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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

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

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

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

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

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

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

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

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

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

21 A. If either party feels aggrieved by the judgment,
22 that party may appeal as in other civil actions. An appeal by
23 the defendant shall stay the execution of any writ of
24 restitution; provided that:

25 (1) a writ of restitution granted for a reason

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1 other than or in addition to the failure to pay rent shall be
2 subject to stay pending appeal only upon such terms as set by
3 the court, including a bond or other conditions designed to
4 protect the interests of the appellee; and

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

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1 notice on the resident pursuant to Subsection D of Section
2 47-8-33 NMSA 1978. If the resident or the resident's escrow
3 agent fails to pay the rent within the three days, a hearing on
4 the issue shall be scheduled within ten days from the date the
5 court is notified of the failure to pay rent. In the case of
6 an appeal de novo, the hearing shall be in the court in which
7 the appeal will be heard. If, at the hearing, the court finds
8 that rent has not been paid, the court shall immediately lift
9 the stay and issue the writ of restitution unless the resident
10 demonstrates a legal justification for failing to comply with
11 the rent payment requirement. An order revoking the stay
12 granted during the appeal shall not be automatically stayed by
13 an appeal.

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