. For example, the tenant may have lost his or her job and simply can't afford to rent the apartment or the house. Or, the tenant may have found a better apartment after agreeing to rent the apartment. If you have signed a written agreement to rent and you have paid a deposit, you may lose your deposit. Landlords have the right to retain deposits under certain situations, and the law usually protects the landlord who winds up in this situation. The landlord may also be entitled to some rent or other damages for having to re-advertise the apartment (NMSA § 47-8-35).

Sometimes, you will be ready to move in on the date you agreed with the landlord, but the apartment or the house is not ready. You have rights if you have signed a rental agreement or have paid deposits, if you were not able to move in on the date you and the landlord agreed to, and if the delay is not your fault. First, you are not required to pay any rent for the days that pass until you actually move in (NMSA § 47-8-26(B)). In addition, you may give a *written notice* to the landlord saying you want to terminate the rental agreement (NMSA § 47-8-26 (B)(1)). If you give the landlord that notice, you are entitled to the return of all prepaid rent and deposits (NMSA § 47-8-8 (B)(1)).

If you do not want to terminate the agreement, you may demand that the landlord make the rental unit available immediately (NMSA § 47-8-26(B)(2)). If the landlord fails, you may bring an action in court to get possession of the apartment or the house. You may also ask for damages as well as for possession in the lawsuit (NMSA § 47-8-26(B)(2)). Unless the landlord returns everything you have paid and makes a reasonable effort to get you possession within seven days of your written demand, you are entitled to damages (NMSA § 47-8-48) as well as possession.

Obviously, before filing a lawsuit, you should make every effort to seek legal advice. While you can do the lawsuit yourself, you will need more information than is contained in this guide to know all the issues that such a lawsuit will involve.

Chapter 4

RENTAL AGREEMENTS OR LEASES

Once the tenant has found an apartment or house to rent, an agreement must be reached with the landlord. Remember, the terms of such an agreement are part of the deal between the tenant and the landlord, and the terms should be negotiated in the same way as the purchase of a car. When a car is bought or sold, the agreement is set out in a written contract. In the landlord-tenant world, that contract is called a *rental agreement* or a *lease*. The law requires the landlord to provide a signed written rental agreement to the tenant (NMSA § 47-8-20(G)).

The next sections of this guide will describe things to watch out for when negotiating and signing a rental agreement or a lease.

A. Periodic vs. fixed-term tenancies

There are several important things to remember about the contract for the rental dwelling. The first thing is that the tenant and landlord are agreeing to rent for some length of time. It may be a week, two weeks, a month, six months, a year, or even longer. The tenant and the landlord need to know what that length of time—the *term*—will be.

The most common type of rental agreement is a month-to-month tenancy, which is often called a *periodic tenancy*. This type of agreement allows the tenant to live in the dwelling for a month at a time. At the end of the month, the landlord may decide that he or she wants the tenant to move out or wants to raise the rent or change other conditions of the tenancy. In a month-to-month tenancy, the landlord must give the tenant a written notice at least thirty days in advance for any changes in the rent or conditions (NMSA § 47-8-15(F)), or to end the tenancy (NMSA § 47-8-37(B)). If the tenant wants to move, he or she must give the landlord at least thirty days written notice (NMSA 47-8-37(B)). If the tenant gives less than thirty days notice, the tenant can be held responsible for the following month's rent (NMSA § 47-8-35).

Some rental agreements are for less than a month. These are still periodic tenancies, but all the time limits for notice are equal to the length of the term (NMSA § 47-8-15(F)). For example, if the tenant and the landlord agree that the term is two weeks at a time, the landlord must give the tenant two weeks notice to move or to raise the rent. The tenant must give the landlord two weeks notice if the tenant intends to move.

The term the tenant agrees to is always important, and the parties should have a clear understanding of what the tenant and the landlord have agreed on. This is very important when someone is renting a room in a hotel or a motel. If the tenant is renting a hotel or motel room for more than a week as their main place to live and the tenant pays rent on a weekly basis, then the tenant has a periodic tenancy (NMSA § 47-8-15(C) and NMSA § 47-8- 3(F). This can be important in giving the tenant rights under

the Uniform Owner-Resident Relations Act. A person who is simply stopping at a hotel or motel while visiting or passing through town is not a tenant, and the person has few rights if the owner decides to have the person leave (NMSA § 47-8-3(V)). If you intend to stay in a hotel or motel for a more extended time than a couple of days, be sure to inform the hotel or motel that you intend to be living there as a resident and not just a short-term visitor. The hotel or motel is not required to allow you to establish a residency. The hotel or motel can require daily payment in order to ensure that the occupancy remains temporary.

A *definite term* or *fixed-term* tenancy is one where the tenant and the landlord have agreed that the tenant will be renting for a specific period of time. This type of agreement is usually for six months or a year. The tenant may still be paying rent each month, but the tenant has the right to stay for the full term without a rent increase or other changes (NMSA § 47-8-15(F)). In this type of tenancy, the landlord cannot make the tenant move out during the term of the lease unless the tenant violates the agreement (NMSA § 47-8-40). The landlord cannot raise the rent during the period of the lease. If the tenant and the landlord agree that the tenant will be staying for an additional fixed term when the lease ends, the landlord must give notice of any rent increase in the new agreement at least thirty days before end of the current lease (NMSA § 47-8-15(F)).

In thinking about whether a periodic tenancy or a fixed-term tenancy is best, the parties should consider several issues. In a fixed-term tenancy, the tenant has the right to stay for the full term and the rent will not be increased during that term. However, in a fixed-term tenancy, the tenant may owe the landlord rent for some of the rental term if the tenant decides to move out before the term ends. The landlord will not be able to terminate the lease until the end of the lease term and loses flexibility in how the property is used. In a periodic tenancy, the tenant has more flexibility in ending the tenancy, but neither party has the security of a fixed-term agreement.

B. Oral agreements

There are a lot of important legal issues about the rental agreement even in an area as simple as how long the rental term is. If the agreement is not in writing, there can be serious misunderstandings between the tenant and the landlord. For example, the landlord rents a place to the tenant for a month at a time, and the tenant tells the landlord that he or she will be there for six months. If the agreement about the term is not in writing, then it will be difficult to prove in court that the term was six months as opposed to month-to-month.

Although New Mexico law requires a written rental agreement or lease (NMSA § 47-8-20(G)), some landlords don't use them. Usually, a landlord who refuses to give the tenant a written rental agreement is a landlord the tenant may have trouble with down the road.

Oral leases are still enforceable. If you pay rent to a landlord for your residence, you are a tenant and the Uniform Owner-Resident Relation Act gives you rights as a tenant whether your lease is written or oral. It is often difficult to enforce those rights when the tenant does not have the rental agreement *in writing and signed* by the tenant and the landlord. If the tenant starts to have problems with the landlord, and the tenant does not have a written rental agreement, it is very important that the tenant immediately seek legal advice. It is also important for both the landlord and the tenant to have a copy of the signed agreement. Although this does not happen frequently, landlords have called the police and claimed that the tenants were trespassers when the tenant did not have a written rental agreement.

Certain agreements related to a tenancy are not enforceable unless they are in writing, such as an agreement that the tenant will make repairs to the property (NMSA § 47-8-20(C)).

C. Written leases

A written rental agreement sets out the promises the landlord and the tenant make to each other. In most cases, promises the landlord made at the time the tenant moved in or afterward will be difficult to enforce if they are not in the written lease or in an attachment to the lease. The tenant should make sure all agreements that were important to the tenant are put in the lease. For example, if the landlord promised to provide new locks or fix a fence, the promise should be made part of the lease. Think of putting promises in writing as a way to avoid disputes later on.

A written fixed-term lease is usually the best deal for the tenant and the landlord. It offers the security of both continued occupancy and unchanged rent. When the tenant and the landlord agree to a fixed-term lease, the parties have made a commitment to each other for an agreed-upon period of time.

It is important to remember that the tenant's promises are also part of the agreement, and a written lease sets out what the tenant has agreed to do. For example, when two roommates co-sign a lease, either one can be held responsible for the entire rental agreement.

D. Rules and regulations

Many landlords, especially in large apartment complexes or mobile home parks, will have Rules and Regulations in addition to the lease. The Rules and Regulations are part of the lease and should be read just as carefully as the lease agreement. If there are Rules and Regulations, the tenant should receive a copy at the same time that he or she receives a copy of the lease (NMSA § 47-8-23(F)). Violations of the Rules and Regulations can be a basis for notices of termination of the tenancy. The landlord can change the Rules and Regulations during the lease term but must give reasonable notice to the tenant of the proposed change, and the proposed change must not substantially modify the tenancy (NMSA § 47-8-23(F)).

E. Lease provisions

One of the main reasons to insist on a written lease is that there is so much involved in an agreement to rent a house or apartment. However, just because there is a written lease does not mean the tenant's worries are over. The tenant needs to read the lease, be sure that he or she understands everything in it and try to make the best deal possible.

1. Form leases

Most landlords use form leases. These are preprinted forms that have been prepared for a landlord to use with all tenants. These forms will have blank spaces to be filled in for rent, deposits, number of occupants, etc. Make sure all the blank spaces are filled in or appropriately marked "n/a" (not applicable). While leases are often difficult to read, it is still important that both the landlord and the tenant read the lease and sign it. Also, if there are provisions in the lease that the tenant did not agree to or the tenant does not want, the tenant should try to get those provisions removed before signing the lease. If the lease is signed with those provisions still included, the tenant will be bound by them. When any changes are made on the lease form, both the landlord and the tenant should initial the changes.

Landlords can obtain information about leases from the Apartment Association of New Mexico, located in Albuquerque (phone 505-822-1114 and on-line at www.aanm.org).

2. Provisions against subleasing

Most form leases contain language that prohibits subleasing or assigning a house, mobile home or apartment to other people. Often something like the following wording will appear in a lease:

> *The lessee herein further covenants and agrees that he or she will not sell, assign, transfer, relinquish, encumber or in any manner dispose of this lease or any part of it; also*

lessee further covenants and agrees for him/herself and others not to sublet the demised premises or any part or portion thereof nor in any manner permit the occupancy and use thereof by another or others.

Quite a mouthful, isn't it? It means that the tenant cannot allow anyone else to rent the apartment or to take over the lease. Provisions like this mean that you need the landlord's approval to sublease agreement or to have someone else take over the lease. It is very important that the tenant contact the landlord if the tenant wants to sublease, reach agreement on the sublease, and have the agreement put in writing and signed by the landlord, the tenant and the person the tenant wants to sublet to). This agreement needs to specify who is responsible if the subtenant fails to pay the rent or damages the property. If the landlord does not agree to the sublease, the tenant will be responsible. Even if the landlord does agree, the agreement could still make the tenant responsible for the subtenant.

If the lease requires landlord approval before subleasing a house or apartment, the tenant should make sure it also states that "consent may not be unreasonably withheld for any suitable tenant." Try to get this language in the lease or rental agreement, because it will protect the tenant in the event of a situation where the landlord decides to be unreasonable about the people who can move in or about new terms and conditions for a sublease. Mobile home parks generally require that the buyer of a mobile home located in the park must apply to lease the space the mobile home is on. The buyer does not automatically take over the seller's lease for the mobile home space.

The tenant may not permit roommates or friends to use the unit as a place of permanent residence if the lease prohibits subleasing. But remember that a provision prohibiting subleasing does *not* prevent the tenant from having friends visit as guests in the tenant's apartment or rental house. The tenant is entitled to have a reasonable number of guests stay for a reasonable time. The lease may specify the length of time guests may stay with the tenant in the rental unit.

3. Automatic renewal

A lease may contain language that provides for the automatic renewal of the term of the lease. Such a provision usually states if the lease is not canceled in advance (usually thirty days) of its termination date, then it will renew itself for another term, or it may turn into a month- to-month lease. The tenant should be aware of the language in the lease or rental agreement. Such language may commit the tenant to stay an extra year, or whatever term is in the agreement, when the tenant might not want to stay that long. The tenant should also remember this language when the lease term is about to run out. The tenant must decide whether to stay for another full term. If the tenant doesn't want to stay, written notice must generally be given to the landlord.

Most leases renew on a month-to-month basis. This means that either the tenant or the landlord can end the lease by giving at least a thirty-day notice.

If the tenant leaves after a lease has been automatically renewed, the tenant may owe the landlord rent. The tenant may also lose some of the deposits. (See Chapter 9 on "Moving out" in this guide for more information on rights and duties when a rental agreement ends (NMSA § 47-8-35)).

4. Objectionable clauses in leases

A landlord may want to put many different conditions in the lease, but remember, the tenant has the right to negotiate the best deal possible. Being

sure you understand what is in the written agreement is part of that negotiating process. There are certain things that may not legally be included in a lease agreement. For example, a lease may not include terms and conditions that are prohibited by the Uniform Owner-Resident Relations Act or other laws governing the use of property (NMSA § 47-8-14). The lease may not require the tenant to give up rights under the law (NMSA § 47-8-16). If a lease contains such illegal provisions, the tenant may be able to collect damages and get attorney's fees in a lawsuit if the tenant is harmed by the landlord's attempt to enforce the illegal provision (NMSA § 47-8-48).

Here are some examples of lease provisions that are illegal:

- Any provision that says the tenant does not get a refund of prepaid rent or a deposit (NMSA § 47- 8-18(C))
- Any provision that charges a late fee greater than 10% of the monthly rent (NMSA § 47-8-15(D))
- Any provision that forces the tenant to give up the right to defend himself or herself in court if the landlord seeks to evict the tenant or files suit against the tenant for damages (NMSA § 47-8- 30(A))
- Any provision that says the tenant must give up the right to receive notice of termination or notice of a court action (NMSA § 47-8-33)
- Any provision that says the tenant must give up the right to take the landlord to court (NMSA § 47-8-27.1)
- Any provision that allows the landlord to change the locks at the apartment or otherwise deny the tenant access to the apartment when the tenant owes rent (NMSA § 47-8-36 (A)(2))
- Any provision that allows the landlord to hold the tenant's personal property after an eviction or when the landlord claims the tenant owes rent (NMSA § 47-8-34.1).

A lease that requires the tenant to perform all the landlord's duties to maintain the rental property in a safe condition does not mean the landlord has no duties (NMSA § 47-8-20(E)). Such a lease clause is illegal, unless the agreement on repairs is in writing (NMSA § 47-8-20 (D)) and the tenant gets something of value in return (such as reduced rent, special privileges or wages).

Some lease clauses are not illegal, but they turn out to be very unfair. Courts have the power to change, or limit, any lease provisions that the tenant can show are *inequitable* (very unfair to one of the parties in the lease agreement) (NMSA § 47-8-12). If the tenant feels the lease may contain unfair or illegal provisions, the tenant should quickly seek legal advice.

5. Other important points in a rental agreement

a. Rent

What is the amount of the rent? When is it due? Where, how, and to whom is it to be paid? Be sure what is written in the agreement is what was agreed to. Be mindful that some of these terms may not be in the agreement. If they are not there, the law has its own rules for filling in the missing terms. For example, if there is no rent stated, the rent will be the fair market rental value (NMSA § 47-8-15(A)). If the agreement does not say where or when the rent is to be paid, the law requires it be paid at the rental unit on the first day of each month (or the first day of each week, if the rent is paid weekly) (NMSA § 47-8- 15(B)).

b. Late charges

What are the charges, if any, for late payment of rent? When do the late charges begin? The landlord is not allowed to charge a late fee unless the written lease says he can charge a late fee. Many leases provide a three or five day grace period. This means the late fee is not charged until the third or fifth day of the rental period. If the agreement provides for late charges, the charge may not legally be for more than 10% of the rent that is overdue (NMSA § 47-8-15(D)). For example, if the rent is $500 per month, a charge for late payment may not exceed $50. In addition, the landlord may charge a reasonable fee for returned checks.

The landlord must give the tenant written notice of the late fee on or before the last day of the month following the month in which the late fee was owed, or else the late fee is waived. For example, if the landlord wants to charge you a late fee because your June rent was late, the landlord must give you written notice of the charge by the end of July. If no notice is given, the landlord waives the late fee.

c. Utilities and appliances

Who is responsible for the utilities? If the tenant is responsible, what is the metering system? Will the tenant have a separate meter, a meter shared with other tenants, or a submeter? How will utility costs between tenants on shared meters be divided? If the tenant will be paying for the utilities, it is important to know the date by which the tenant is responsible for transferring the utilities to his or her own name. Sometimes the landlord will have the utilities in his or her name while the apartment is vacant. This can frequently lead to confusion about who is responsible for the utilities and sometimes results in a utility shut-off. The responsibility for the utilities should be spelled out very specifically in the rental agreement.

Sometimes the utilities are included in the rent. If the landlord fails to pay the utility or water bills and the utilities or water are shut off; the tenant may be entitled to a rent abatement (NMSA § 47-8-27.2(A)). The tenant can also choose to pay to have the utilities turned back on. The tenant may be entitled to deduct all costs from the rent and may also be entitled to damages. If the landlord fails to comply with his or her obligation to provide utilities, the tenant can contact the local code enforcement agency. In multi- unit housing, if there is separate utility metering for each unit, a resident is allowed to request a copy of the utility bill for his or her unit. If the unit is submetered, the resident is entitled to receive a copy of the unit's utility bill. When utility bills for common areas divided between units and the costs are passed on to the residents, a resident is entitled to request a copy of all utility bills being charged to the unit. The calculations used as the basis for dividing the cost of utilities for common areas and submetered apartments must be made available to any resident upon request. However, the owner may charge an administrative fee of not more than five dollars for each requested item (NMSA § 47-8-20(F)).

The landlord is not required to supply any appliances, including stoves, refrigerators, dishwashers, air conditioners or swamp coolers. If the landlord does supply an appliance, then it is the landlord's obligation to make sure that the appliance is in good working condition (NMSA § 47-8-20(A)(4)). The landlord is also responsible for repairs to the appliances. Again, it is a good idea to make sure the lease is specific about the appliances, including any appliances to be supplied by the tenant. If the tenant wishes to install a washer and dryer, or a dishwasher, he or she should get the agreement of the landlord. It is then the tenant's responsibility to remove the appliance at the end of the lease term and restore the premises to their original condition.

If the landlord shuts off the utilities, or removes appliances, as a way to evict the tenant, that is illegal, and the tenant may be entitled to a statutory penalty and damages (NMSA § 47-8-36). (See Chapter 9 of this guide on lock-outs.)

d. Owner or authorized agent

What is the name, address, and telephone number of the person authorized to manage the rental property? What is the name, address, and telephone number of the owner and/or an agent who is authorized to receive notices or service of court papers? The law requires the landlord to provide this information (NMSA § 47-8-19). If the landlord fails to provide it, the tenant does not have to give certain notices to the landlord (for example, a

notice of termination or of rent abatement) (NMSA § 47-8-19(D)).

It is important to have information about where the tenant can reach the landlord or the landlord's agent. If necessary, the tenant can get property ownership information at the county tax assessor's office. (In Bernalillo County: One Civic Plaza NW, Albuquerque NM 87102, phone (505) 222-3700. If the owner is a corporation, its address might be available from the New Mexico Secretary of State (505) 827-3614.) Many county and state agencies now have this kind of information available on websites.

e. Repairs and maintenance

What does the rental agreement say about responsibility for repairs, yard work, trash removal, snow removal, or general maintenance around the apartment or house? Is the tenant being asked to do work or take responsibility in areas that should be part of the landlord's duties to tenants? Are the responsibilities spelled out in the written rental agreement? This is particularly important if the agreement shifts the responsibility for the landlord's duties to the tenant.

Rentals of houses are often treated differently than apartments in this regard. The yard of the house is often considered part of the premises (NMSA § 47-8-3(N)) and thus its maintenance is the tenant's responsibility. Tenants may have to pay for the water necessary to maintain the landscaping around the house. Rentals of apartments, however, almost never include responsibility for outdoor areas.

f. Guests

A landlord may not charge a guest fee for the tenant to have a reasonable number of guests visit for a reasonable time (NMSA § 47-8-15(E)). Remember, though, that what feels "reasonable" to one person may not seem so reasonable to someone else. The lease may contain a provision about guests. Some landlords also have Rules and Regulations in addition to the lease. The Rules and Regulations may contain a policy on guests even if the lease does not. The tenant should also check to see whether the landlord charges a fee for the guests' use of facilities at the rental unit (e.g. laundry facilities, pool, and parking). Fees for these types of things are allowed, and the tenant should find out what the charge will be for guests who want to use these facilities.

g. Pets

A landlord may prohibit the tenant from having pets. If pets are not permitted, the lease should specifically say so. If pets are allowed, the landlord may charge a pet fee (either a lump sum or a monthly amount) and a pet deposit. This is part of the rental agreement and should be set out in the lease. Landlords can have rules about the size, number or type of pets that are allowed.

Landlords must allow service and emotional support animals for persons with disabilities. These can include, for example, seeing-eye dogs, assistive animals for people with mobility impairments and therapeutic animals for people with mental disabilities (42 USC 3604 (f) (3)(B)). If a landlord will not allow a tenant to have a service or emotional support animal, that is a violation of the Fair Housing Act. See Chapter 13 on housing discrimination. The landlord cannot charge "pet rent", a "pet deposit" or any other additional fees for service and emotional service animals. The landlord can, however, charge the tenant for any damage caused by the animal.

Chapter 5

DEPOSITS

Deposits are a very important part of every rental agreement. The landlord can ask for the first month's rent, the last month's rent, and a number of deposits. Remember, these deposits and prepaid rents are negotiable. Also, the law provides the tenant a number of protections for the return of the deposits.

A. Refundable deposits vs. non-refundable fees

A deposit is *money the tenant pays in advance to protect the landlord.* The law is clear that if the property is not damaged, the tenant is entitled to get the deposit back (NMSA § 47-8-18(C)). For example, if the landlord charges a pet deposit, the deposit is to protect the landlord for the additional wear and tear the pet may cause at the apartment. If, however, the pet does not cause any unusual wear and tear, the tenant is entitled to the return of the pet deposit.

If the landlord charges the tenant a *holding deposit*, that deposit is to protect the landlord if the tenant doesn't move in. However, the landlord is not entitled to double rent (NMSA § 47-8-18(B)). So, if the tenant does move in, the tenant is entitled to the return of the deposit or to have it applied to the first month's rent. Similarly, if the landlord is able to rent to someone else right away, the tenant is entitled to the return of the portion of the holding deposit equal to the rent the landlord received from the tenant who did move in.

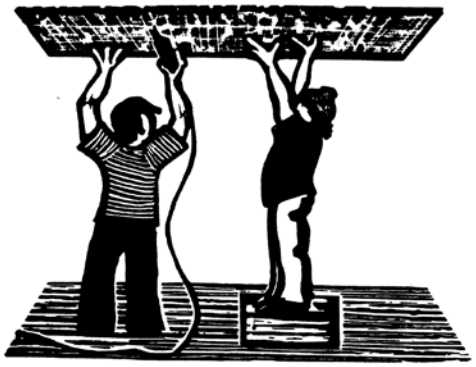
A *fee,* however, is different. It is a charge for something the landlord does for the tenant or for the tenants generally. A landlord, for example, may charge an application fee when someone applies for an apartment. This fee is supposed to cover the landlord's costs in doing credit and background checks and other investigations to determine whether the applicant is an acceptable renter. Even if the applicant decides not to take the apartment, he or she will not necessarily be entitled to the return of the fee, unless the applicant can convince a court that the fee is wholly unreasonable given the landlord's actual costs.

Sometimes, landlords will call something a fee that is really a deposit. The most common example is a cleaning fee to cover costs of making the apartment ready for the next renter after the tenant leaves. This is really a deposit, because if the tenant cleans the place before moving out, the landlord will not have performed any service to earn the fee. When the tenant moves out, the tenant should treat the cleaning fee as a damage deposit. If it is not returned to the tenant, follow the guidelines on damage deposits in this chapter.

B. The damage deposit

A damage deposit is the money paid to protect the landlord against tenant-caused damage to the rental housing that goes beyond normal wear and tear (NMSA § 47-8-18(C)). Usually the deposit money is turned over to the landlord at the time the rental agreement is finalized, and it is returned or accounted for after the tenant moves out. Although the landlord may also use the damage deposit to cover unpaid rent, damages and advertising costs if the tenant violates the terms of the tenant rental agreement (NMSA § 47-8-35), this deposit is not the same as the last month's prepaid rent required by the landlord (NMSA § 47-8- 18(B)). A landlord may not have any obligation to refund the prepaid rent if

the tenant voluntarily moves out before the lease ends or if the tenant is evicted. The landlord must, however, return that portion of the tenant's damage deposit which exceeds the damages the landlord actually suffered.



1. What is the most that can be charged for a damage deposit?

A landlord may not charge a tenant more than one month's rent as a damage deposit on any kind of lease with a term of less than one year (NMSA § 47-8-18(A)(2)). Remember, prepaid rent for the last month is not the same as a damage deposit, so the tenant can be charged both prepaid rent *and* a damage deposit, even though the total amount is more than one month's rent. The deposit cannot be treated as the last month's rent unless the landlord and tenant agree to this in writing.

If there is a written lease for a term of a year or more, the landlord may charge any amount as a damage deposit. However, if the landlord charges a deposit that amounts to more than one month's rent, the landlord must pay interest on the full amount of deposit for as long as the landlord keeps it (NMSA § 47-8-18(A)(1)).

2. What does the deposit cover?

Many tenants are surprised when the landlord won't give them back their deposit when they move out. Sometimes a landlord will keep it even when the tenant has done no damage. The problem often comes from what is legally considered damage.

The damage deposit covers only those damages the tenant has caused the landlord to actually suffer. These damages may be lost rent, physical damage to the apartment requiring repairs or replacements, or other business-related expenses that the landlord had because the tenant violated terms of the lease (NMSA § 47-8-35). If, for example, the tenant moves out without giving proper notice, and the landlord has trouble getting a new tenant, the landlord may withhold that portion of the deposit covering lost rent and costs involved in getting the place ready to rent to someone else.

The most common situation involving damage deposits, however, is where the landlord claims the tenant did real damage to the rental unit. Broken furniture, torn or heavily soiled carpeting, and other problems requiring costly repairs often are claimed by landlords as the basis for keeping damage deposits rather than returning them. Often, however, the tenant caused nothing more than *normal wear and tear,* which is not chargeable against the deposit (NMSA § 47-8-18(C)).

3. What is normal wear and tear?

Normal wear and tear is damage or deterioration by ordinary and reasonable use of the property. It is the normal loss in value that occurs when something is used. A landlord, for example, should expect to have to repaint walls every few years, especially in the kitchen. Furniture normally gets worn with age. Walls acquire small nail holes, and carpets get worn. (Some rental agreements do, however, prohibit putting nails into the walls. If the rental agreement does prohibit any nail holes, then nail holes would be an item of damage.)

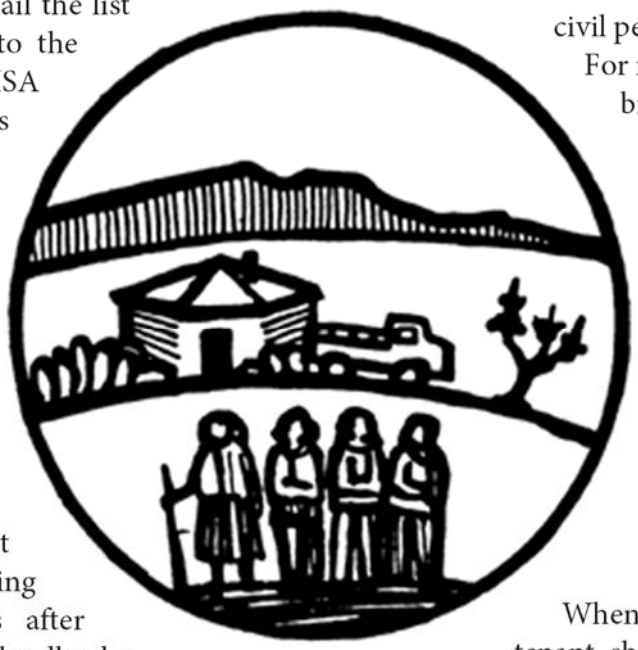
The law requires the landlord to pay to fix ordinary wear and tear. Normal use of the property by the tenant and guests of the tenant is not something the landlord can claim as damages. However, the tenant must pay for accidental damages done to the property. If the landlord can prove that the tenant intentionally damaged the property, the tenant may be charged for the cost of repairs, plus two times the monthly rent as a penalty (NMSA § 47-8-48 (C)). Wear and tear does not include cleaning made necessary by a tenant's failure to clean when moving out or other failure to keep the rental unit clean. A tenant's obligation to clean (NMSA § 47- 8-22) generally includes sweeping and washing floors, shampooing carpets, disposing of all trash and making sure that the kitchen, bathroom and all appliances are properly cleaned. The tenant should take pictures when moving in and moving out to show the condition of the rental. Pictures should include the tops and insides of sinks, stoves,

cabinets, refrigerators, and toilets. Having a witness look at the place at move-out time is helpful, too.

4. When should the damage deposit be returned?

Within 30 days after the tenant moves out, the landlord must make an itemized list of all deductions from the deposit that he or she claims were damages caused by the tenant. The landlord must send this list of deductions to the tenant. The landlord must also send any part of the deposit remaining after deducting the cost of the damages listed (NMSA § 47-8-18(C)). If the landlord does not send both the list and any refund within the 30 days, the tenant is entitled to the full deposit and the landlord loses any right to compensation for damages the landlord claims the tenant caused to the property (NMSA § 47-8-18(D)).

Remember, the landlord must mail the list of deductions and the deposit to the tenant's last known address (NMSA § 47-8-1(C)(3)). If the tenant has not provided a new address, the landlord will use the address of the rental unit. If the landlord has any other addresses, such as a work address or emergency contact, the landlord should also send the notice to those places. If the notice of damages only goes to the rental unit after the tenant moves out, the tenant may not receive it. If the tenant is not going to have a permanent address after moving out, it is wise to give the landlord a forwarding address such as the tenant's employer or someone the tenant trusts to receive mail. If the tenant does have a new permanent address, it is important to file a change of address with the post office.



This can be done in person or on line at www.usps.com. This is a free service. Ignore websites that offer this service for a fee.

If the landlord does not provide a deduction list or return the full deposit, the tenant should demand the full deposit back. If the landlord sends the tenant a list of deductions claiming damages that the tenant feels are unreasonable or simply the results of normal wear and tear, the tenant should demand the full deposit back. There is a Demand Letter for Return of Security Deposit in the Appendix to this guide which can be used for this purpose.

If the landlord still does not return the tenant's deposit, the tenant may take the landlord to small claims court (Magistrate or Metropolitan) and sue for the deposit (NMSA § 47-8-18(D)). The judge should order the landlord who has not complied with the law to turn over the full deposit and pay the tenant's court costs and attorney fees. In a lawsuit for the return of the tenant's deposit, the landlord who has not complied with the law cannot claim any damages against the tenant in a counterclaim. If the judge finds that the landlord kept all or part of the deposit in bad faith (not just by mistake), the judge must award the tenant an additional $250 civil penalty (NMSA § 47-8-18(E)). For more information on how to bring a lawsuit for the tenant deposit, see Chapter 16 on "Going to Court."

The landlord can keep the deposit to cover unpaid rent or utilities without having to send the notice regarding deductions.

5. Getting back the full deposit

When the tenant moves in, the tenant should get a *receipt* for each deposit the tenant has paid to the landlord. With a receipt, or at least a canceled check, the tenant will have evidence he or she paid the deposit, and that will make it easier to get the deposit back if the tenant has to go to court to get it.

Before actually moving in, the tenant should inspect the rental dwelling. Look for damaged furniture, dents or holes in the walls, broken glass, spots on the floors or carpeting, and generally look the place over for anything that might be looked at as damage to the place. (See the move-in rental unit checklist format in the Appendix to this guide.)

It is a good idea to do this walk-through with the landlord and reach agreement on the checklist. Both the tenant and the landlord should initial the checklist and keep a copy of it. The checklist can be used to negotiate with the landlord to get repairs, but more importantly, the list will give the tenant a record of the condition of the rental dwelling at the time the tenant moved in. If the apartment is furnished, the tenant should also make a list of all the furniture in place at the time the tenant moves in, so that later on the landlord can't claim that something is missing.

If it isn't possible to have the landlord sign off on the checklist, get a couple of witnesses to inspect the rental unit and sign the list. It is also a good idea to take photographs and date them (use the date function on the camera or have the developer do this when the film is processed).

If the tenant discovers more damages after living in the unit for a few weeks, make an additional list. Keep a copy of the new list and send a copy to the landlord.

If the tenant later gets into a dispute with the landlord over the condition of the rental unit on the move-in date, these lists and photographs could be important evidence to use in showing the tenant's side of the story. Keep the checklist, photographs, and the deposit receipts together, so that they can be found easily.

The tenant should get and keep a receipt for every rent payment made, including prepaid rent. Just like with the deposit receipt and checklists the tenant kept when moving in, the tenant should keep all of the rent receipts together in one place. If there is a dispute over rent, these receipts will be extremely important.

The tenant should leave the rental unit clean and in the same condition as it was when the tenant moved in. *The best way to prove the unit is clean is to take photographs at the time the tenant moves out.* Also, take the checklist made when the tenant first moved in and go over it again, making sure everything is in pretty much the same condition. If the landlord and the tenant agree that there are no damages, get the landlord to sign the checklist when the tenant moves out, indicating that the place is in the same condition it was when the tenant moved in.

If the tenant and the landlord agree that something has been damaged while the tenant lived in the place, they can sign a list of the agreed damages (NMSA § 47-8-7). The list should set out the amount of damages the landlord claims. If the tenant disagrees about some of the damages, make a separate list showing which damages the tenant and the landlord disagree on.

It is best to get all disagreements set out before the tenant leaves, so the landlord will not later claim more damages. If the tenant's lease has language stating the landlord's inspection will be made after the tenant vacates, that language should be crossed out and changed to read "at the time the tenant vacates." (Always have landlord initial any change in the lease language.) If this change is not made, the tenant may get stuck with a larger damage estimate made by the landlord.

The suggestions in this section may seem complicated, but they are important. Issues involving damages to a rental dwelling are often difficult and sometimes involve going to court. Disputes over damages usually wind up being the landlord's word against the tenant's word. If the tenant has photographs and written evidence and gets the landlord to agree about damages in before the move-out date, the tenant will have a much better chance of getting back the deposits.

Chapter 6

PAYING RENT

A. The tenant's duty to pay rent

In a landlord-tenant relationship, the tenant's main responsibility is to pay rent. The tenant must pay the landlord the amount of rent agreed upon, and the rent must be paid at the time and place stated in the lease (NMSA § 47-8-15(B)). If the tenant and the landlord have not agreed on a time and place, the law says that the rent is due on the first day of the rental period (a week or a month), and it is payable at the rental residence. If the rental period is longer than one month (for example, a one-year lease), and the rent is paid monthly, rent is due on the first day of the month unless the tenant and the landlord have agreed on a different day (NMSA § 47-8-15(B)).

The lease may require that the rent be paid by cash, check or money order. The best way to pay rent is payment in person to the landlord in return for a receipt. Whether you pay with a check, money order, or cash, *always get a receipt*. A canceled check is proof that you paid, but it does not prove *when* you handed the rent to the landlord. A money order stub does not prove *who* you gave the money order to or *when* you gave it. Money orders can be traced, but that is expensive and can take many months. And cash paid without a receipt is as good as cash never paid. A landlord who does not give receipts, or who says he will give you one later, is not an honest landlord and might cheat you later.

Never pay rent through a rent drop box. A drop box does not give you a receipt, so you cannot prove that you paid the rent or when you paid it. Drop box thefts are common, and if your rent payment is stolen from the drop box, the landlord might charge you late fees and make you pay the rent a second time (though this is often illegal).

If the tenant is having trouble paying rent, but the tenant wants to stay in the rental unit, the tenant *must* talk to the landlord. It is possible to modify a rental agreement, but the tenant can't expect the landlord to agree to a change if he or she doesn't understand the tenant's problem.

It may also be possible to make agreements with the landlord about how to pay rent. For example, if the tenant gets a government check on the third day of every month, the tenant will probably not want the rent to be due on the first of the month; if the check is a disability check, the landlord may be required under the law to accept rent after receipt of the check as a reasonable accommodation for the tenant's disability. If the tenant is having financial problems, it may be possible to arrange to pay part of the rent on the first of the month and the rest on the fifteenth. If a landlord believes that the tenant is trying to pay the rent, it is less likely the landlord will immediately move to evict the tenant when the rent is a little behind.

B. Rent vs. deposits or damages

Rent may not be used by the landlord for deposits or to pay for damages, unless the tenant agrees to this kind of use in a written rental agreement (NMSA § 47-8-15(G)). The tenant should check the

lease or rental agreement to see whether it contains such a provision.

If the tenant has caused some damage to the property, the landlord may allocate a portion of the rent to cover the damages only if the lease specifically allows such an allocation (NMSA § 47-8-15(G)). If the landlord then sues the tenant for eviction, and if the landlord wins, the tenant can still stay in the rental unit. The court will issue a *conditional writ* which gives the tenant three days to pay the amount of unpaid rent. If the tenant pays within the three days, then the tenant can stay in possession of the rental unit (NMSA § 47-8-33(E)(2)).

C. Agreements where the tenant's right to a dwelling is tied to a job

Sometimes, a landlord will rent to a tenant in exchange for the tenant agreeing to manage the property or make repairs around the property. In other situations, an employer may give an employee a place to live as part of working for the employer. If the agreement is that the housing is directly tied to the job and the tenant gets fired or laid off, the housing can be lost at the same time. If the agreement connecting the job to the housing is in writing, the tenant will not have the rights provided by the Uniform Owner-Resident Relations Act (NMSA § 47-8-9(E)). The landlord can use a quicker legal action, called Forcible Entry and Detainer, to evict the employee (NMSA § 35-10-1). If the job- housing connection is not spelled out in writing, the employer/landlord must give the tenant the notices, and recognize the rights required by the Uniform Owner-Resident Relations Act (NMSA § 47-8-9(E)).

D. When the tenant doesn't pay the rent

If the tenant does not pay the full rent on time, the landlord may evict the tenant (NMSA § 47-8-33(D)). Eviction must be done through a court action. The landlord does not have the right to simply throw a tenant out of the apartment without going to court first (NMSA § 47-8-36(A)). Until a judge orders the tenant to move out, the tenant may stay in the rental dwelling and the landlord cannot cut off necessary utilities or force the tenant to leave (see Chapter 9 of this guide on "Lock-outs") (NMSA § 47-8-36(A)).

Before a landlord can go to court to evict a tenant for non-payment of rent, the landlord must give the tenant a *written three-day notice of non-payment*. If the tenant does not pay the rent (including late charges if the rental agreement provides for late charges) within three days of receiving the notice, the tenant loses the right to stay and may be evicted. If the tenant pays the rent within the three-day period, the tenancy is reinstated and the landlord may not try to evict the tenant for non-payment of rent (NMSA § 47-8-33(D)).

The law also requires that the landlord deliver the notice to the tenant, mail it to the tenant, or *post* it (NMSA § 47-8-13(D)). Unfortunately, even with these requirements, a tenant may sometimes not find out about the notice during the three-day period. For example, the notice may be given to someone who is living with the tenant. Mail may arrive late. And *posting* only requires that the notice be taped to the tenant's door or placed in a fixture or receptacle designed for notices or mail, such as a tenant's box at the apartment entrance, or on a covered bulletin board (NMSA § 47-8-13). After the three days pass, there is not much the tenant can do to avoid going to court to defend him or herself in an eviction action. If the tenant did not properly receive the notice, that can be used as a defense in the eviction action.

Sometimes, a tenant will try to pay the rent during this three-day period, but the landlord won't accept it. If this happens, the tenant should make a second offer of the rent in the presence of witnesses; the tenant can then ask the witnesses to testify in court. If the tenant can show the judge that he or she tried to pay but the landlord refused the payment, the tenant may be able to win the eviction case.

If the tenant faces an eviction action for non-payment of rent, the tenant will owe the rent for each day the tenant stays in the rental unit (NMSA § 47-8-30(A)). The court will enter a judgment for the amount of rent due through the move-out day. This court order is called a *writ of restitution*. The day set by the court for moving out will be *three to seven days* from the court hearing. If the tenant does not

move out by that day, the landlord can take the order to the sheriff, who can force the tenant to move out, and then change the locks (NMSA § 47-8-46(A)).

E. Keeping records

It is very important for the tenant to receive and keep all rent receipts. If the tenant pays by check, write on the check the month for which the rent is being paid, before giving the check to the landlord. Keep the canceled check when it comes back with the bank statement. The tenant should get a receipt from the landlord when paying by check or money order just as when paying cash, but at least the canceled check will be evidence of payment if the tenant doesn't get a receipt. Money order receipt forms are not as good evidence of payment as are canceled checks. In order to prove a landlord received and cashed a money order, the tenant will have to order the records from the money-order company, pay a fee (about $15-35) and wait for weeks or even months.

Both the tenant and the landlord should keep complete records of rent payments. These may be needed at some point as proof of what rent was paid or not paid.

F. Rent increases

If the tenant has a written lease covering a specified period of time (for example, a six-month or one-year lease), the landlord is not allowed to raise the rent during that period. If a fixed-term lease is for more than a month, and the lease automatically renews itself, the landlord must give the tenant notice of a rent increase at least thirty days before the current lease expires (NMSA § 47-8-15(F)).

If the lease allows the tenant to renew by giving notice, the landlord must also give the tenant thirty days' notice of a rent increase on the new lease. If the lease runs out, the landlord cannot raise the rent without giving the tenant thirty days' notice, unless a new lease is signed (NMSA § 47-8-15(F)).

Under a month-to-month rental agreement, a landlord must give thirty days' written notice before the increase in rent can become effective. If a rental agreement is week-to-week, the landlord must give seven days' notice before the beginning of the week the rental increase is to become effective (NMSA § 47-8-15(F)).

All written notices of a rent increase must be either hand delivered to the tenant or mailed to the tenant (NMSA § 47-8-13(C)(3)). Posting the rental increase at the rental unit is not enough.

Chapter 7

OBLIGATIONS OF LANDLORDS AND TENANTS FOR SAFETY, MAINTENANCE AND REPAIRS

Landlords and tenants both have duties in taking care of the rental unit and the areas around the rental unit (NMSA § 47-8-20 and NMSA § 47-8-22). The Uniform Owner-Resident Relations Act contains some of these duties, and other duties are imposed by local housing codes or by the lease agreement.

A. Tenant obligations and responsibilities

1. A safe and clean place

The tenant's responsibilities to the landlord and to other tenants are based on the law, the rental agreement, and the rules the landlord makes for tenants. When the tenant fails to meet these responsibilities, the landlord may end the tenancy and evict the tenant. The tenant also has responsibilities to other tenants so that they may enjoy a decent and safe place to live, and in certain cases the landlord may take action to protect the rights of the other tenants.

Beyond paying rent, the tenant's most important obligation is to keep the rental unit clean, safe, and free from unnecessary damage (NMSA § 47-8-22). The tenant is not responsible to pay for normal wear and tear on the rental unit while living in it. The tenant will, however, have to pay for repairs for any damage caused by abuse or neglect of the unit by the tenant or the tenant's guests.

In addition, local housing codes make rules for the use of property (Albuquerque Code of Ordinances Chapter 14 Article 3) which add to the tenant's responsibilities. For example, the Albuquerque Housing Code prohibits: (1) unhealthy conditions in the residence, particularly in the bathroom and kitchen, which might cause disease, attract rodents, or breed insects; (2) dangerous structures or objects, especially those that attract children; and (3) overcrowding the residence.

The tenant is responsible for disposing of ashes, rubbish, and garbage in a clean and safe way (NMSA § 47-8-22(C)). The landlord is responsible for providing the tenant with suitable containers and a means of disposal (NMSA § 47-8-20(A)(5)).

2. Complying with the rental agreement and the landlord's rules

The agreement between the tenant and the landlord is a contract. Both the tenant and the landlord are normally required to live up to the responsibilities set out in their agreement. There are exceptions to this rule of law where the agreement contains illegal or inequitable (grossly unfair) terms (NMSA § 47-8-12).

Similarly, if the landlord makes rules about the use of rental facilities, the tenant must follow the rules if they are fair and reasonable, and if the tenant gets a copy of the rules at the time the tenant enters into the rental agreement (NMSA § 47-8-23). If the landlord makes a new rule or changes a current rule after the tenant begins renting, the landlord must give the tenant reasonable notice of the rule change. Rule changes should not be made on less notice than the rental term (for example, seven days' notice on a week-to-week, thirty days' notice on a month-to-month), and the rule change must be in a written

notice delivered to or mailed to the tenant. The rule change may also be posted, but if it is posted the landlord must also mail the notice to the tenant (NMSA § 47-8-23 and NMSA § 47-8-13(D)).

If the landlord makes a rule change that creates a major change in what the tenant agreed to initially—such as prohibiting pets or limiting access to certain facilities—the rule change cannot be enforced against the tenant for the period of the lease (NMSA § 47-8- 23(F)).

There are other limits on the rules a landlord may make:

- The rules must be designed to improve the property's appearance; aid the tenants' safety, convenience, and welfare; or generally provide for equitable and efficient delivery of services to all tenants (NMSA § 47-8-23(A)).
- The rules must be required to fulfill a reasonable purpose (NMSA § 47-8-23(B)).
- The rules must apply to all tenants in a fair manner (NMSA § 47-8-23(C)).
- The rules must be clear and understandable (NMSA § 47-8-23(D)).
- The rules must not be made for the purpose of avoiding the landlord's legal obligations (NMSA § 47-8-23(E)).

3. Allowing access to the rental unit

A tenant must allow the landlord to have reasonable access to the rental unit in order to perform the landlord's duties. However, a landlord may not abuse this right of access, and the law has placed some restrictions on a landlord's right to enter the rental unit.

The law allows the landlord entry to inspect the unit, to make necessary and agreed-upon repairs, to decorate, to make alterations or improvements, and to supply necessary or agreed-upon services. The law also allows the landlord to enter the unit to show it to someone who plans to buy or rent the property. The landlord may also bring in contractors or workers when the landlord properly enters the rental unit (NMSA § 47-8-24(A)).

In order for the landlord to enter the rental unit to do any of the work listed above, the landlord must give the tenant notice. Unless the landlord and the tenant agree to shorter notice, the landlord must give *twenty-four hours written notice* to the tenant before entering the rental unit. The notice must tell the tenant what time the landlord will be entering, how long the landlord will be inside, and why the landlord will be going in ((NMSA § 47-8-24(A)(1)).

The landlord does not need to give the twenty-four hour notice if the entry is to perform repairs or services that have been requested by the tenant within the past seven days, or when the landlord is with a public official conducting an inspection or a utility company representative or cable TV installer (NMSA § 47-8-24(A)(2)).

The rental agreement may provide for other specified conditions that require the landlord to enter the tenant's rental unit. The rental agreement may not, however, take away the notice rights of the tenant. The law does recognize that the landlord and the tenant may, from time to time, agree to other arrangements (NMSA § 47-8-24(A)). For example, a tenant may agree to let the landlord in on less than twenty-four hours notice, and the landlord may give the tenant options about the most convenient time to have the gas man look over the apartment (NMSA § 47-8-24(A)(3)).

While the law allows the landlord and the tenant to work out entry problems, there are sometimes when a landlord's right of entry is not open for negotiation. The landlord has the right of entry without any notice in case of an emergency (NMSA § 47-8-24(B)), or when the tenant has been gone from the rental unit for more than seven days without telling the landlord (NMSA § 47-8-24(D)).

If the tenant refuses to let the landlord in when the landlord is acting properly, the tenant's denial of access is a violation of the law. The landlord may terminate the tenancy, get a court order to enter the rental unit and sue for damages (NMSA § 47-8-24(E)).

If the tenant feels that the landlord is entering the apartment unreasonably, the tenant should seek legal advice. This is one area where a simple misunderstanding can lead to a serious dispute. If the landlord abuses the right of entry and is interfering with the tenant's right to peaceably

occupy the rental unit, the tenant can also terminate the tenancy and go to court. The tenant can get an order keeping the landlord out and sue for damages (NMSA § 47-8- 24(F)).

4. Informing the landlord of the tenant's absence for seven days or more

As stated above, if the tenant is gone for more than seven days without telling the landlord, the landlord has the right to enter the apartment (NMSA § 47-8-24(D)). There are good reasons to tell the landlord about an absence. Some of these reasons are practical and help the tenant. Other reasons include the tenant's right to have a place to stay and what happens to the tenant's property.

- First, the rental agreement may require the tenant to notify the landlord if the tenant is going to be gone for some period of time (NMSA § 47-8- 25). If the tenant doesn't notify the landlord, the tenant will have broken the rental agreement and may be subject to having the tenancy terminated.

- Second, it is a good idea to let the landlord know the tenant will be gone, so the landlord can watch the rental unit for vandalism, fire, freezing pipes, and to be aware that the tenant's property is more vulnerable to burglars. The tenant's chances of having insurance cover any losses that occur to the tenant's property may also be affected by whether the landlord was informed about the tenant's absence.

- Third, the law states if the tenant is behind in the rent and is gone for more than seven days without telling the landlord, the tenant has *abandoned* the rental unit (NMSA § 47-8-3(A)). Once the tenant has legally abandoned the unit, the landlord can treat the tenancy as over and re-rent the apartment. The landlord can also store and sell any property the tenant leaves in the apartment, subject only to the tenant rights to claim the property from storage (NMSA § 47-8-34.1). (See Chapter 10, "The Tenant's Property").

5. Using the rental unit as a residence

Unless the landlord agrees that the tenant may use the rental unit for other purposes, the tenant may use it only as a residence. For example, if the tenant plans to rent a place to use for a business, the tenant must discuss that with the landlord. If the tenant runs a business from the rental unit without the landlord's permission, the tenant may be in violation of the rental agreement (NMSA § 47-8-25).

The issue of whether the tenant is maintaining a residence might be important when the tenant rents a room in a hotel or a motel. If a person pays on a weekly basis or less frequently (for example, biweekly or monthly) and has no other residence, that person is probably a tenant entitled to the protections of the Uniform Owner-Resident Relations Act. To be certain, the tenant should inform the hotel or motel management that the room is the tenant's residence. There are many hotel and motel owners who do rent to people they know are residents, and they take rent for more than a week at a time. These owners, however, like to avoid the obligations the law places on landlords, and they may try to claim the tenant is not really a tenant. Be careful in such situations and take steps to make it clear to the owner the tenant intends to reside in the place.

6. Obligations to neighbors— illegal conduct

The tenant has a duty not to disturb a neighbor's peace and quiet (NMSA § 47-8-22(G)). This duty prohibits such disturbances as those caused by excessive noise, inconsiderate visitors, and uncontrolled pets. Also, while a landlord may not refuse to rent to the tenant because the tenant has children (42 USC § 3604), the tenant must still supervise the children so that they do not unreasonably bother other tenants. The tenant must

also conform to any rules of a joint housing unit or neighborhood association where the tenant lives (NMSA § 47-8-22(H)).

7. Substantial violations

The law states if a tenant knowingly does certain very serious acts (or allows others to do certain acts in the tenant's unit) that are against the law, the tenant may be evicted with only 3 days' written notice. A tenant may be quickly evicted for the following acts, if committed by the tenant or with the tenant's consent:

- Possession, use, sale, distribution or manufacture of a controlled substance (but not misdemeanor possession or use)
- Unlawful use of a deadly weapon (but not self-defense)
- Unlawful action causing serious physical harm to another person
- Sexual assault or sexual molestation of another person
- Entry into another's home or vehicle without their permission and with intent to commit theft or assault
- Theft or attempted theft of the property of another person by use or threatened use of force
- Intentional or reckless damage to property in excess of $1,000

The act must take place within 300 feet of the premises (NMSA § 47-8-3 (T)).

A tenant does not have to be convicted of a crime to face eviction under this *substantial violation* provision of the law, but the landlord must still prove that the violation occurred.

The only general exceptions to the substantial violation prohibition are where the tenant is the victim of the illegal conduct or where the tenant does not know about the illegal conduct and has not done anything to allow it (NMSA § 47-8-33(K)). It is important to remember that this part of the law also applies to the tenant's guests and others living in the unit with the tenant. A tenant usually has a personal responsibility to control the conduct of people in his or her rental unit. Under the law, it is possible that the tenant and the tenant's family may be faced with eviction even if only one person is involved in the illegal conduct.

There is a special exception for victims of domestic violence. A victim of domestic violence cannot be evicted for the domestic violence (NMSA § 47-8-33(J)). The best way for a tenant to get protection under this part of the law is to go to District Court to request a domestic violence order against the abuser. If the tenant is the victim of domestic abuse, the tenant should seek legal advice immediately, because of the abuse itself and also because it may have an effect on the landlord-tenant rights.

In addition, a tenant cannot be evicted for a substantial violation if he or she acted in self-defense (NMSA § 47-8-33(L)).

If the landlord tries to evict the tenant for conduct that was domestic violence or self-defense, it is very important the judge knows what happened.

Because the landlord has the right to terminate the tenancy on only 3 days' notice where such serious violations occur (NMSA § 47-8-33(I)), the law has several important tenant protections. If the landlord tries to use this part of the law to evict a tenant, the landlord must give a very specific notice of what the bad conduct was, explaining exactly when and where the bad conduct occurred (NMSA § 47-8-33(I)). If the landlord has no real basis for seeking an eviction for a substantial violation, the tenant may be awarded a civil penalty in a court action equal to two times the monthly rent (NMSA § 47-8-33(M)). For example, if the landlord simply claims someone was selling drugs in a tenant's apartment without any real evidence, the tenant might be entitled to stay in the apartment and receive an award of damages.

This section of the law is there to protect innocent people, so they can live in decent and safe places. If

the tenant suspects a neighbor is involved in illegal activity, the tenant should call the police and let the landlord know about the conduct at the same time.

8. What will happen if a tenant fails to live up to his or her obligations?

Depending on the type of violation, the tenant will get a written notice. The type of violation determines the number of days' notice the tenant is entitled to and what the tenant can do to cure (remedy or fix) the problem described in the notice.

a. Failure to pay rent

If the notice is for a failure to pay rent, the tenant will have three days to pay the rent owed. If the tenant does not pay the rent within three days, the tenancy may end (NMSA § 47-8-33(D)). Then the landlord may go to court to evict the tenant. This type of notice may be hand delivered or mailed to the tenant or posted (NMSA § 47-8-13(D)).

b. Seven-day notice of lease violation

If the notice is for a failure to live up to obligations under the rental agreement, failure to follow the landlord's rules and regulations, or for failure to perform duties the law requires of tenants, the landlord must give a seven-day notice of the problem (NMSA § 47-8-33(A)). The notice must clearly set out the problem (including dates and specific facts), so the tenant can have the chance to cure (fix) the problem. The seven-day notice of violation must be given within thirty days after the problem occurs or the landlord learns of it (NMSA § 47-8-33(C)).

If, for example, the landlord claims the tenant has a junk car on the property, and the rules prohibit inoperable vehicles, the tenant may get a notice of this violation. The tenant will have seven days from getting the notice to either repair the car or move it. If a tenant does not fix the problem within the seven days, the tenancy will end and the landlord can then go to court for an eviction. The landlord will have to prove that the tenant violated the lease and that the seven-day notice was properly given. The tenant would need to prove that he or she did not violate the lease, or that the seven- day notice was inadequate, or that the problem was cured.

If the tenant does cure the problem, the tenancy will not end. But, if there are any other problems within six months after the first notice, the landlord can give a second seven-day notice. After the second notice, the tenant does not have the right to fix the problem, and after seven days the tenancy will end (NMSA § 47-8-33(B)). If there are no problems for six months after the first notice, then the next notice the landlord gives the tenant is treated as a new first notice. The tenant then has the right to fix the problem and stay in the rental unit (NMSA § 47-8- 33(B)).

Remember, the seven-day notice is for *material* (important) failures to live up to the tenant obligations. If the tenant feels that the problems are minor and the landlord is simply sending the notices to harass the tenant, the tenant should seek legal advice.

A seven-day notice must be either delivered to the tenant in person or mailed to the tenant. If the notice is posted, it must also be mailed to the tenant in order to be effective. However, if the notice is posted, the seven days running will start on the date of posting, not the date the tenant receives the notice in the mail (NMSA § 47-8-13(D)).

c. Three-day notice of substantial violation

If the landlord claims that the tenant, or someone living with or visiting the tenant, has done something that would be considered a serious crime (a substantial violation), the landlord can end the tenancy with a three-day notice of substantial violation (NMSA § 47-8-33(I)). With this kind of notice, the tenant has no right to cure the problem (for example, by telling the landlord that it will never happen again). If the tenant receives this type of notice, it is very important to get legal advice immediately.

A three-day notice of substantial violation must be hand delivered to the tenant or mailed to the tenant. As with a seven-day notice, if the notice is posted it

must also be mailed. The date of posting, not the date the mail is received, will be the date that the time in the notice starts running (NMSA § 47-8-13(D)). Once the three days are up, the landlord can file an eviction action in court to get possession of the rental unit.

There are similar issues presented by such violations in public housing. Ordinarily, a public housing tenant is entitled to a grievance hearing before the housing authority may seek to evict the public housing tenant. However, evictions for criminal activity that is drug-related or threatens the safety of other tenants or housing authority employees may be exempt from the grievance procedure (24 Code of Federal Regulations 966.51). In those cases, the housing authority may go directly to the local court process to evict. Check with HUD or an attorney to determine whether the tenant housing authority is exempt from the grievance procedure in those cases.

9. Notice of termination generally

In general, a landlord may terminate a tenancy without giving a reason using a thirty-day notice in a month-to-month tenancy (NMSA § 47-8-37(B)), or a seven-day notice in a week-to-week tenancy (NMSA § 47-8-37(A)). (Exceptions are made for rental agreements in mobile home parks, fixed-term leases, and some types of low-income housing.) If the tenant has a month-to-month tenancy, the landlord must give the tenant notice of termination at least thirty days before the beginning of the next full month (NMSA § 47-8-37(B)). In a fixed-term lease, the landlord does not have to give notice of termination, unless the lease provides that it will automatically renew unless terminated. Leases often will state that the landlord or the tenant must give a thirty-day notice if the lease will not be renewed.

In the case of mobile home parks, if there is a written lease, a notice of termination must be *for cause* (NMSA § 47-10-5). This means a mobile home space rental agreement cannot be terminated just because the initial lease term has ended or because it is a month-to-month tenancy.

Subsidized housing tenants may have additional rights. For example, tenants of public housing, project-based Section 8 housing, and Low Income Housing Tax Credit housing are entitled to remain in their homes as long as the tenant remains eligible for the program and as long as the landlord continues to receive the government subsidy, and sometimes longer. This rule does not apply to tenants with Section 8 housing choice vouchers. With some exceptions, private landlords who rent to tenants with Section 8 vouchers usually may terminate a tenancy at the end of the lease term and with proper written notice. See Chapter 14 of this guide for more information on the rights of tenants in subsidized housing.

Notices of termination must be hand delivered or mailed to the tenant. If the notice is posted, it must also be mailed. However, the time in the notice begins when the notice is posted, not when the mailed notice is received by the tenant (NMSA § 47-8-13(D)).

There are times when a landlord is upset with a tenant because the tenant has exercised certain rights, and the landlord will send the tenant a termination notice. This type of landlord action may be what the law calls *retaliation*. Such actions are illegal, and there are specific provisions of the law protecting tenants against retaliation (NMSA § 47-8-39). (See "Retaliatory Eviction" in Chapter 9 of this guide).

10. When the time on notices runs out

Because notices are important in creating a landlord's right to terminate a rental agreement, it is crucial to know when the time in a notice starts and ends. As we have seen, the time required for a notice begins running when it is delivered or mailed to the tenant (NMSA § 47-8-13(C)(3)). Most landlords will post the notices, e.g., tape it to the tenant's door. Remember, even when the posted notice is also mailed, it is the date when notice was posted that starts the time running (NMSA § 47-8-13(D)). If the last day of a notice falls on a weekend or a federal

holiday, its effective ending date will be the next day that is not a weekend or a holiday (NMSA § 47-8-33(H)).

For example, if a three-day notice for nonpayment of rent is posted on the tenant's door on a Thursday, the third day for paying the rent would be Sunday. Since Sunday is a weekend, the tenant has until Monday to pay the rent. The landlord could not file a lawsuit to evict the tenant until Tuesday.

11. Eviction

In any situation where the landlord has terminated the tenancy, the tenant can voluntarily move out, or stay in the rental unit and wait to see if the court will order him or her to move out. If the tenant does not move out voluntarily, the next step will be the court action for eviction. A landlord is not allowed to remove a tenant from a rental unit without getting an eviction order from a judge, unless the tenant has abandoned the unit (NMSA § 47-8- 36(A)). Sometimes, landlords try to force a tenant to leave without going to court, but this type of self-enforcement is illegal. (See Chapter 9 of this guide on "Lock-outs").

Court actions for eviction are serious lawsuits, and a tenant who does not wish to move should seek legal advice if the landlord has terminated the tenancy. The tenant should also review the section in this guide about "Evictions" in Chapter 9.

B. Landlord obligations and responsibilities

The responsibilities in a landlord-tenant relationship are not just the tenant's. Landlords have very real duties, which tenants have rights to enforce. The landlord's most important duty is to maintain the property as a safe, decent, and healthy place for the tenant and his or her family to live.

1. Basic responsibilities

A landlord must do at least the following things:

- Make repairs and do whatever is required to put and keep the property in a safe condition (NMSA § 47-8-20(A)(2))
- Maintain in good working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances supplied, or required to be supplied, by the landlord (NMSA § 47-8-20(A)(4))
- Provide and maintain containers for ashes, garbage, rubbish or other waste, and to arrange for their removal (NMSA § 47-8-20(A)(5))
- Supply running water and a reasonable amount of hot water at all times (NMSA § 47-8-20(A)(6)), unless the tenant is responsible for the water bill
- Supply heat, unless this is under the tenant's exclusive control (for example, where the rental agreement states that the tenant is responsible to contract for and pay for gas and electrical utilities) (NMSA § 47-8-20(A)(6))

2. Local housing codes

In addition to the basic landlord responsibilities set out above, local housing codes also impose duties on landlords that tenants may enforce. For example, in Albuquerque the city housing code requires landlords to ensure that:

- Public or shared areas are in a clean, sanitary and safe condition (Albuquerque Code of Ordinances § 14-3-5-11(B))
- Insect and rodent infestations are prevented (where such infestations occur, the landlord is responsible for extermination, unless the tenant is the cause of the infestation); the landlord is always responsible for extermination when an infestation is caused by the landlord's poor maintenance, or is in the common areas of an apartment building (ACO § 14-3-4-2(N)
- General dilapidation is prevented by regular maintenance (ACO § 14-3-4-2(L))
- The foundation, floors, walls, ceilings and roof are reasonably weather tight, in good repair (ACO §14-3-4-8(A)) and capable of affording privacy to the tenants (ACO § 14-3-2-3(G))
- The windows and doors are reasonably weather tight and are kept in sound working condition (ACO § 14-3-4-8(A))
- Stairs and porches are safe to use and capable of supporting the load that normal use requires (ACO § 14-3-4-3(J))

- Bathroom and toilet compartment floor surfaces are reasonably resistant to water absorption and capable of being kept clean (ACO § 14-3-2-3(D))
- Any appliances or fixtures supplied by the landlord (such as a stove, refrigerator, or hot water heater) are in safe working condition (ACO § 14-3-3-2)

Under the Albuquerque Municipal Code, the land- lord must also provide the tenant with:

- A properly vented heater (capable of keeping the dwelling heated to 70 degrees) (ACO § 14-3-3-2)
- An adequate toilet, sink and bathtub (or shower) (ACO § 14-3-2-3(B))
- An adequate (non-absorbent) kitchen sink (ACO § 14-3-2-3(C)(2))
- Hot (110 degrees) and cold running water to appropriate plumbing fixtures (ACO § 14-3-2- 3(C)(1))
- Working windows or other ventilating equipment (ACO § 14-3-3-2(A)(3))
- Electrical outlets and lighting fixtures (ACO § 14- 3-3-2(A)(2)(B))
- Adequate sewage disposal connections (ACO § 14-3-4-2(M))

Most cities and towns have laws setting housing standards. The tenant should check to see what the local code requires, because the landlord will be required to maintain the property up to that standard.

3. Repairs

When there is a problem with any of the things a landlord is required to maintain, the tenant has the right to request that necessary repairs be made. Sometimes, a simple request will do the trick. However, it occasionally happens that the landlord will ignore the tenant requests, and the tenant will need to do more. *Requests for repairs should be made in writing and a copy kept.* If the landlord refuses to make necessary repairs, the tenant will have to think very seriously about enforcing the tenant rights to have repairs done. (See Chapter 8 of this guide on "What to do when repairs are needed.")

4. Written rental agreement

The law requires landlords to give the tenant a written contract containing the rental agreement (NMSA § 47-8-20(G)). Unfortunately, some landlords do not live up to this requirement.

As we have stated earlier in this guide, the tenant should insist on a written agreement when moving in. If the landlord won't give the tenant a written agreement, the tenant should think seriously about looking for another place. If the tenant does not have a written agreement with the landlord and there is a dispute with the landlord, the tenant should seek legal advice immediately.

5. Quiet enjoyment

Quiet enjoyment means a lot more than limited noise. It means that when a tenant rents property, the tenant has a right to reasonably use the property. While the tenant must give the landlord access to the rental unit for certain purposes, the landlord has no right to interfere with the tenant's privacy by entering the rental unit at will (see Chapter 7 of this guide on "Allowing access to the rental unit") (NMSA § 47-8- 24(F)). The landlord may not lock the tenant out of the rental unit (NMSA § 47-8-36(A)) (see Chapter 9 on "Lock-outs").

The landlord may also not make rules and regulations that are unreasonable and that unreasonably limit the tenant's use of the rental property (see Chapter 7 of this guide on "Complying with the rental agreement and the landlord's rules") (NMSA § 47-8-23).

Chapter 8

WHAT TO DO WHEN REPAIRS ARE NEEDED

A. Types of repairs

There are three kinds of repairs that may be needed at a rental unit:

1. Those required by something the tenant caused to happen (such as accidentally breaking a lamp or a window)

2. Those required by normal wear and tear (such as a leaky faucet or a stopped-up drain)

3. Those involving the landlord's obligation to adequately maintain the property (such as faulty plumbing or electrical wiring problems)

The rights and obligations of the tenant are different for each type of repair.

1. Tenant-caused damage

Accidents will happen. If something breaks as a result of a tenant's negligence, or something goes wrong that is part of the tenant's responsibilities, the tenant will probably have to pay for the repairs. It is still a good idea to notify the landlord, because many landlords insist on controlling the repairs around their property. Often, lease agreements require notifying the landlord before doing any repairs. Also, if there is a dispute later on over whether a particular repair was needed because of the tenant's negligence or was the landlord's responsibility, the tenant will want a record of what happened. If the tenant does a repair with the landlord's permission, the landlord will later have a hard time saying that the tenant had no business doing it.

2. Wear and tear repairs

Remember, the cost of wear and tear is the landlord's responsibility. If something needs repair simply because it is old or worn, the landlord should make the repair (NMSA § 47-8-20(A)(2)). Once again, the tenant should notify the landlord of any repairs needed by wear and tear (preferably in writing). This will both provide the tenant with evidence that the landlord was notified that something needed fixing and provide a record of wear and tear damage for the tenant to use if the landlord later claims the right to deduct such damage from a security or damage deposit.

Usually these kinds of repairs can be handled by agreement with the landlord. Either the tenant will get it fixed and give the bill to the landlord, or the landlord will have it fixed. Sometimes, the tenant will not care about the repair but will want the landlord to know that something is no longer working.

3. Material repairs

A *material* (important) repair is one of the basic obligations of a landlord. For example, bad plumbing or a leaky roof is something a landlord must fix and fix promptly, because they go to the health and safety of the rented property. Landlords' failures to make material repairs produce many of the conflicts that bring landlords and tenants into court. The next section will deal with the situation where important repairs are needed but are not done by the landlord within seven days (NMSA § 47-8-27.1(A)(1)).

B. When the tenant requests repairs

1. Making a record of needed repairs

Whenever a major repair is needed, the tenant should notify the landlord or the landlord's agent in writing (NMSA § 47-8-27.1(A)(1)). Sometimes, a tenant will think that a repair is so obviously needed (as in the case of a leaky roof or bad plumbing) that it isn't necessary to put the request in writing. However, these are just the kinds of repairs that it is most important to request in writing, because if the repairs aren't made the tenant will want to take drastic action. The written notice is necessary before the tenant can terminate the lease, seek to use the remedy of rent abatement (discussed later in this chapter), or even defend against an eviction action for non-payment of rent.

When the tenant sends a repair notice to the landlord, it should say what is wrong, and ask the landlord to fix it; a sample letter demanding repairs is in the Appendix ("Resident's 7-day notice of abatement") (NMSA § 47-8-27.1(A)(1)). If the landlord has an agent managing the property, the tenant should send the notice to the agent, too. The tenant should always keep a copy of the letter or of any written note to the landlord or the landlord's manager. To prove that the landlord received the notice, it is a good idea to send it by certified mail, return receipt requested, and by regular mail. You can also hand deliver it to the landlord or the manager in front of a witness who can testify in court if necessary.

As part of the tenant's record, it is a good idea to take pictures of the problem, so the tenant will have evidence if he or she has to go to court as a result of the landlord's failure to make repairs. The tenant should also show the problem to witnesses, who will be able to support the tenant's argument that repairs were needed. It is best, however, to get an official report from an agency whose job it is to enforce housing and building codes.

2. Health and safety violations

If the landlord does not make a reasonable attempt to correct a new problem within seven days, or if the landlord has ignored the tenant's requests to have a long-term problem corrected, the tenant should write or call the local housing authority or local code enforcement office. The tenant should send the office copies of any correspondence with the landlord about the repair problem and any notices the tenant has sent demanding repairs. The tenant has the right to contact code enforcement agencies, and if the landlord tries to evict the tenant for doing so, the landlord is acting illegally (NMSA § 47-8-39(A)(1)). (See Chapter 9 in this guide on "Retaliatory evictions").

In Albuquerque and many other cities, a tenant complaint might cause an inspector from the code enforcement office to come to the apartment or house and make an official record of the violations found. The official report will be made and filed with the code enforcement agency. The landlord will generally be ordered to make repairs. It is important to notify code enforcement if the landlord fails to comply with the order. The tenant can get a copy of the report as evidence, and the tenant will be able to use the inspector as a witness in court if that becomes necessary.

Code Enforcement Offices

Below is a listing of Code Enforcement contacts. Due to limited resources, some of the below offices do NOT respond to tenants' issues, but they will direct you to the appropriate office/agency that may be able to assist you.

Albuquerque Code Enforcement Division
311 or 505/768-2000; 505/924-3850
Bernalillo County Planning & Development Services
505/314-0350; 505/314-0351
Bernalillo County Health Protection Office
505/314-0310

Bernalillo County Natural Resources Office
505/314-0375
City of Carlsbad Code Enforcement
575/885-1185, Extensions 2238 & 2239
City of Clovis Code Enforcement
575/763-9461 & 575/763-9609
City of Deming Code Enforcement
575/546-3011
Dona Ana County Code Enforcement
575/526-0795, then Dial 6
Eddy County Code Enforcement
575/887-9511 (Administrative Offices), then Dial 1
City of Gallup Code Enforcement
505/863-1240
Grant County Code Enforcement (NO)
575/574-0065; 575/313-7722
City of Hobbs Code Enforcement
575/391-8158
Las Cruces Code Enforcement (NO)
575/525-4100
City of Las Vegas Code Enforcement
505/426-3272 or 505/454-1401, Extension 3272
City of Lordsburg Code Enforcement
575/542-3421
Los Lunas Code Enforcement Community Development (Building Inspector)
505/839-3842
Luna County Planning Department (Code Enforcement)
575/543-6620
Rio Rancho Code Enforcement Division of the Police Department
505/891-5862
City of Roswell Code Enforcement
575/624-6700, Extension 280; 575/637-6280
City of Santa Fe Code Enforcement
505/955-6560
Santa Fe County Code Enforcement
505/986-6225
Town of Silver City Code Enforcement
575/534-6344; 575-534-6367
County of Taos Code Enforcement
575/737-6452; 575/737-6440
Town of Taos Code Enforcement
575/751-2016
Valencia County Code Enforcement
505/866-2053

C. Tenant remedies

If a tenant has notified the landlord of a problem, and the landlord does nothing, the tenant will need to consider the remedies allowed by law.

1. Damages and injunctive relief

A tenant may sue the landlord for money damages for any failure, or *breach,* of the landlord in performing his duties under the law or the rental agreement. Once the tenant has given the landlord notice of the breach and the landlord has not corrected the problem, the tenant has the right to go to court seeking damages (NMSA § 47-8-27.1(C)). The tenant can raise a damage claim even when the tenant is being sued for eviction (NMSA § 47-8-30(A)). (See Chapter 16 of this guide on "Going to Court"). In addition, the tenant may sue for damages even in addition to any of the other remedies available (NMSA § 47-8-27.1(C)).

The tenant may also go to court to get an order forcing the landlord to make repairs or do any other act necessary to make up for the breach. This type of order is called *injunctive relief.* It is like a restraining order signed by a judge (NMSA § 47-8-27.1(C)). If the landlord doesn't follow the order, he or she can be held in contempt of the court.

2. Termination of the tenancy

If the problem needing repair poses a serious threat to the tenant's health or safety, the tenant may choose to move out. If the tenant chooses to do this, it will be necessary to give the landlord a written notice. The written notice must state the problem and make a demand that the landlord correct the problem within seven days. It must also state if the problem is not corrected within seven days, the tenant will terminate the tenancy and move out. If the landlord does not make a reasonable attempt to correct the problem within the seven-day notice period, the tenant can consider the tenancy over and move out. The tenant is then entitled to the return of all deposits and prepaid rent (NMSA § 47-8-27.1(A)(1)).

If the landlord does make a reasonable attempt to cure the problem within seven days, the tenant is not allowed to terminate the tenancy (NMSA § 47-8-27.1(A)(1)). However, the tenant may still be able to claim damages for any losses the tenant suffered from the time the tenant first notified the landlord of the need for repairs and/or get injunctive relief forcing the landlord to finish the repairs (NMSA § 47-8- 27.1(C)).

3. Rent abatement

When a landlord has failed to meet obligations under the law, and particularly when the landlord fails to make important needed repairs, the tenant gets less from the rental agreement than he or she is paying rent for. The law has created a remedy to correct this situation, and it is called *abatement of rent*. Think of abatement as withholding a part of the tenant's rent because of the reduced value of the rental unit due to the landlord's failure to make repairs.

To use the remedy of abatement, the tenant must be very careful. The tenant must give the landlord a *written notice* of the conditions that need to be corrected (NMSA § 47-8-27.2(A)). These conditions must involve the landlord's basic duties to maintain the property and to keep the property up to the standards of the local building and housing codes. The notice does not need to say what the tenant will do if the repairs are not made, but it would be wise to state that the tenant intends to abate rent if the repairs are not done. Alternatively, if the tenant plans to move out if repairs are not made, the tenant should give notice of termination as set forth in the previous section of this guide. A tenant may terminate the rental agreement or use the abatement remedy, but not both at the same time.

Once the notice has been given, if the landlord does not make the repairs within seven days, the tenant may abate rent (NMSA § 47-8-27.2(A)).
There are several things to think about when calculating the amount the tenant will abate. If the problem is so serious that the tenant cannot live in the rental unit, the tenant may abate 100% of the rent for each day the tenant is not living in the rental unit because of the needed repair (NMSA § 47-8-27.2(A)(2)). If the tenant continues to live in the rental unit while abating rent, the tenant may deduct 1/3 of the daily rent for each day the repairs are not made (NMSA § 47-8-27.2(A)(1)).

Example

The roof in the kitchen leaks. The tenant gave the landlord a written 7-day notice on July 20 and the landlord has not repaired the problem. The tenant pays $450 rent per month. The tenant decides to abate a portion of the August rent.

✓ Monthly rent $ 450 (A)

✓ # days in month 31 (B)

✓ Divide (A) by (B) $ 14.51 (C) [daily rent]

✓ # days since notice given to landlord 10 (D)

✓ Divide (C) by 3 $ 4.84 (E)

✓ Multiply (D) x (E) $ 48.40 (F) Abatement

✓ Subtract (F) from (A) $450 - 48.40 = $401.60

In August, the tenant will take $48.40 out of the rent and pay $401.60. The tenant has reduced the rent payment by one-third of the daily rent for the number of days that passed since giving the notice to the landlord.

If the landlord still hasn't fixed the roof by September 1, the tenant may abate one-third of the rent for the entire month of August.

Rent Abatement Worksheet

Find your daily rent

✓ Monthly rent $_____ (A)

✓ Number days in month _____ (B)

✓ Divide (A) by (B) $_____ (C) [daily rent]

Unable to live in your house or apartment?

✓ Number of days unable to live in home _____ (D)

✓ Multiply (C) x (D) $_____ (E)

(E) is the amount to deduct from your next rental payment.

OR

Able to live in your house or apartment?

✓ Number of days since notice given to landlord _____ (F)

✓ Divide (C) by 3 $_____ (G)

✓ Multiply (F) x (G) $_____ (H)

(H) is the amount to deduct from your next rental payment.

Remember, a tenant usually pays rent in advance of the rental period. This is very important in dealing with abatement. Once the tenant gives the landlord a notice and the landlord fails to repair, the tenant will start figuring the abatement deduction. When it comes time to pay rent for the next month, make the rent payment after deducting the amount of the abated rent from the last month. It is not wise to estimate how long it will take for the landlord to make the repairs and abate the rent prospectively. If the landlord has committed to have the repairs done by a certain day, the tenant may figure the abatement amount up to that day and adjust the rent payment for the abatement. If the tenant does not know when the repairs will be done, the tenant will risk making

too large a deduction if the landlord then promptly makes the repairs. The best course to follow is to deduct the amount of rent that can be abated based on the prior month.

This is all somewhat complicated, but the tenant should remember there are risks involved when withholding the rent. If the landlord moves to evict the tenant for non-payment because the tenant abated rent, the tenant will need to explain to the judge very clearly why and how the rent abatement was calculated. If the judge sees that the tenant has acted reasonably and carefully and is not just using abatement as an excuse not to pay rent, there is a better chance that the judge will find that the tenant paid the right amount of rent.

Even if the judge finds that the tenant has not properly abated rent, if the tenant has acted carefully he or she will be in a better position to avoid eviction. The law allows a tenant who has incorrectly abated rent to pay the amount deducted within three days of an order for eviction. If the rent is paid within that time, the eviction order will be set aside. It is therefore wise to hold onto the abated rent and not spend it until the matter has been finally settled.

D. Limitations on the landlord's duty to make repairs, and the tenant's remedies

Remember, the landlord does not have any duty to repair damage caused by the tenant's negligence or by the negligence of the tenant's family members or guests. None of the remedies discussed here cover that situation (NMSA § 47-8-27.1(B)).

In addition, if the repairs needed in the rental unit are the result of circumstances beyond the landlord's control (for example, a flood or a fire), the tenant may not get damages or injunctive relief. The tenant may, however, abate rent or terminate the rental agreement as set out in the chapters on termination and abatement (NMSA § 47-8-27.1(B)).

Chapter 9

MOVING OUT—BY CHOICE OR BY COURT-ORDERED EVICTION

Landlord-tenant arrangements are temporary. A rental can last one week or ten years. Most renters will move out at some point. Sometimes the decision to move out is the result of the landlord trying to evict the tenant. Sometimes the tenant wants a larger apartment or one closer to a job. This section of the guide will discuss both situations.

A. Voluntary cancellations of leases and rental agreements

When a tenant decides to move out, there are several things to consider. First, the tenant will need to find out the proper notice to give the landlord.

Leases that have no specific termination date (month-to-month or week-to-week rental agreements) continue automatically until they are ended by a written notice from either the landlord or the tenant, given thirty days or seven days in advance of the termination date of the lease (NMSA § 47-8-37(B)and NMSA § 47-8-37(A)). The landlord does not need to give any reason for ending the agreement but must give the tenant written notice in order make the tenant move out. Similarly, the tenant can leave for any reason, but the tenant must give the landlord proper written notice, too. If the tenant does not give the landlord advance notice, the tenant may owe the landlord rent for some time after moving out (NMSA § 47-8-35).

1. How much notice do I have to give?

The length of the notice required depends on how often the tenant pays rent. In a week-to-week tenancy the notice must be given seven days in advance (NMSA § 47-8-37(A)). A thirty-day notice is required in a month-to-month tenancy (NMSA § 7-8-37(B)). Remember, however, the notice periods mean seven or thirty days *before the next rent payment is due,* so if the landlord gives a notice on May 10 to a tenant who pays rent on the first of the month, the notice will not be effective until the end of June. Notice given on the day rent is due often is not sufficient because a full thirty days will not pass before the first day of the next rental period. Notice should generally be given on the day before rent is due, except for February which would require notice by January 28 or 29.

For fixed-term leases—for example, a lease running from September 1, 2010 to August 31, 2011—there is usually no notice requirement because the lease simply ends on August 31, 2011. However, notice is still customarily given on such leases so that there will be no question of automatic renewal. A provision for automatic renewal may be contained in the lease, and the tenant should check for such a clause.

2. Failure to give proper notice

The tenant will be liable for damages the landlord suffers because of a failure to give proper notice. In a monthly agreement, the tenant can be liable for the rent for the next rental period (NMSA § 47-8-35). This amount can be deducted from the deposit (NMSA § 47- 8-18(C)), or the landlord can take the tenant to court for the damages. However, the landlord is required to make an honest effort to reduce damages by trying to get a new tenant. After the apartment is rented, the landlord cannot collect double rent. At that point, the remaining deposit, minus the rent for the days when the place was vacant,

must be returned to the tenant. Fixed-term leases pose a problem for the tenant who wants to move out early. Regardless of the notice given, the tenant may be liable for rent for the full term, and this can be a lot of money. In such a situation, the landlord has the duty to reduce damages by trying to rent the place as soon as possible, but the tenant will be liable for the landlord's costs in advertising and showing the property as well as any other costs incurred in getting a new tenant.

Some leases allow the tenant to move out without the full notice being given if the move is required by military transfer or an involuntary job transfer.

3. Subletting

If the tenant with a fixed-term lease wants to move out early, the tenant can try to arrange a sublet (or *sublease*) agreement to minimize the risk of being held liable for damages. A sublet is when the original tenant moves out and rents the apartment to someone else. The landlord's permission is required only when the lease expressly forbids subleasing. However, it is a good idea to advise the landlord about the plan to sublet, to avoid unnecessary problems for both the tenant and the subtenant. Unless the landlord has agreed, the tenant will be responsible for any unpaid rent or damage caused by the subtenant.

The landlord will be much more likely to allow the tenant to break the lease if the tenant has found a suitable tenant to take his or her place. If this is done without the landlord's knowledge or consent, the new tenant may be evicted when the landlord finds out. Even when consent isn't required, the new tenant may face a lot of unnecessary hassles if the landlord hasn't been informed in advance about the new arrangement.

A sublet agreement should be in writing, signed by both the new tenant and the landlord. A sublet includes the risk that the original tenant will still be responsible to the landlord if the new tenant breaches the lease or moves out early. For these reasons, the tenant who wants to sublet would be well advised to obtain a security deposit from the new tenant, put together a list of damages to the property at the time of the sublet, and arrange to have all utilities put in the new tenant's name.

In some cases, the landlord will agree to a *release of tenant obligations.* Such a release may occur instead of a sublet, where the landlord simply accepts the new tenant and enters a new lease. In other situations, the landlord may agree to release the first tenant by canceling the lease, but these situations are rare. In any event, any such agreement for a release should be in writing and signed by the landlord.

B. Eviction

If a tenant fails to move out after giving or receiving a proper notice ending the tenancy, the landlord may evict the tenant (NMSA § 47-8-37(C)). The landlord may go to court to evict any *holdover* tenant. This includes:

- a tenant who has given notice canceling the lease but who stays in the apartment
- a tenant who has received a proper seven-day notice ending a week-to-week tenancy
- a tenant who has received a proper thirty-day notice ending a month-to-month tenancy
- a tenant who has given or received the required notice ending a fixed-term lease

If the landlord does not agree to let the tenant stay on, eviction can follow.

If the landlord wants to evict a tenant for non-payment of rent, for a breach of the rental agreement, for a substantial violation, or for some other breach of the tenant's obligation, the landlord must give the required notice of termination, let the time in the notice run, and then file in court for eviction. The chapters of this guide entitled "Paying rent" and

"Tenant obligations and responsibilities" set out lawful reasons for termination by the landlord and the types of notices required in each situation.

Once the landlord files the eviction action, the tenant will be served with a summons and a copy of the landlord's complaint (NMSA § 47-8-43(A)). The summons will tell the tenant the court date for a hearing on the eviction action (which, by law, is supposed to be between seven and ten business days after the summons is served). If the tenant has any questions about the eviction, the tenant should seek legal advice. There may be defenses to the eviction in court, or the tenant may have his or her own claims to raise in a court action by counterclaim. If the tenant does nothing and does not show up to court, however, he or she will be in default and will lose the case.

If the tenant has no argument against the eviction and is able to move out by the end of the notice period, it is often a good idea to move and avoid going to court. Many landlords do not want to rent to tenants who have been evicted in the past. Even if the court hearing has already been scheduled, moving out before the court date may persuade the landlord to have the case dismissed. If the landlord goes to court after the tenant has moved, the tenant may still be liable for back rent, damages, and court costs and attorney fees. If the tenant is not absolutely sure that the landlord has dismissed the case, the tenant should go to court to tell his or her side of the story and try to minimize any damages that might be awarded.

C. Illegal evictions

Like any lawsuit, an eviction is usually the result of a dispute people have not been able to work out. One party sues, and the other party defends. However, there are occasions when one party brings a lawsuit for improper reasons. Sometimes one party tries to use illegal methods to get the result that should be sought in court. This section talks about examples of both types of illegal evictions.

1. Retaliatory evictions

If the tenant has requested repairs, asked for a code inspector to examine some problem affecting health and safety at the rental property, abated rent, or otherwise properly insisted that the landlord fulfill his or her legal obligations to the tenant, the landlord may try to get the tenant evicted. The same thing may happen if the landlord learns the tenant is involved in a tenants' association or has filed a housing discrimination complaint against the landlord. It sometimes happens that a tenant has won a previous eviction action or testified for another tenant in a case against the landlord, and the landlord decides to punish the tenant by filing an eviction action. *If any of these things happened within six months of an eviction action being filed or of any other landlord action taken against the tenant, the landlord may be acting illegally* (NMSA § 47-8-39).

A landlord may not, for any of the reasons set out above, threaten to evict the tenant, try to evict the tenant, increase the tenant's rent, or deny the tenant services at the rental unit or around the property (NMSA § 47-8-39(A)). Evictions and other actions based on these reasons are called *retaliation* and they are illegal. If the tenant is being victimized by retaliation, the tenant should seek legal advice. Retaliation may be a defense to an eviction action and it may allow the tenant to get damages and a civil penalty against the landlord (NMSA § 47-8-39(B)).

Remember, however, that the landlord may still take actions against the tenant if the tenant has violated the lease or the law. This is true even if the tenant thinks the real reason the landlord is acting is because of retaliation. Also, the landlord may raise the rent if it is part of a general rental increase in the apartment building that does not target only that tenant (NMSA § 47-8-39(C)).

Retaliation is often difficult to prove, so the tenant should be sure to have any evidence of the landlord's unlawful motive ready to present in court. If the

landlord or the apartment manager has accused the tenant of being a trouble-maker or said other similar things, write them down and note the date the statement was made. If there are witnesses who heard the statements, or witnesses who know about the tenant's efforts to protect his or her rights, write down and keep their names, addresses, and phone numbers.

2. Lock-outs

If the landlord has not followed the court eviction procedures, it is illegal for him or her to attempt to force the tenant out of the rental unit by denying the tenant access to the apartment or house. The types of actions that are illegal include the following:

- Lying about the existence of a court order or committing any other kind of fraud to make the tenant leave (NMSA § 47-8-36(A)(1))
- Disabling or changing the locks on the apartment or house (NMSA § 47-8-36(A)(2))
- Blocking the entrance to the apartment or the house (NMSA § 47-8-36(A)(3))
- Cutting off or interrupting utility service to the dwelling (NMSA § 47-8-36(A)(4)) (However, the landlord is not responsible for making payments to prevent utility shutoffs when the tenant is responsible for paying for the utility and does not).
- Removing the tenant's personal property from the apartment or house (NMSA § 47-8-36(A)(5))
- Removing or disabling appliances or fixtures (except to make necessary repairs) (NMSA § 47- 8-36(A)(6))
- Doing anything to intentionally deprive the tenant of access to the dwelling or make the dwelling unfit to live in (NMSA § 47-8-36(A)(7))

If a landlord takes any of these actions, a tenant should immediately seek legal advice. The tenant has the right to abate rent for the time the tenant is locked out (NMSA § 47-8-36(C)(1)). The tenant may also bring a court action to compel the landlord to allow the tenant to get back in (NMSA § 47-8-36(C) (3)), and if successful the tenant may be awarded damages and a civil penalty in court (NMSA § 47-8- 36(C)(2)).

Chapter 10

THE TENANT'S PROPERTY

There are two situations where a landlord might try to hold a tenant's personal property, and these situations raise both practical and legal problems for the tenant. The first situation is where the landlord claims a *landlord's lien* on the tenant's property as security for past due rent. The second situation is where the landlord believes the tenant has abandoned the rental unit and left personal property behind. This section of the guide will discuss these two situations.

A. The landlord's lien

At one time, landlords were able to hold property as a way of either punishing a tenant or to extort disputed rent. In 1995, the legislature abolished the lien on tenant property for unpaid rent. Now, the landlord's lien is illegal (NMSA § 47-8-36.1(A)). A landlord may seize a tenant's property only by an order issued by a court (NMSA § 47-8-36(A)). (However, the landlord in a mobile home park can assert a lien and hold the tenant's mobile home—but not personal property—under certain conditions (NMSA § 47-10- 9(E)). See Chapter 12 on mobile homes.)

Most reputable landlords never used the landlord's lien even when it was legal, but the type of landlord who wants to seize a tenant's clothes, personal effects, kitchen utensils, and bedding might still try to do it. If a landlord is holding the tenant's property, the tenant should call the police or seek legal advice. The landlord has stolen the tenant's property. The landlord has committed *conversion,* and that may entitle the tenant to damages and even a civil penalty in court.

B. Abandoned property

It is very important that the tenant remove all personal property so that it cannot be sold or thrown away. Still, sometimes, a tenant will move out and leave property behind. In other cases, the tenant may have actually abandoned the rental unit, leaving personal property in it. In still other situations, a tenant may be lawfully evicted and not be able to remove all his or her personal property when the sheriff serves the eviction order. The law provides several options for the landlord and the tenant in these situations.

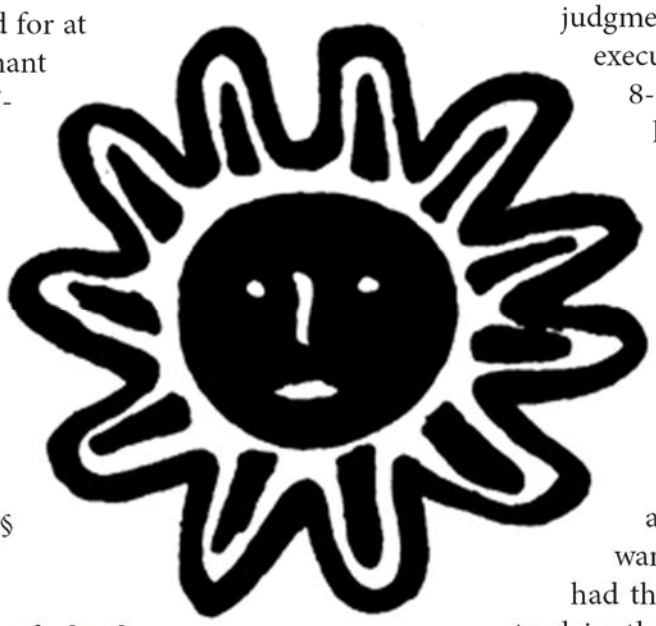
1. The tenant abandons the rental unit

If a tenant fails to give a landlord notice of an extended absence or is gone for seven or more days while behind in rent without telling the landlord, the landlord may consider the rental unit abandoned (NMSA § 47-8-3 and NMSA § 47-8-3(A)). In that situation, the landlord may enter the rental unit and put the tenant's property in storage (NMSA § 47-8-34.1(A)(1) and NMSA § 47-8-34(B)). The landlord must notify the tenant that the property is being stored (NMSA § 47-8-34.1(A)(2)) by mailing a notice to the tenant's last known address, or the best address the landlord has from the tenant (for example, the tenant's employer's address or some other address provided to the landlord in case of emergencies) (NMSA § 47-8-34.1(A)(3)). The notice will say that the landlord is storing the property and intends to dispose of it in thirty days unless the tenant claims it. The landlord must make arrangements for the tenant to get the property within that time (NMSA § 47-8- 34.1(A)(5)), but the

tenant may be liable for the cost of storage (NMSA § 47-8-34.1(G)).

2. The tenant moves out because the lease has ended

When a tenant has moved out, the landlord must hold all property left behind for at least fourteen days and give the tenant the chance to claim it (NMSA § 47-8-34.1(B)). In this situation, the landlord is not required to give any notice, so the tenant should check with the landlord no later than ten days after moving out to make sure that there is no property being stored. If there is, the tenant should claim the property, but the tenant may still have to pay for any storage charges (NMSA § 47-8-34.1(G)).



3. The tenant has been evicted

Once a tenant has been evicted by a court action, the landlord must hold any property left behind for only three days after the date the tenant is forced to move under the eviction order (NMSA § 47-8-34.1(C)). The three days start on the day the sheriff changes the locks on the door—*not* the day the landlord and tenant went to court. During those three days, the landlord must give the tenant reasonable opportunities to come to the property and move personal belongings.

If the tenant and the landlord can agree on a longer period to hold the property, the longer period will apply. Any such agreement should be in writing and signed by the landlord. After the three days, the landlord does not have to store the property (NMSA § 47-8-34.1(C)).

4. Disposition of the property

A landlord may not charge the tenant for anything other than reasonable costs of moving and storing the property. The landlord may not hold the property for security on a debt or judgment without getting a formal execution in court (NMSA § 47-8-34.1(H)). However, if the landlord has stored the property and allowed the tenant the required amount of time to claim it, the landlord may dispose of the property.

If the property is left behind after an eviction, the landlord can do anything with it he or she wants, so long as the tenant had three days after the eviction to claim the property (NMSA § 47-8-34.1(C)). In all other cases, the landlord's duties in disposing of the property depend on the value it has.

After the time for the tenant to claim the property has run, the landlord may dispose of the property. If the property is worth less than $100, the landlord may keep it, or sell it and keep the proceeds (NMSA § 47-8-34.1(D)). If it is worth more than $100, the landlord may sell it, but the tenant is entitled to any amount over the storage and sale costs (NMSA §47-8-34.1(E)(1)). If the property is worth more than $100, and the landlord wants to keep it, the landlord must determine its fair market value and pay the tenant any amount over the cost of storing the property (NMSA § 47-8-34.1(E)(2)).

Chapter 11

TENANTS IN SPECIAL SITUATIONS

In any housing arrangement problems can occur, and it is well beyond the scope of this guide to anticipate every problem the tenant might have. This section will try to point out a number of areas that affect certain types of tenants and their landlords.

A. Sale of the rental property

Normally, when the landlord sells the rental property, the tenant's rental agreement continues, and the new owner has to abide by the terms of the agreement and the law (NMSA § 47-8-21(A)). Sometimes, however, the new owner will want to change how the property is used or to renovate the property. In such a situation, tenants with month-to-month tenancies may find themselves receiving thirty-day termination notices, notices of rent increases, or a whole new set of landlord rules and regulations. As long as the tenant receives the proper notices, these changes are legal. Tenants with fixed-term leases have more protection, because the new owner must abide by the terms at least until the lease expires.

If there is a change in ownership, the tenant is entitled to a notice in writing that the property has changed hands. The notice must tell the tenant about any changes in where rent is to be paid and it must include the name, address, and phone number of the new owner and of any new manager of the property (NMSA § 47-8- 21(A)). The tenant should ask the new owner for proof of ownership of the property. After receiving the notice, the tenant should begin paying rent to the new owner. The new owner is responsible for any deposits that were made on the rental unit.

B. Utility problems

Where utilities are included in the rent, or where utility charges are billed to the tenant by the landlord, the tenant should deal with the landlord when utility problems occur. If the landlord cuts off or interrupts utilities in a dispute with the tenant, this is an illegal *lock-out* (NMSA § 47-8-36(A)(4)) and the tenant should seek legal advice. (See the section in Chapter 9 of this guide on "Lock-outs").

Where the tenant is responsible for utilities, and the utilities are billed directly to the tenant, the tenant will need to deal directly with the utility company. Problems with utility companies are common enough to be discussed in this guide.

If the resident, or tenant, can prove medical necessity, utility companies will frequently leave the utilities on, despite an inability to pay. This can include the need for refrigeration for medication such as insulin, or special needs for heat or air conditioning. Generally, the resident will have to provide the utility company with a signed statement from his or her treating doctor verifying the medical condition and the need for utility service. If the tenant is having trouble paying their utilities, they should also consider applying for assistance from LIHEAP at their local HSD office or on the HSD website. Some local charities, such as churches, will also help with utility bills.

Utilities such as electricity and gas, including the Public Service Company of New Mexico (PNM), are regulated by a state agency called the Public Regulation Commission. The PRC has a Consumer Complaint Line for utility customers at 1-888-427-5772 (toll free) or 505-827-4592. The website explaining the complaint process is at http://www.nmprc.state.nm.us/consumer-relations

Control of water service in New Mexico varies with the locality. Usually, the landlord pays for water. Sometimes a tenant finds water shut off because the landlord hasn't paid the bill. In Albuquerque, the Water Utility Authority allows a tenant in such a predicament to open an account in his or her own

name in order to keep the water on. The tenant must pay a deposit, and then is liable for paying for future water service (but not for the landlord's back bill). Remember, the law and most rental agreements make the landlord responsible for providing water (NMSA § 47-8-20(A) (6)), so a tenant who has to pay for water service is in a position to abate rent and seek damages in court from the landlord.

C. Making structural changes in a rental unit

Generally, tenants may not make structural changes to rental units (NMSA § 47-8-22(F)). For example, a tenant may not take down a wall to enlarge a room, widen a doorway, or add a porch. Similarly, a tenant should not make decorative changes (such as changing wallpaper, floor tile, or paint color) which the landlord may have to undo to re-rent the apartment. Also, improvements that attach to the structure and cannot be removed without damaging the structure (such as built- in bookcases) are considered fixtures, and they become the property of the landlord. If a tenant wants to make changes in the apartment or house, the tenant must get the landlord's consent. This consent should be in the form of a written agreement signed by the landlord. The agreement should clearly state whether the tenant may later remove the additions, and that the landlord will not charge the tenant to undo any changes.

Ordinarily, a tenant may not compel a landlord to consent to changes. However, there is an exception to this rule. If the tenant, or a member of the tenant's family, has a disability which requires a reasonable modification of the rental unit (such as a wheelchair ramp), the landlord must allow the tenant to make the modification (42 USC § 3604(F)(3)). The tenant may be required to pay for the modification, and the landlord may require the tenant to pay to remove the modification before moving out (but the landlord may not be unreasonable in insisting on the removal). If a landlord refuses to allow the tenant to make the necessary modifications, the landlord may have violated fair housing laws (see Chapter 13 of this guide).

D. Foreclosure of the Rental Property

Sometimes the landlord does not pay the mortgage on his property and the property gets foreclosed on. Under the Protecting Tenants at Foreclosure Act (PTFA), most tenants will have at least ninety (90) days to move out after a home is foreclosed on. The law covers all types of residential foreclosures as long as the tenant is a "bona fide" tenant. This means the tenant must be paying market rent for the rental. Most importantly under this law, if the tenant has a lease for a set term, he or she will be allowed to stay in the property until the lease ends. However, if the new owner intends to move into the property and live there himself, the lease can be terminated early with ninety days' notice. If the tenant has a month-to-month lease, the landlord must provide the tenant with ninety days' notice before the tenant is forced to move out. Tenants are still subject to the regular eviction process if they fail to pay their rent.

Tenants are often, but not always, named in the complaint as defendants. Tenants might not be listed by name, but instead as "Unknown Tenants," "Unknown Occupants" or "All Other Occupants." If you receive a foreclosure complaint saying your rental home is being foreclosed, you should file a written notice—called an *answer*—with the court, saying you are a tenant and attaching a copy of any written lease. Even if you are not named as a defendant, you should still notify the court in writing that you are a tenant. Attend any hearings scheduled by the court and ask the judge to make the bank honor your lease and the PTFA.

Your original landlord, however, is still your landlord until the District Court judge signs an order of foreclosure on the property. Until that order is signed, you are obligated by your lease. You must still pay rent to the landlord, and a court can evict you for nonpayment or for any other lease violation. Likewise, until the foreclosure order is signed, your original landlord must still make repairs, pay for any utilities the lease obligates him to pay, and perform any other lease obligations.

Unfortunately, landlords in foreclosure often stop making repairs or paying utilities. If you have any questions about whether to pay rent and whom to pay, hold the rent in a bank account, notify your landlord that you are doing so, and contact an attorney for legal advice.

Some banks foreclosing on properties will offer to pay tenants to move out of foreclosed properties. If you receive such an offer, get it in writing and contact an attorney if you need legal advice.

Chapter 12

MOBILE HOME PARKS

Some mobile home park residents are covered by just the Uniform Owner-Resident Relations Act and some are covered by the Mobile Home Park Act also. Anyone who is *renting* a mobile home is governed by the landlord-tenant laws set out in the rest of this guide.

However, if the tenant owns or is buying a mobile home and is renting a space in a mobile home park, the Mobile Home Park Act may apply to the rental agreement. The Mobile Home Park Act provides certain protections for mobile home owners whose agreements are covered under that Act. If the Mobile Home Act does not have a provision for a particular situation, the UORRA (landlord-tenant law) still applies.

A. What is a mobile home park?

The law defines a mobile home park as a parcel of land accommodating *twelve or more* occupied mobile homes, where a landlord rents spaces (NMSA § 47- 10-2(C)). If the park has fewer than twelve spaces, it is not considered a mobile home park, and regular landlord-tenant law applies to the tenants.

Where the Mobile Home Park Act does apply, it requires that all rental agreements be in writing (NMSA § 47-10-3(A)) and states that the landlord may only terminate the agreement for cause (NMSA § 47-10-5) after giving the tenant thirty days' notice (NMSA § 47-10-3(C), except for non-payment of rent (NMSA § 47-10-6). The tenant served with such a notice has thirty days after the end of the rental period in which the notice was served to move the mobile home (NMSA § 47-10-3(C)). If the tenant has a multi-section or doublewide mobile home, he or she will have sixty days to move the home (NMSA § 47-10-3(C)).

Rental agreements must contain the following information:

- The term of the tenancy
- The amount of the rent and the amount of any rent increases for the last two years
- The day rent is due
- The day when unpaid rent will be considered in default
- The rules and regulations of the park
- The zoning of the park
- The name and mailing address where the owner/ manager's decision can be appealed
- The name and mailing address of the owner
- All charges other than rent
- A statement of the right to request alternative dispute resolution of any disputes except rent, utility charges or public safety emergencies (NMSA § 47-10-14(A))

In a mobile home park, the landlord may not raise rent except after giving sixty days' written notice of a rental increase (NMSA § 47-10-19(A)). If a court finds that a landlord has violated this rule, the court can assess a penalty of up to $500 on the landlord.

The Mobile Home Park Act prohibits *closed parks*. This means that the owner cannot require tenants to purchase their mobile home from a particular seller and shall not require the tenant to sell their home

through the manager (NMSA § 47-10-11(A)). Changes in the rules and regulations of a park are permitted with sixty days' notice (NMSA § 47-10-15.1(A)). The management must give the residents thirty days to comment on the proposed changes in the rules (NMSA § 47-10-15.1(A)). Even if the rules are changed, existing pets must be permitted (NMSA § 47-10-15.1 (B)). Similarly, the management cannot require existing residents to make physical improvements under new rules (NMSA § 47-10- 15.1(C)). For example, the new rules might require a certain type of landscaping. Existing tenants would not have to change their existing landscaping to comply with this new rule, but all new tenants would have to comply.

B. Evictions from mobile home parks

Except for non-payment of rent or utilities, a mobile home park tenancy may only be terminated for the following reasons:

- Failure to comply with local or state law concerning mobile homes (NMSA § 47-10-5(A))
- Conduct of the tenant on the property annoying other tenants or interfering with park management (NMSA § 47-10-5(B))
- Failure of the tenant to comply with the rental agreement or with rules and regulations of the mobile home park (NMSA § 47-10-5(C))
- Condemnation or change of use of the mobile home park (NMSA § 47-10-5 (D))

If the resident receives a termination notice, or Notice to Quit, the best course of action is to immediately correct the activity or condition which violates the lease agreement.

The thirty-day notice of termination must be in writing and must include the following information (NMSA § 47-10-3(A)):

- The name of landlord or the name of the mobile home park
- The mailing address of the property
- The location of space number upon with the mobile home is situated
- The county in which the mobile home is situated
- The reason for the termination of the tenancy
- The date, place and circumstances of any acts allegedly justifying the termination

The notice must be either hand-delivered or posted on the property, and if it is posted, it must *also* be mailed by certified mail. Because it is so expensive to move a mobile home, the courts have required mobile home park owners to comply exactly with these notice requirements.

A mobile home park tenancy may also be terminated for non-payment of rent and utilities (NMSA § 47-10-6). In this situation, the landlord must only give three days' notice. Again, the notice must be either hand-delivered or posted on the property, and if it is posted, it must also be mailed by certified mail. If the tenant pays the rent within the three days, the landlord may not go to court to evict the tenant.

If the landlord is planning to change the use of the land on which the mobile home park is situated, tenants must be given six months' notice before they can be evicted (NMSA § 47-10-5 (E)).

If the landlord goes to court and gets an eviction order (called a Writ of Restitution) and the tenant has not removed the mobile home within the time allowed in the writ, the landlord may ask the sheriff to take possession of the mobile home to remove and/or store it (NMSA § 47-10-9(D)). The tenant will be liable for the landlord's costs for rent, utilities, removal, and storage (NMSA § 47-10-9(E)). If the landlord lawfully takes possession of the mobile home, the resident is entitled to go into the mobile home to remove any personal property.

If the resident is buying the mobile home, the owner must provide notice of the intended eviction to the lien holder (usually a mortgage company).

C. Utility service

Most mobile home parks provide utility service rather than each resident having an individual account with the local utility company. The park is responsible for maintaining the utility lines from the mains to the individual mobile home hook-ups,

unless the line is damaged by the resident (NMSA § 47-10-20(A)). The landlord may not charge more for utility service than the park is charged (NMSA § 47-10-20(B)) and the landlord must provide the resident with reasonable access to the records of meter readings, if any, taken at the resident's mobile home space (NMSA § 47-10-20 (C)).

The landlord may charge a reasonable administrative fee to offset the cost incurred by a landlord when he or she provides utility services to residents (NMSA § 47-10-21(A)). The amount of the administrative fee must be included in the rental agreement and any increase requires sixty days' written notice to the resident (NMSA § 47-10-21 (C)).

The landlord must provide a monthly itemized bill that includes:

- A separate list of the charges for each utility service (NMSA § 47-10-22(A))
- The amount used and cost per unit for service, or the formula used to determine cost when individual metering is not used (NMSA § 47-10- 22(B))
- The amount of the administrative fee (NMSA § 47-10-22(C))

If the landlord violates one of the above provisions, a court may order the landlord to pay a civil penalty of up to $500 (NMSA § 47-10-23(A)).

Chapter 13

HOUSING DISCRIMINATION

A. Your rights under the law

Looking for housing is a demanding task for anyone, but it is especially hard when a person is treated unfairly because of discrimination. Discrimination includes refusing to show a person an apartment or house for rent (42 USC § 3604(a)), or when the landlord charges higher rent or fees to a tenant based on his or her race, disability or other protected status (42 USC § 3 604(b)).

The federal Fair Housing Act *gives you the right to rent or buy a home without discrimination.* The Fair Housing Act was passed in 1968 as part of the civil rights agenda of the 1960s. Amendments to the Fair Housing Act were passed in 1988 to protect the disabled and families with children in addition to other protected classes.

The Fair Housing Act, with certain exceptions, makes it illegal to discriminate with respect to any housing- related matter (42 USC § 3602 (f)), such as renting or buying a home, against any person because of their race, color, national origin, religion, gender, disability or family status. These seven categories are known as the *protected classes*. State, city and county laws and ordinances provide additional protections. For example, the New Mexico Human Rights Ordinance provides protection if a home-seeker is discriminated against because of his or her sexual orientation.

Other relevant laws might apply to your situation.

B. Protected classes

Fair housing laws protect people who are discriminated against because they are perceived as different from, or more difficult tenants than, the majority population. Fair housing laws identify certain groups of people for this protection. These include groups based upon race, color, national origin, religion, gender, family status, children, sexual orientation, gender identity and spousal affiliation (42 USC § 3605(a) and NMSA § 28-1-7).

1. Race and color

The federal Fair Housing Act and local laws prohibit discrimination in housing based on a person's race or color. However, race is not specifically defined in the Fair Housing Act. Race is interpreted broadly by the courts and even includes the White race as a protected class. One court stated that race "embraces membership in a group that is ethnically and physiognomically [facially] distinct," but most courts do not insist on restricting the concept of race to anthropological definitions. The Tenth Circuit Court of Appeals, whose jurisdiction includes New Mexico, has held that for purposes of the Civil Rights Act of 1866, people with Spanish surnames or people of Mexican American descent are considered a distinct race (Anthony Manzanares v. Safeway Stores, Inc. et al., 593 F.2d 968, 970).

The following are examples of discrimination based on race or color:

Discrimination based on race. If an apartment owner rents to everyone except African Americans or only rents to Whites and denies housing to everyone else, that owner is violating the Fair Housing Act based on race.

Discrimination based on color. A landlord might rent to light-skinned Hispanics, Native Americans or African Americans while refusing to rent to their darker skinned counterparts. This is discrimination based on color.

2. National origin

The term *national origin* refers not only to the actual country or geographic area where a person was born, but also to the country or geographical area of the person's ancestry. It includes a person's cultural and linguistic attributes. Examples of national origin include: Mexican, Central American, Mexican American, Hispanic, Egyptian, Middle Eastern, Cuban, Caribbean, and Spanish speaking.

3. Religion

It is illegal to discriminate in housing against persons because of their religion (42 USC § 3604). For example, refusing to rent or to sell to persons because they are Muslim or Jewish is a violation of the Fair Housing Act. However, religious organizations are exempt from this prohibition where they own or operate housing that is closely associated with a religious purpose, such as seminary housing, and which is offered only to members of the same religion. Nonetheless, even when a religious organization qualifies for this exemption, it still cannot legally discriminate against people based on their race, color, or national origin.

4. Gender

Gender discrimination means treating people differently based on their sex. A landlord who refuses to rent either to women or to men is engaging in unlawful housing discrimination (42 USC § 3604).

There are two main types of gender discrimination: *quid pro quo* and *hostile environment*.

Sexual quid pro quo. Quid pro quo is Latin meaning "something for something." It occurs when a housing agent conditions rental or continued rental to a person contingent on the tenant sleeping or going out with the landlord. That behavior constitutes illegal quid-pro-quo sexual harassment. If the amount of rent or the timing of repairs depends upon the tenant's willingness to have sex or become romantically involved with the landlord or apartment manager, that constitutes quid-pro-quo sexual harassment. For example, "Go out with me and I'll do the repairs," or, "Sleep with me and I'll give you a break on the rent."

Hostile environment. If a housing agent does not make a quid-pro-quo proposition, but rather engages in an ongoing pattern of offensive and persistent sexual or sexist conduct, the housing provider is engaging in illegal sex harassment by creating a hostile environment for the tenant. One court defined sexual harassment as "unwelcome sexual advances, unwelcome physical contact of a sexual nature, or unwelcome verbal or physical conduct of a sexual nature."

Examples of such behavior include making sexually suggestive remarks, inappropriate and unwelcome touching or hugging, and pestering the tenant to go out with him or her, despite the tenant continuing to say no or the tenant asking the agent to stop making the remarks.

5. Familial status

Families with children are sometimes discriminated against because landlords believe that children are noisy, destructive or cause more wear and tear than adults. If a housing provider excludes a family with children under the age of 18, or denies housing to a pregnant woman, that is discrimination based on familial status (42 USC § 3604).

Prohibiting children from using common areas. It is illegal to prohibit children from using the common area of an apartment complex, unless there is a legitimate reason for reasonably restricting their activities to a certain part of the common areas.

Restricting families to living in certain areas. A landlord cannot restrict families with children to certain buildings, or ground floor apartments, even if the justification for the restriction is related to the safety of those families. There are two exceptions to the law protecting tenants from discrimination based on family status.

a. Occupancy limits

If a reasonable local building code only allows up to a certain number of people to occupy an apartment, the landlord can refuse to rent to a family of more than that number. For example, if the building code prohibits more than three people from renting a one-bedroom apartment, the landlord can refuse to rent that apartment to a family of two adults and two children, provided the landlord would also refuse to rent that apartment to a group of four adults, or a family with three adults and one child. Whether the occupancy limit is reasonable depends on the justification for the limit, such as a mobile home park's limited sewer capacity. Some courts have held that a landlord can charge extra rent within reason for children, such as would be charged for extra adults.

b. Senior housing

The Fair Housing Act exempts housing that is geared towards older people from the familial status provisions of the Act. This type of housing can take the form of 55-and-over housing and and-over housing. The 62-and-over housing is straightforward: all residents must be 62 or older. To qualify as 55-and-over housing, the housing complex in question must have at least 80% of the units occupied by at least one person 55 or older and must publish and adhere to policies and procedures that demonstrate the intent to provide housing for persons 55 or over (42 USC § 3607(b)). HUD has identified 7 factors to help determine compliance with the intent requirement:

- The manner in which the housing facility or community is described to prospective residents
- Any advertising designed to attract prospective residents
- Lease provisions
- Written rules, regulations, covenants, deed or other restrictions
- The maintenance and consistent application of relevant procedures
- Actual practices of the housing facility or community
- Public posting of statements in common areas describing the facility or community as housing for persons 55 or older

If the complex meets the legal standard for 55- or 62-and-over housing, then the complex does not have to rent to families with children.

6. Disability

For purposes of the Fair Housing Act, "handicap" or "disability" is defined as a physical or mental impairment that substantially limits one or more life activities; having a record of having such impairment; or being perceived as having an impairment (42 USC § 3602(h)), for example, being HIV-positive, even if no symptoms exist. It does not include current, illegal use of or addiction to a controlled substance.

Illegal discrimination against disabled people can take the form of outright refusal to rent or imposing different terms and conditions. It can also take the form of refusal to allow reasonable modifications, refusal to make reasonable accommodations in the rules, policies and practices, or failure to adhere to accessibility requirements. (See "Accessibility requirements" below in this chapter.)

a. Modifications

Modifications are physical changes to rental property, such as widening doors, installing grab bars in the bathroom, or installing a wheelchair ramp. Landlords who receive federal subsidies, such as a project-based Section 8 apartment complex, may have to make such modifications at the landlord's expense. Disabled tenants in a non-federally subsidized complex must pay for such modifications themselves, and they are responsible for removing these modifications and restoring the apartment when they move out.

b. Reasonable accommodation

Housing providers must make reasonable accommodations in rules, policies, or practices so that a disabled person can enjoy his or her dwelling to the extent (or approaching the extent) that a non-disabled person can (42 USC § 3604 (f)(3)(b)). What is reasonable depends not only on the disabled person's needs but also on the degree of impact the

accommodation would have on the landlord. For example, a blind person can have a trained guide dog where there is a no-pet policy, or a person who needs a pet for prescribed therapeutic purposes may also be allowed to have an animal. However, if an accommodation of a tenant would threaten the health and safety of other tenants, it can be denied. Similarly, a person needing a designated parking space close to his or her apartment may get one even if the rules do not generally provide for reserved parking spaces.

Mental disabilities are included among the disabilities that are protected by the Fair Housing Act (42 USC § 3602(h)(1)). A typical reasonable-accommodation case involving a mentally disabled tenant is one in which the tenant exhibits behavior that disturbs the neighbors, leading the landlord to seek to evict the tenant. If the disturbing behavior is caused by the mental disability and the landlord knows about the disability, the landlord must try to find a way to accommodate the tenant before evicting him or her.

c. Accessibility requirements

Multi-family housing (4 units or more) built after 1991 must be accessible to disabled persons. Federal and state law require accessibility to ground floor apartments such as ramps or paths that are at the same level as the apartment and common areas (the same goes for upper floor apartments if there is an elevator). Reasonable distribution of accessible parking spaces for disabled people is required, including van accessible spaces. The apartment complex must also have units that are accessible. This means, for example, wider doors, accessible electrical outlets, accessible stove controls, grab bars, and space to turn around in a wheel chair (42 USC § 3604(f)(3)(C)).

7. Sexual orientation

The New Mexico Human Rights Act and some local laws prohibit landlords from refusing to rent or treating tenants differently based upon their sexual orientation (being gay, lesbian, bisexual, transgender or straight) (NMSA § 28-1-7). Federal fair housing law does not provide protection based on sexual orientation.

8. Spousal affiliation

The New Mexico Human Rights Act protects tenants based on spousal affiliation (NMSA § 28-1-7) but does not define what it covers. A New Mexico court has interpreted this provision to protect unmarried couples. Federal fair housing law does not provide protection based on spousal affiliation.

9. Gender identity

The New Mexico Human Rights Act prohibits discrimination based upon a person's gender identity (NMSA § 28-1-7). The Act defines gender identity as a person's self-perception, or perception by another, of the person's identity as a male or female based upon the person's appearance or behavior, that are in accord with or different from the person's physical anatomy, chromosomal gender or gender at birth (NMSA § 28-1-2 (Q)). Federal fair housing law does not provide protection based on gender identity.

C. Exemptions from the Fair Housing Act

Some housing providers are exempt from most provisions of the federal Fair Housing Act (42 U.S.C § 3603(b)). Exempt housing providers include:

- Owner-occupied rental buildings with no more than 4 units and which are not federally subsidized
- Single-family dwellings sold or rented without a broker, if the owner does not own more than 3 such dwellings
- Religious organizations, under limited circumstances
- Private clubs

However, these landlords or housing providers may be subject to local ordinances and the New Mexico Human Rights Act. If the person or agent who discriminates against a home seeker is not subject to the federal Fair Housing Act, a complaint may still be filed with the city or state human rights office or with a court. It is important to check with an attorney or the local human rights office to determine which law covers the discrimination.

Discriminatory statements or advertisements are prohibited by federal law even if the transaction

involves one of these otherwise exempt situations. Also, if discriminatory treatment is based on race or color, it may violate the Civil Rights Act of 1866.

D. What can you do?

Record the details of what happened to you, including dates, times, people involved, as well as possible witnesses, including their phone numbers and addresses. Keep a running log of everything that has happened, especially if this is an ongoing situation. Keep a file of documents that pertain to your case.

When housing discrimination occurs, complaints can be filed with the Department of Housing and Urban Development (HUD), and/or in state or federal court, or with a state or city human rights office.

1. Statute of limitations

A statute of limitations sets a specific time period for filing a complaint or lawsuit after you have been injured. The statute of limitations for filing a fair housing complaint with HUD is one year. State and local laws generally have much shorter time periods for filing complaints, usually 180 days. The statute of limitations for filing a fair housing complaint with a court is two years (42 USC § 3613(a)(1)(A)).

If a person has been subject to ongoing discrimination (i.e., continuous discrimination or a number of incidents of discrimination that form a pattern), then the statute of limitations begins to run at the time of the last incident or when the continuous discrimination ended.

The two-year statute of limitations for filing in court is suspended during the period of when HUS has and is evaluating a complaint. The time HUS has the case does not count when calculating when the two-year statute of limitations expires (42 USC § 3612(a)(1)(B)).

2. The HUD process

Once a complaint is filed, HUD will investigate the complaint. If HUD finds reasonable cause that a violation of the Fair Housing Act occurred, it will set a date for an administrative hearing before a HUD Administrative Law Judge (42 USC § 3612(b)). HUD legal staff, representing the government, will try the case on behalf of the complainant (the tenant), but the complainant can obtain separate representation and intervene in the case. However, either the complainant or the respondent (landlord) can elect to have the case tried in Federal District Court instead of a HUD administrative proceeding. In that event, the Department of Justice will represent the government on behalf of the complainant, and the complainant can obtain separate representation and intervene in the case.

E. Resources

New Mexico Legal Aid
Various locations statewide
www.newmexicolegalaid.org

U.S. Department of Housing & Urban Development (HUD)
Office of Fair Housing and Equal Opportunity
500 Gold Avenue SW, Suite 7301
Albuquerque NM 87102
Mailing: P.O. Box 906,
Albuquerque, NM 87103-0906
(505) 346-6463 or toll-free 1-888-560-8913
www.hud.gov

U.S. Department of Housing and Urban Development
Fair Housing Access First
www.fairhousingfirst.org

Albuquerque Human Rights Office
Albuquerque City Hall
One Civic Plaza NW, Suite 201
Albuquerque, N.M. 87102
Telephone: 311
www.cabq.gov/office-of-equity-inclusion/contact

New Mexico Human Rights Commission
Telephone: (505) 827-6838
or toll-free 1-800-566-9471
http://dws.state.nm.us/Human-Rights-Information

National Fair Housing Alliance
1101 Vermont Ave., NW, #710
Washington, DC 20005
Telephone: (202) 898-1661
www.nationalfairhousing.org

New Mexico Mortgage Finance Authority (MFA)
344 4th Street, SW
Albuquerque, NM 87102
Telephone: 505-843-6880 /
Toll Free Statewide: 1-800-444-6880
www.housingnm.org

F. Applicable laws

- The Civil Rights Act of 1866 provides that: "All citizens of the U.S. shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold, and convey real property."

- The New Mexico Human Rights Act makes it illegal to discriminate with respect to any housing-related matter against any person because of their sexual orientation or gender identity. Protection is already available for discrimination based on spousal affiliation. The Act is at Chapter 28 of the New Mexico Statutes. 28 NMSA § 1 et seq.

- Local human rights laws vary by community. For example, Albuquerque has a Human Rights Ordinance; you may contact the city's Office of Diversity and Human Rights at (505) 768-4712 for more information about discrimination laws that apply within Albuquerque city limits.

  Outside of Albuquerque, you may call the New Mexico Human Rights Commission at (800) 566- 9471 or file a complaint at http://www.dws.state.nm.us/Labor-Relations/Human-Rights/Filing-a-Complaint-of-Discrimination.

- Section 504 of the Rehabilitation Act of 1973 provides that "No otherwise qualified individual with a disability in the U.S. … shall solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

- The Americans with Disabilities Act (ADA) extends the protections offered by Section 504 to all activities of state and local governments, including those that do not receive federal financial assistance. The ADA does not apply to housing itself but rather to public areas in housing and accommodations such as stores, movie theaters, bowling alleys, buses, etc. It is similar in spirit to the provisions in the Fair Housing Act regarding persons with disabilities.

- The New Mexico Building Code has certain requirements for disability accessibility for new construction of residential housing, some of which are more stringent than what is required under the Fair Housing Act.

Chapter 14

TENANTS OF FEDERALLY SUBSIDIZED HOUSING

There are several different kinds of government housing programs which offer rental assistance or rents that are less than current market rents to tenants with low income. Federal laws provide extra rights and protection to tenants in these programs.

A. Privately owned HUD or USDA subsidized housing

These apartment complexes are owned by private developers. The owners have entered into contracts with the U.S. Department of Housing and Urban Development (HUD) or the U.S. Department of Agriculture (USDA) to charge less than fair market rents in exchange for mortgage assistance from the federal government. Some of these apartment complexes are for elderly and disabled persons only.

Tenants of modest to low income can apply directly to these privately owned subsidized complexes. If the tenant is eligible, he or she will probably be placed on a waiting list. It is the tenant's responsibility to make sure that the application is kept current. It is very important to make sure that the management has a current mailing address. If a tenant is not found eligible, he or she must be notified in writing of the reason, and of his or her right to meet with the management to discuss the decision.

Rents in these complexes will be lower than in equivalent non-subsidized apartments, and some units may be set aside for further assistance, with the rent reduced to 30% of the tenant's adjusted income. Tenants may have to be recertified annually to ensure that they still qualify for reduced rent.

Tenants in HUD and USDA subsidized housing usually cannot be evicted unless they violate the terms of their lease.

B. Section 8 housing choice vouchers

Low-income tenants may apply for a Housing Choice voucher (commonly called a "Section 8" voucher) at a local housing authority. A Housing Choice/Section 8 voucher helps pay the rent for a privately owned house or apartment. The tenant's share of the rent and utilities is 30% of his or her adjusted income (42 USC § 1437a(a)(1)(A)). There are generally waiting lists for Section 8 vouchers. A person's position on the waiting list may depend on factors such as having a disability or being homeless. In some areas, a person who loses his or her housing due to building condemnation or domestic violence may be able to get a Section 8 voucher without having to wait. An applicant who is told that he or she is not eligible for the voucher must be notified in writing and informed that he or she may request an informal review at the housing authority.

Once notified that he or she has a Housing Choice/Section 8 voucher, the tenant has sixty days to find an apartment or house whose landlord will accept voucher payment (24 CFR 982.303(a)). If the tenant is unable to find a place to rent, the tenant may request an extension of the 60 days but must make the request in writing before the 60 days are over. If the tenant has not found a place to rent within the 60 days or any extensions granted, the voucher will be lost. Landlords are not required to rent to a person with a Section 8 voucher.

With a Housing Choice/Section 8 voucher, the tenant may rent any house or apartment which passes the Voucher inspection process. If the total rent is more than the fair market rent established by HUD (42 USC § 1437f(o)(1)(B)), the tenant may agree to pay the difference in addition to the share calculated by HUD, but the tenant's total share of the rent cannot be more than 40% of his or her household income, and the arrangement must be approved in writing by the housing authority.

The security deposit is limited only by the landlord-tenant law and may be as much as one month's rent.

The tenant's share of the rent will be recalculated once a year (42 USC § 1437f(o)(5) and 24 CFR 982.516(a)(1)) or sooner if he or she claims a hardship or reports a change in income. Failure to cooperate with the recertification process can result in termination of the Housing Choice/Section 8 voucher. If a tenant does not agree with the housing authority's determination he or she may request an informal hearing; the request must be made in writing and within the time stated in the notice. The hearing must be held quickly, and the hearing officer must make a written decision stating the reasons for the decision (24 CFR 982.555).

The tenant's share of the rent is recalculated whenever the tenant's family has a change in income (24 CFR 982.516(b)). It is important to report both increases and decreases in income to the housing authority so that the tenant's share is accurate. Even a temporary reduction in the tenant's income can reduce the tenant's share of the rent, making it much easier to keep housing in times of financial difficulty. Failure to report increases in income can result in overpayments by the housing authority which must be repaid by the tenant. The housing authority can then terminate the Housing Choice/Section 8 voucher or ask the tenant to enter into a repayment agreement. Failure to comply with a repayment agreement can result in termination of the Housing Choice/Section 8 voucher. The tenant has the right to an informal hearing with the housing authority to dispute the overpayment or termination of the voucher.

The private landlord cannot charge the tenant any fees that are not agreed to in the lease and in the Housing Assistance Payments (HAP) contract between the housing authority, the tenant and the landlord (24 CFR 966.4(b)(2)). If the private landlord is not maintaining the property, the housing authority can re-inspect and withhold the housing assistance payments until the landlord brings the unit into compliance with Section 8 requirements. A tenant cannot be evicted by the landlord if the housing authority has withheld its share of the payments (24 CFR 983.353(b)(4)). Section 8 tenants can also abate rent under the landlord-tenant law. The tenant can abate his or her entire share if it is less than the one- third total rent abatement allowed by the law.

Section 8 tenants can be evicted from their apartments as set out in the landlord-tenant law. It is important to read the lease and HAP contract carefully because it may provide more protection than the landlord-tenant law. Eviction does not necessarily mean that you will lose Voucher, although you should check with the housing authority who administers your particular voucher, because many housing authorities do treat evictions as grounds for termination of the Housing Choice/Section 8 voucher. If the housing authority is not terminating your voucher, you can be recertified to rent another unit using your voucher as long as you do not have any debt to the landlord.

If the housing authority proposes to terminate your participation in the Voucher program because of the eviction, they must notify you in writing and offer you an informal hearing. Tenants have the right to be represented by an attorney at a hearing with the housing authority. If you have received a notice terminating your Housing Choice/Section 8 voucher, you should request a hearing immediately and seek legal assistance.

The rules are slightly different each housing authority. Every housing authority is required to have regulations, which the tenant may ask to review.

C. Public housing

Public housing complexes are owned and operated by local housing authorities. Tenants with low income may apply for admission to public housing and will be placed on a waiting list; position on the

waiting list depends upon several factors. Generally, families, elderly and disabled persons have preference over single individuals. Homeless people or people in substandard housing may also have preference in obtaining public housing. It is important to notify the housing authority of any changes in your mailing address so that you will not lose your spot on the waiting list or miss an opening (24 CFR 982.204(c)(1))

In public housing, the tenant must pay 30% of his or her adjusted income for rent and utilities (42 USC § 1437a(a)(1)(A)). It is important to report both increases and decreases in income to the housing authority as soon as you know about them so that the rent can be accurately calculated. The housing authority will recertify the tenant's income once a year (42 USC § 1437a(a) (1)) and recalculate the rent based on any changes in income (24 CFR 960.257(a)(1)). Failure to cooperate with recertification can result in eviction.

Public housing has a grievance procedure which consists of an informal hearing or review (24 CFR et seq.) and then a formal hearing. The specific type of procedure depends upon the rules adopted by the local housing authority. The grievance procedure can be used to address issues such as ineligibility, rent amount, poor conditions, damage charges and for-cause lease terminations. Hearings generally must be requested in writing within ten days of the disputed housing authority action. The local rules generally provide more notice time than the state landlord-tenant law. Always read any notice from the housing authority carefully and consult with the local legal services program if you have any questions or need assistance with the hearing process.

Evictions for criminal activity that is drug related or threatens the safety of other tenants or housing authority employees is sometimes exempt from the grievance procedure. In those cases, the housing authority may go directly to the local court to evict. Check with HUD or an attorney to determine whether the tenant housing authority is exempt from the grievance procedure in those cases.

D. Low Income Housing Tax Credit housing

The owners of many housing complexes in New Mexico have agreements with the U.S. Internal Revenue Service (IRS) to rent to low-income tenants at reduced rents. In return, the IRS allows the owners or to pay lower taxes. These properties are called Low Income Housing Tax Credit (LIHTC or *lie-tek*) properties. Tenants in these properties must report their income annually to show the landlord that they still qualify. Tenant rents at these properties are fixed below market so as to make them affordable to low- income tenants. Unlike HUD and USDA subsidized properties, however, the rent at LIHTC properties does not change if the tenant's income increases or decreases, unless the tenant's income increases so much that he or she is no longer eligible for a low-income unit.

Tenants in LIHTC properties cannot be evicted expect for good cause (for example, not paying rent or otherwise violating the lease). LIHTC landlords are not permitted to refuse a tenant just because the tenant has a section 8 voucher.

E. Important tips for all residents of subsidized housing

Most subsidized housing tenants are required to report any changes in income or household composition to the housing authority (if they have public housing or section 8) or their landlord (if they have HUD, USDA or LIHTC housing). It is extremely important that tenants do so *in writing* as soon as they know of these changes.

If you receive a letter saying that you are being evicted or your voucher is being terminated, the letter will often state that you have a right to a grievance meeting or informal hearing. *Always* ask for the meeting or hearing, in writing, before the deadline given in the letter. Keep a copy of the written request so that you can prove you made the request. The housing authority or landlord often is prohibited from evicting you or terminating you from the program until after the meeting or hearing is held. The meeting is your chance to resolve any issues and stop the eviction. In the case of Section 8 voucher termination, if you do not request the meeting, you may lose any further opportunity to fight the voucher termination.

To evict you from subsidized housing, the landlord must use the court process just like any other landlord, even if you do not request a meeting or hearing.

New Mexico law gives special protections to residents of subsidized housing. For example, if you are being evicted for nonpayment of rent, the judge can arrange a payment plan so that you can pay your debt and stay in your home.

In these cases, it is very important to tell the judge:

- That you are in subsidized housing
- The reason you fell behind on your rent (loss of job, loss of benefits, illness)
- Your plan for paying off your debt to the landlord or housing authority

Many residents of subsidized housing—especially LIHTC housing—do not realize that their housing is subsidized. *If you are required to report your income to your landlord, you are probably in subsidized housing.* If you do not know whether you are in subsidized housing, you can usually find out by calling the New Mexico Mortgage Finance Authority at 505-843-6880 or toll free at 800-444-6880.

Chapter 15

TENANT ORGANIZING

Knowing the law is not always enough to protect the tenant's right to decent housing at an affordable price. Often, tenants must organize and use their collective political, economic and social pressure to overcome recurring problems. A group of tenants can collectively exert more pressure than can individual tenants on their own.

Remember, landlords have been working together for a long time to make sure that politicians and public officials know what they want done. Tenants have every right to do the same thing. Sometimes tenants will organize themselves to let their local government know that they want certain actions taken. For example, they might press for better code enforcement to ensure that rental housing is safe and decent. The actions may be efforts to expand the supply of affordable housing, so that rents will be more reasonable. Sometimes tenants will want action for greater tenant rights under the law. For these changes to happen, tenants must make their voices heard in the offices where political decisions are made.

More commonly, tenants organize to deal with problems they are having with their own landlord. Such organizing involves getting together a group of people who live in the same apartment complex, public housing development or mobile-home park, or in various houses owned or managed by the same landlord. The tenants get together to make the landlord listen to their complaints, demands or suggestions. The tenants try to work together for a common goal, to make their lives and living situations better. While a landlord may find it easy to ignore individual tenant demands, a group of tenants speaking with one voice may be harder to ignore.

When there are problems with a landlord, think about organizing. Talk to other tenants about whether they think getting together to discuss problems would be a good idea. Set a time and place for a meeting that is convenient for everyone. At the first tenants' meeting, it is a good idea for one person to lead the meeting. This person can help keep the meeting going and get people to speak up and participate. The person or persons who organized the meeting should state why it was called. People should be encouraged to talk about their problems. The person leading the meeting can also create a list of complaints, so that everyone at the meeting will remember that many of their concerns are shared by the other tenants.

Minutes should be taken at this first meeting, including a list of those who attended. It might be helpful to advise people that they have a right to organize and that it is unlawful for the landlord to try to evict or take certain other punitive actions against individual tenants just because they joined the tenants' organization (NMSA § 47-8-39(A)(2)).

People at the meeting can decide what steps they want to take, agreeing on a set of goals for their new organization. They may consider writing a petition to their landlord. The petition can say that the tenants have formed an association to address shared problems and include a list of complaints and

problems that need attention. End by asking the landlord to meet with the association to discuss the problems. In cases where the rental units have housing code violations, it is useful and sometimes necessary to inform the landlord that the association plans to make a request for an inspector to make an official report.

Set a deadline for the landlord to respond to the petition. If the landlord ignores the request for a meeting, the tenants should meet again to discuss tactics aimed at the landlord's refusal to respond. It may be useful to get a lawyer to come to the meeting to discuss tactics and to explore the possibility of having the association take the landlord to court.

It is always important to get information about the landlord. Who is the landlord? Does the landlord own any other property? How much? If there are other tenants who rent from the same landlord, find out about their situation and ask for their support. By finding out what other businesses the landlord is involved in, tenants will have a better idea about the landlord's strength and whether the landlord is worried that others may learn about his or her lack of concern for tenants. Find out if the landlord has been involved in other housing lawsuits and how those suits turned out. Even if the landlord did not respond to the original petition, he or she may respond to the threat of a lawsuit and become willing to discuss problems, either because the landlord has lost before in court or because the he or she fears the possibility of a court judgment.

Even if the landlord is willing to listen and discuss problems, this doesn't necessarily mean that both sides will agree about the problems or their solutions. Sometimes going to court will still be necessary, but it is always a good idea to try other methods first. Negotiation and mediation offer alternatives to court, and there are a growing number of professional organizations that offer help in setting up, and doing, mediation.

The landlord-tenant law protects tenants who organize. The law forbids landlords from evicting or threatening to evict tenants or taking certain other retaliatory actions against the tenants because they have been involved in organizing during the preceding six months (NMSA § 47-8-39(A)(2)). If the landlord does illegally retaliate, the tenant can be awarded damages of up to two months' rent, court costs and attorneys' fees.

Chapter 16

GOING TO COURT

Unfortunately, landlord-tenant disputes often end up in court. The most common landlord-tenant cases are evictions, which the law in New Mexico calls a *petition for writ of restitution*. In the case of evictions, landlords bring these actions to get court orders to remove tenants. Or, if the tenant has been illegally locked out of the apartment, the tenant can also file a petition for a writ of restitution restoring the apartment to the tenant (NMSA § 47-8-46).

Other common cases involve suits by tenants to recover damage deposits, where landlords have failed to follow the law or unreasonably withheld the deposits. Other cases involve landlords claiming past due rent or excessive damages caused by tenant after vacating the unit. A single case may involve all of these claims at the same time.

Most frequently the court dealing with these disputes will be the local Magistrate Court. In Albuquerque, it will be the Metropolitan ("Metro") Court. The information in this guide is aimed at helping the landlord and tenant understand how those courts work in civil cases, the category to which landlord- tenant cases belong. This guide does not discuss criminal cases.

A. Legal counsel

Representation by a lawyer is usually not required in court. In some cases, landlords or tenants can represent themselves without a lawyer. It is a good idea, however, to at least talk to a lawyer before going to court on a landlord-tenant case. The tenant will want to know what defenses or counterclaims can be raised in the case. The landlord will want to make sure that he or she has followed all of the steps required by the law.

People with very low income can call their local legal aid office. People ineligible for free legal services can consult their local lawyer referral service to find a lawyer. In hiring a lawyer, be sure to discuss all fee arrangements at the first meeting. Some lawyers do not charge a fee for the first consultation.

B. Some definitions

A person bringing suit against another person in court is called the *plaintiff*. The person being sued is called the *defendant*. A plaintiff or a defendant representing himself or herself is said to be a *pro se* party in the lawsuit.

A lawsuit starts with the filing of a *complaint* or *petition* in court. Magistrate and Metropolitan Courts have forms for complaints and petitions that the plaintiff can simply fill out (NMSA § 47-8- 42). Lawsuits under the Uniform Owner-Resident Relations Act or the Mobile Home Park Act can also be filed in the local District Court (NMSA § 47-8-10). The procedures in the District Courts are more complicated than the Magistrate or Metropolitan Courts. This guide does not discuss procedures for District Court.

The next document in a lawsuit is the *summons* (NMSA § 47-8-43). This document is endorsed by the court clerk and tells the defendant a suit has been filed and that the defendant has a certain amount of time to answer the complaint or the petition. The summons will be attached to the complaint or the petition for *service of process*. Service of process means that the defendant must be notified of the lawsuit by having the complaint (or petition) and the summons delivered to him or her so that the defendant will know there is a lawsuit. Sometimes, the summons will include a *notice of hearing*, which tells the defendant the date, time, and place of a trial. In eviction actions, it is common that a notice of

hearing will be part of the summons (NMSA § 47-8-43).

The defendant has the right to tell his or her side of the story by filing a written *answer* to the complaint or petition (NMSA § 47-8-43). Magistrate and Metropolitan Courts have forms for answers, and the defendant can fill out the form and file it with the court. If the tenant receives a notice of hearing, the tenant should, but is not required to file a written answer explaining why the tenant disagrees with the complaint or petition. The tenant must appear in court on the date and time set out in the notice of hearing.

In cases involving damages or other issues, the court's final decision is called the *judgment* (NMSA § 47-8-46).

C. Court procedures

The first step in filing suit is to go to the courthouse in person. The court clerk will explain procedures and may assist a plaintiff in filing his or her complaint. But the court clerk *cannot* give any legal advice. There is a *filing fee,* which the plaintiff must pay at the time the complaint is filed with the court (NMSA § 34-6-40). If the tenant cannot afford the filing fee, the tenant can ask the court to waive the fee by filing a *Motion For Free Process.*

The summons and complaint cannot be served by the plaintiff directly. There may be a *service of process fee* if the plaintiff wants the sheriff to serve (deliver) the summons and the complaint. It is also possible for the plaintiff to hire a private process server or have a friend serve the court papers. If the plaintiff chooses to use that type of service, there will not be a service of process fee. However, if someone other than the sheriff will serve the papers, the plaintiff must get forms for a return of service and instructions on how to fill out the return from the court clerk.

Eviction actions are quick, and the trial date will be set at the time the landlord files the petition for a writ of restitution. The trial will be set between 7 to 10 days from the date the court papers are served on the defendant (NMSA § 47-8-43(A)(1)). Even if the defendant files a written answer, he or she must also appear at the time set for trial. If the defendant fails to appear, the court can issue a judgment granting everything requested by the plaintiff, including evicting the defendant from the rental unit.

If the tenant is filing for a writ of restitution to get back into the rental unit, the hearing date will be set three to five days after the service of the summons and petition on the landlord (NMSA § 47-8-43(A)(2)).

If the court orders the writ of restitution requiring the tenant to leave, the judge will give the tenant up to 7 days to move (NMSA § 47-8-43(B)).

D. Disqualifying a judge

If a party feels that he or she does not want the assigned judge to hear the case, it is possible to have the judge disqualified. The parties will know the name of the judge hearing the case because it will appear on the notice of hearing. In New Mexico, each party has the right to *bump* a judge without giving any particular reason, but the party must file a *notice of excusal* to do it (Rule 1-088.1, New Mexico Rules Annotated). The clerk's office has a form for this purpose. The notice of excusal must be filed not later than three days after service of the petition in an eviction action (Rule 2-106 & Rule 3-106(C)(3), NMRA). If the tenant asks the judge to do something (such as grant a continuance), the tenant loses the right to bump the judge without giving a reason. Any later statements of disqualification must be based on good cause (Rule 21-400, NMRA). For example, the tenant might want to disqualify the judge if the judge is a friend of the landlord or has had dealings with the tenant in the past and has demonstrated a bias against the tenant.

E. The trial

Trials in Magistrate and Metropolitan Courts are less formal than in District Court. There are several issues to consider about a trial in either court. Magistrate Courts do not have a *record* (a taped or written history of the trial), and any appeal from the Magistrate Court will involve a whole new trial (called a *de novo* appeal).

1. The record

In Metropolitan Court, appeals are *from the record* (Rule 3-706, NMRA). The Metropolitan Court will only make a formal record (a tape or CD recording) if one of the parties asks for it (Rule 3-708(A), NMRA). The clerk's office has a form for this purpose. You must file the form with the court before or at the start of the hearing. If a recording is not requested, it will be very difficult to show what errors were made at the trial if either party has to appeal. The court will not charge to have the trial recorded, but there is a charge for getting a copy of the recording if it is needed for an appeal (Rule 3-706(E), NMRA). The Metropolitan Court in Albuquerque currently provides recordings on CD. If your court case is in Metropolitan Court, it is very important to request a recording before the trial begins.

2. Jury trials

Another important issue to consider is whether to ask for a jury trial. Either the plaintiff or the defendant may ask for a jury to hear the case. The plaintiff makes the request for a jury trial at the time the complaint is filed. The defendant makes the request for a jury at the time the answer is filed. A defendant who wants a jury in an eviction case must file an answer before the trial date and include the request for jury in the answer. There is a fee for having a jury trial, and the fee is charged to the person making the request (Rule 1-038, NMRA; Rule 2-602, NMRA; and Rule 3-602, NMRA).

3. Interpreters

Courts are required to provide an interpreter free of charge to any party who requests one for the trial. The request should be made as soon as the party is aware that an interpreter will be needed, since it may take some time to locate or schedule one (NMSA § 38-9-3 and NMSA § 38-10-3).

4. Trial preparation

Anyone involved in a trial in a landlord-tenant case should be well organized and well prepared.

- Keep all *court papers* in order and bring them with you to court.
- Be prepared to *tell the judge* why you think you should win your case. Write an *outline* of the facts and points to be made, so that you can relate the events in chronological order when you testify at the trial.
- Collect *evidence*—rent receipts, the lease, copies of notices and letters, housing code violation reports, photos, etc. In addition to the originals, make two copies of every piece of evidence, one for the court and one for the other party.
- Ask the court clerk for a *recording* of the hearing, if your case is in Metropolitan Court. (See "The record," above in this chapter.)
- Arrange in advance for any *witnesses* to appear in support of your case, and practice answering the questions which will be asked in court.

A witness can be *subpoenaed* (given an official command to come to court), and it is always a good idea to have a subpoena issued by the court and served if you have any concern that the witness might not show up at the hearing. Witnesses who are subpoenaed are entitled to a $75 fee for appearing in court.

5. Trial presentation

At the trial, the plaintiff tells his or her story first. This is because the plaintiff has the *burden of proof* to show why he or she should win. Then the defendant puts on his or her case. Each side will put on witnesses. Usually the plaintiff and the defendant are witnesses, together with other people who have knowledge of the facts of the case. The defendant gets to ask questions of the plaintiff's witnesses, and the plaintiff has the same opportunity to ask questions of the defendant's witnesses. This is called *cross-examination.* All witnesses will tell what they know after the court has made them swear to tell the truth.

In eviction cases, the landlord will usually be asking for a money judgment (back rent and/or damages) as well as a court-ordered eviction. Damage claims are often not heard at the time of the eviction trial, but they are left *open* to be heard at a later date, after the tenant has been forced to move. In some cases, the tenant may want a later trial on damages, too. However, if the issue of damages may affect the claims raised by the landlord for eviction, the tenant should

insist that the damage issues be part of the eviction trial.

When the housing is subsidized (Section 8, public housing, HUD, USDA or LIHTC), the tenant should always ask the judge for a payment plan for any unpaid rent. (See Chapter 14 of this guide for more information about subsidized housing.)

6. The judgment

After the trial, the judge will enter a decision about who won and who lost at the trial. This decision is called the *judgment* in the case, and it will be on a form prepared by the court. It will say what the loser must do. If the judge decides that the tenant must move out, the judgment will be for a writ of restitution specifying the date the tenant must be out of the rental unit. The tenant should explain to the judge whatever hardships this will involve. The judge can give the tenant three to seven days to leave the rental unit (NMSA § 47-8-46).

If the case involves a good-faith dispute over whether the tenant properly abated rent, and the landlord wins, the tenant may be given three days from the date of judgment to pay the back rent. If the tenant pays the rent within the three days, the writ of restitution will be dismissed (NMSA § 47-8-33(E)). This is called a *conditional writ*.

If the tenant wins, the judgment will note that the petition for a writ of restitution is denied. The judgment may also include an award of damages to the tenant for any claims the tenant made and won (NMSA § 47-8-48). As noted above, however, damage claims often are heard at a separate, later date than the eviction trial.

In addition to the relief awarded in the judgment, the winning party may be entitled to other money. The judge may award the winner court costs (such as filing and service fees) and in some cases, where the winning party has hired an attorney, the court may award attorneys' fees (NMSA § 47-8-48(A)).

F. Appeal

The losing party may appeal to the District Court if he or she disagrees with the judge's decision. An appeal from the lower court (Magistrate or Metropolitan Court) must be filed in District Court within fifteen days by filing a *notice of appeal* with the District Court. The notice of appeal must also be served on the winning party (*appellee*) and filed in the lower court. The person appealing is called the *appellant*. There is a filing fee that must be paid to the District Court (Rule 1-072, NMRA, and Rule 1-073, NMRA). The appellant can ask the District Court to waive or reduce the filing fee if he or she cannot afford to pay it. You can get the forms to have the filing fee waived or reduced from the District Court clerk's office by asking for a "Motion for Free Process and Affidavit of Indigency."

When the tenant is evicted, an appeal can *stay* (meaning to stop temporarily) the eviction from taking place while the appeal is pending. To stay the eviction, the tenant must:

1. File the appeal in District Court and file a copy in the lower court (Metropolitan or Magistrate) before the eviction date written in lower court's judgment.
2. During the appeal, you must pay all rent that comes due after the eviction date. For example, if the eviction date in your appeal is June 15 and your rent is $600 per month, you must pay $300 rent to the landlord (the half month's rent for June 15 to June 30) within 5 days after filing the appeal, and then pay full rent for July, August and each month after that, when due, until your appeal is decided. The rent must be paid to the landlord or a private escrow company. Some landlords do not like to accept rent during the appeal. In that case, you can pay rent to a private escrow company, or ask the court to let you to pay the rent to the court clerk. If you do not pay rent during the appeal, the landlord can give you a three-day notice (see Chapter 6 of this guide on "When the tenant doesn't pay the rent"). If you do not comply, the landlord can file a motion in the court to evict you.

The law also allows the appellant to post an appeal bond to *stay execution* of a money judgment during the appeal. This kind of stay temporarily prevents the appellee from garnishing the appellee's wages or bank accounts or from executing on (seizing) the appellee's personal property, until the appeal is over. NMSA § 47-8-47(B). This kind of stay is not as

important to low-income tenants because (1) their wages are too low to garnish, (2) their public benefits are exempt from garnishment, and (3) most low-income people do not have sufficient personal property for execution. Therefore, before posting an appeal bond, you should first get legal advice to see if it is really necessary. It is important to realize that staying the eviction (as described in above) and staying collection of the money judgment (as described in this paragraph) are two separate procedures, and you can choose to do one or the other or both. For example, if you cannot afford an appeal bond but you can afford to pay the ongoing rent, you can choose only to stay the eviction, and thereby remain in your unit while the appeal is taking place. The fact that you do not also post an appeal bond does not prevent you from doing this.

An appellant must comply with the court rules, or the appeal may be dismissed. This guide does not cover all of the rules for an appeal. You should consult a lawyer immediately upon filing a Notice of Appeal.

G. After court

If an eviction has been ordered and not appealed, a writ of restitution empowers the sheriff to carry out the eviction (NMSA § 47-8-46). The sheriff will order the tenant out of the unit and may either order the tenant to remove personal property immediately or lock up the unit and advise the tenant to arrange for removal of the property, giving the tenant only a few minutes to gather important documents or other personal effects. There are strict time limits for making arrangements to remove all personal property. After those time limits, the landlord may be able to dispose of the property as he or she wishes. (See Chapter 10 of this guide on "The Tenant's Property.")

For any final judgment which includes an award of money, a *writ of execution* may be issued by the court, instructing the sheriff to carry out the judgment. If the losing side does not comply voluntarily with the terms of the judgment, the sheriff may be able to seize money or property to satisfy the judgment (Rule 1-065.1, New Mexico Rules Annotated; Rule 2-801, NMRA; Rule 3-801, NMRA).

Certain things are exempt from judgment collections, such as:

- Personal property up to the value of $500
- Tools of the trade up to the amount of $1,500
- One motor vehicle up to the value of $4,000
- Jewelry up to the value of $2,500
- Clothing, furniture and books
- Medical equipment being used for the health of the person (NMSA § 42-10-1; NMSA § 42-10-2)
- Up to sixty thousand dollars ($60,000) in equity in the person's own home (NMSA § 42-10-9)
- Life insurance and health insurance plans (NMSA § 42-10-3)

Anyone seeking to exempt their eligible property from seizure must file a *claim of exemptions* with the court, listing what property is being protected. The clerk can provide the form (NMSA § 42-10-13). This should be done immediately after the judgment has been entered. It must be done before any sale of the property takes place.

A judgment may also be satisfied by garnishment (NMSA § 35-12-1) against wages or bank accounts. If a judgment debtor earns wages which exceed a certain amount, the debtor's employer may be served with a *writ of garnishment,* and the debt is withheld from the debtor's wages (NMSA § 35-12-3). Income from public benefits such as welfare, Social Security, and veteran's benefits cannot be garnished, even if deposited in a bank account (NMSA § 35-12-7). If these types of income are being garnished, contact an attorney immediately.

Information about the court system is available at www.nmcourts.gov. This website includes general information about the courts in New Mexico, links to legal research information and links to websites for New Mexico courts, including the District Courts and the Bernalillo County Metropolitan Court. The Magistrate Courts' website includes a very useful manual explaining the Magistrate Court Rules and Procedures.

Chapter 17

REAL ESTATE CONTRACTS, RENTING-TO-OWN AND OPTIONS TO BUY

Many people who cannot afford to buy a home using traditional bank financing choose instead to buy the home under a real estate contract. Under a real estate contract, the seller, not a bank, provides the financing. The buyer typically pays a down payment plus monthly payments of principal and interest for several years. The seller holds the title until the final payment is made.

Sellers often sell property with a real estate contract because the house cannot pass an inspection for a mortgage, because the price of the home exceeds its fair market value, or because the seller does not have good title to the home.

Unlike mortgages, there are very few laws regulating real estate contracts. The written contract controls the relationship between the seller and buyer, and the terms of the agreement almost always favor the seller.

If you are buying a house on a real estate contract, make sure you know exactly what the problems are with the house and make sure the price is reasonable given the problems. You should research whether the seller actually owns the property. Many sellers, themselves, are buying the property under a real estate contract. Under this kind of arrangement—called a *wraparound contract*—the seller does not have, and might never have, good title to the property. You could pay each and every payment owed but if your seller does not pay *his* seller, you still might lose the property and all of your money.

Make sure the contract includes *all* terms of the agreement between you and the seller, including the purchase price, number of payments, dates of the first and last payments, and interest rate. The contract should contain the seller's warranty that he has good title to the property and that there are no termites, lead paint or other serious problems.

Most real estate contracts have provisions that if a payment is missed, the escrow company handling the payments sends out a notice. There is usually a fee for that. If the buyer does not make the payment, *and* pay the fee, the seller can declare forfeiture. Under some real estate contracts, failing to make a single payment may result in loss of the property and of all the money that you have paid, no matter how long you have paying on the contract. *Before signing any real estate contract, make sure you understand what will happen if you miss a payment.*

If you have a real estate contract and the seller wants to evict you, the seller must file the case in District Court. If the seller sues you in Magistrate Court or Metropolitan Court, tell the judge you have a real estate contract, and the judge will usually dismiss the case and tell the seller to file in District Court.

While home ownership is attractive, there are important downsides to buying a home:

- In a real estate contract the buyer usually pays for taxes and repairs. In a rental agreement, the landlord pays these things.

- Buyers under real estate contracts often pay deposits of thousands of dollars, which they usually lose if they are evicted. Tenant deposits are usually equal to just one month's rent.

- If the house you are buying turns out to be a dud, you are faced with making expensive repairs or walking away from the deal—neither of which you can afford. But a tenant can walk away from a rented home after giving proper notice, and perhaps find a better one.

Some tenants are involved in rent-to-own agreements or options to buy. The terms of these agreements almost always favor the seller/landlord. Often the agreements are poorly written or not written down at all. Often these agreements amount to little more than a lease with a very large deposit.

If you are considering a real estate contract, a rent-to-own agreement or an option to buy, make sure the agreement is in writing. Review the written agreement very carefully and get legal advice if you have any questions. Make sure you can afford any deposit, the monthly payments, the taxes and any repairs. A home purchase is an enormous commitment. If in doubt about a particular purchase, you might consider just saying "no."

APPENDIX

I. RESOURCES

A. Legal help

You can apply for legal services from New Mexico Legal Aid (NMLA) by:

- calling 833-LGL-HELP (833-545-4357)

Monday - Friday, 10 am – 4 pm Mountain Time

- submitting an online application: http://tinyurl.com/NMLGL-HELP

Please mail additional questions or concerns to the NMLA central administrative office at:

PO Box 25486
Albuquerque, NM 87125-5486

NMLA is closed on most federal holidays.
You can visit the NMLA website for more information, including statewide office locations: www.newmexicolegalaid.org

Lawyer Resources for the Elderly
For persons over 55, primarily outside of Bernalillo County
(505) 797-6005 / Toll free: (800) 876-6657

New Mexico State Bar Association Lawyer Referral Program
(505) 797-6066 / Toll free: (800) 876-6227

Senior Citizen Law Office
For persons over 60 in Bernalillo, Sandoval, Torrance and Valencia Counties
4317 Lead Avenue SE, Suite A,
Albuquerque NM 87108
(505) 265-2300

DNA-People's Legal Services Inc.

- FARMINGTON (*Serves San Juan County*)
  709 N. Butler Ave.
  Farmington, NM 87401
  (505) 325-8886
- DULCE (*Serves Jicarilla Apache Nation*)
  5 Dulce Rock Rd.,
  P.O. Box 1671
  Dulce, NM 87528
  (705) 759-7568

B. Courts

Landlord-tenant and mobile home park cases can be filed in any of the Magistrate, Metropolitan or District Courts. The location of local courts can be found in the State Government section of the White Pages of your telephone book under Magistrate Court, Metropolitan Court, or District Court.
Information for the entire state on the New Mexico Courts is available at www.nmcourts.gov.

C. Predatory lending & mortgage foreclosure

United South Broadway Corporation & Project Change Fair Lending Center
1500 Walter Street SE, 2nd floor
Albuquerque NM 87102
(505) 764-8867
www.unitedsouthbroadway.org

D. Consumer Complaints

New Mexico Attorney General Consumer and Family Advocacy Services
https://www.nmag.gov/consumer-and-family-advocacy-services.aspx
(505) 717-3500

E. Other resources

New Mexico Mortgage Finance Authority
(505) 843-6880 / Toll free: (800) 444-6880
www.housingnm.org

II. FORMS AND MODEL LETTERS

THIRTY-DAY NOTICE[1] TO TERMINATE RENTAL AGREEMENT

(Uniform Owner-Resident Relations Act)

To: _____

Address: _____

_____

_____, New Mexico _____

You are notified that the undersigned terminates the rental agreement concerning the premises at[2]:

_____

_____

_____, New Mexico _____

effective _____, _____ *(date),* and the premises are to be restored to the owner on that date. Prepaid rent and damage deposit, if any, will be dealt with in accordance with the Uniform Owner-Resident Relations Act and any agreement between the parties. Failure to vacate by this date will result in a legal action being filed against you.

Dated this _____ day of _____, _____.

_____

(Owner) (Agent) (Resident)

Service of notice

- ☐ personally delivered to resident
- ☐ posted
- ☐ mailed by certified mail, return receipt requested

☐ Delivered ☐ Posted ☐ Mailed:

Time: _____ Time: _____

Date: _____ Date: _____

By[3]: _____ By[3]: _____

USE NOTE

1. *The party giving notice should retain two (2) copies for possible court action.*
   This form may also be used for a mobile home park with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.
   If the residency is week-to-week, strike the words "Thirty-Day" in the title to this form, and insert the words "One-Week".
   If the residency is month-to-month, the thirty (30) day notice must be given at least thirty (30) days before the periodic rental date; for example, if the rent is due on the 1st, the notice must be given at least thirty (30) days before the 1st.
2. *If the leased premises is an apartment, include the name of the apartments and the apartment number.*
3. *Include the name of the person delivering, posting or mailing the notice.*

Rule 4-903 NMRA; as amended, effective 9/2/97; 4/6/98
CV-108 Thirty-Day Notice to Terminate Rental Agreement (Rev. 02/08)

THREE-DAY NOTICE OF NONPAYMENT OF RENT[1]

(Uniform Owner-Resident Relations Act)

To: _____

Address: _____

_____

_____, New Mexico _____

You are notified that you are not in compliance with the rental agreement or separate agreement concerning the premises at[2]:

_____

_____

_____, New Mexico _____

by failure to pay rent as follows:

$_____

$_____

$_____

Total due: $_____

If the amount due is not paid within three (3) days from the date of delivery set out below, the rental agreement shall be terminated.

Payment will be accepted only by:

- ☐ Cash
- ☐ Money Order
- ☐ Cashiers or certified check
- ☐ Personal Check

Dated this_____day of_____, _____

_____

Service of notice: *(Owner) (Agent)*

- ☐ Personally delivered to resident
- ☐ Posted
- ☐ Mailed certified mail, return receipt requested
- ☐ Mailed

☐ Delivered ☐ Posted ☐ Mailed:

Time: _____ Time: _____

Date: _____ Date: _____

By[3]: _____ By[3]: _____

USE NOTE

1. *The party giving notice should retain two (2) copies for possible court action.*
2. *If the leased premises is an apartment, include the name of the apartments and the apartment number. This form may also be used for a mobile homepark with less than 12 units. See Subsection C of Section 47-10-2 NMSA 1978.*
3. *Include the name of the person delivering, posting or mailing the notice.*

Rule 4-901 NMRA; as amended, effective 9/02197; 4116198. CV-104 Three-Day Notice of Nonpayment of Rent (Rev. 02108)

RESIDENT'S SEVEN-DAY NOTICE OF ABATEMENT OR TERMINATION OF RENTAL AGREEMENT'

(Uniform Owner-Resident Relations Act)

To: _____

Address: _____

_____

(include name and unit number if applicable)

_____, New Mexico_____*(zip code)*

You are notified that you have breached the rental agreement or the Uniform Owner-Resident Relations Act concerning the premises at:

_____

_____

(include name and unit number if applicable)

_____, New Mexico_____

in that:

(check all that apply)

☐ You failed to make repairs and do whatever is necessary to put and keep the premises in a safe condition as provided by applicable law and rules and regulations;

☐ You failed to keep common areas of the premises in a safe condition;

☐ You failed to maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilation, air conditioning or other facilities and appliances supplied by you;

☐ You failed to provide and maintain appropriate receptacles for the removal of garbage and other waste and arrange for their removal from the appropriate receptacle;

☐ You failed to supply running water and a reasonable amount of hot water at a reasonable temperature at all times;

☐ The dwelling I rent from you does not substantially comply with the minimum housing codes that materially affect health and safety.

Specifically, the condition which needs to be remedied is as follows:

_____

_____

_____

_____

(describe the condition specifically and in detail. Attach additional pages if necessary.)

This condition materially affects the health and safety or habitability of the dwelling I rent.

If reasonable steps are not taken to correct this condition within seven (7) days from the date of delivery set out below, I will:

Continues on next page.

Resident's 7-day notice of abatement (continued)

(check only one)

☐ Reside in the dwelling and withhold one third of my monthly rent until the condition is corrected;

☐ Temporarily move from the dwelling and withhold all of my rent until the condition is corrected;

☐ Terminate the rental agreement and vacate the dwelling.

Dated this_____day of_____, _____

_____

Resident

Service of notice

☐ Personally delivered to resident
☐ Posted
☐ Mailed certified mail, return receipt requested
☐ Mailed

☐ Delivered ☐ Posted ☐ Mailed:

Time: _____	Time: _____
Date: _____	Date: _____
By[2]: _____	By[2]: _____

USE NOTE

1. ***The party giving notice should retain two (2) copies for possible court action.***
2. ***Include the name of the person delivering, posting or mailing the notice.***

Demand letter for return of security deposit

_____
Date

_____
Landlord's name

_____
Address

_____
City, State, Zip Code

Dear Sir or Madam:

On_____(date of move) I moved out of the rental property located at_____(address).

The law in New Mexico requires a landlord to return deposits or else supply the tenant with a written list of deductions and the balance due, if any, within 30 days after a tenant moves out. As you have failed to do this, you must return my entire deposit. If you do not return my deposit I can file an action in court and you may also have to pay a penalty of $250.00 (New Mexico Statutes Annotated Section 47-8-18).

Please return my deposit promptly to avoid court action, possible attorneys' fees, costs and penalties. I will wait seven days before taking any further action.

My deposit should be mailed to: _____

Sincerely,

_____
Tenant's signature

_____
Tenant's name

Move-in rental unit checklist

A checklist of the condition of a rental unit prior to a tenancy may help to determine who is responsible for damages, if any, when the tenant moves out. The tenant and landlord should date and sign the checklist when the tenant moves in *and* when the tenant moves out. Sample checklist:

Room or Area	Condition on moving-in date (OK, dirty, damaged)	Condition on moving-out date (OK, dirty, damaged)
Living room	OK	
Bedroom 1	Missing one window screen	
Master bedroom	OK	
Small bathroom	Broken tiles in shower stall No plug in sink	
Large (master) bathroom	Window on the right is painted closed	
Other	Doorbell doesn't work Mail box won't stay closed	

Include every room and every issue in each room. Be sure to include other interior areas such as hall, basement, attic, etc., as well as exterior areas such as yard, garage, patio, fences, outdoor walls, etc.

If the landlord and tenant disagree on an item, note the disagreement and both should initial the item.
If possible, take photos of any item of disagreement. Sign and date the photos and keep them and the checklist with all your rental documents. Keep them in a safe place because they are very important when the tenant moves out.