

1 AN ACT
2 RELATING TO HOUSING; REQUIRING OWNERS TO PROVIDE NOTICE TO
3 DWELLING UNIT APPLICANTS OF FEES RELATED TO APPLICANT
4 SCREENING; REQUIRING OWNERS TO RETURN AN APPLICANT SCREENING
5 FEE IN CERTAIN CIRCUMSTANCES; REQUIRING OWNERS TO PROVIDE
6 NOTICE OF FEE INCREASES; REDUCING THE LIMIT ON LATE FEES;
7 EXPANDING PRIVATE REMEDIES; DECLARING AN UNFAIR OR DECEPTIVE
8 TRADE PRACTICE.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13 "47-8-3. DEFINITIONS.--As used in the Uniform
14 Owner-Resident Relations Act:

15 A. "abandonment" means absence of the resident
16 from the dwelling, without notice to the owner, in excess of
17 seven continuous days; providing such absence occurs only
18 after rent for the dwelling unit is delinquent;

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

22 C. "amenity" means a facility appurtenance or area
23 supplied by the owner and the absence of which would not
24 materially affect the health and safety of the resident or
25 the habitability of the dwelling unit;

1 D. "applicant" means a person who submits an
2 application to rent a dwelling unit to the owner or who
3 agrees to act as a guarantor or cosigner on a rental
4 agreement;

5 E. "codes" includes building codes, housing codes,
6 health and safety codes, sanitation codes and any law,
7 ordinance or governmental regulation concerning fitness for
8 habitation or the construction, maintenance, operation,
9 occupancy or use of a dwelling unit;

10 F. "deposit" means an amount of currency or
11 instrument delivered to the owner by the resident as a pledge
12 to abide by terms and conditions of the rental agreement;

13 G. "dwelling unit" means a structure, mobile home
14 or the part of a structure, including a hotel or motel, that
15 is used as a home, residence or sleeping place by one person
16 who maintains a household or by two or more persons who
17 maintain a common household and includes a parcel of land
18 leased by its owner for use as a site for the parking of a
19 mobile home;

20 H. "eviction" means any action initiated by the
21 owner to regain possession of a dwelling unit and use of the
22 premises pursuant to the terms of the Uniform Owner-Resident
23 Relations Act;

24 I. "fair rental value" is that value that is
25 comparable to the value established in the market place;

1 J. "good faith" means honesty in fact in the
2 conduct of the transaction concerned as evidenced by all
3 surrounding circumstances;

4 K. "normal wear and tear" means deterioration that
5 occurs based upon the use for which the rental unit is
6 intended, without negligence, carelessness, accident, abuse
7 or intentional damage of the premises, equipment or chattels
8 of the owner by the residents or by any other person in the
9 dwelling unit or on the premises with the resident's consent;
10 however, uncleanliness does not constitute normal wear and
11 tear;

12 L. "organization" includes a corporation,
13 government, governmental subdivision or agency thereof,
14 business trust, estate, trust, partnership or association,
15 two or more persons having a joint or common interest or any
16 other legal or commercial entity;

17 M. "owner" means one or more persons, jointly or
18 severally, in whom is vested:

19 (1) all or part of the legal title to
20 property, but shall not include the limited partner in an
21 association regulated pursuant to the Uniform Limited
22 Partnership Act; or

23 (2) all or part of the beneficial ownership
24 and a right to present use and enjoyment of the premises and
25 agents thereof and includes a mortgagee in possession and the

1 lessors, but shall not include a person or persons, jointly
2 or severally, who as owner leases the entire premises to a
3 lessee of vacant land for apartment use;

4 N. "person" includes an individual, corporation,
5 entity or organization;

6 O. "premises" means facilities, facilities and
7 appurtenances, areas and other facilities held out for use of
8 the resident or whose use is promised to the resident
9 coincidental with occupancy of a dwelling unit;

10 P. "rent" means payments in currency or in-kind
11 pursuant to terms and conditions of the rental agreement for
12 use of a dwelling unit or premises, to be made to the owner
13 by the resident, but does not include deposits;

14 Q. "rental agreement" means all agreements between
15 an owner and resident and valid rules and regulations adopted
16 under Section 47-8-23 NMSA 1978 embodying the terms and
17 conditions concerning the use and occupancy of a dwelling
18 unit or premises;

19 R. "resident" means a person entitled pursuant to
20 a rental agreement to occupy a dwelling unit in peaceful
21 possession to the exclusion of others and includes the owner
22 of a mobile home renting premises, other than a lot or parcel
23 in a mobile home park, for use as a site for the location of
24 the mobile home;

25 S. "roomer" means a person occupying a dwelling

1 unit that lacks a major bathroom or kitchen facility in a
2 structure where one or more major facilities are used in
3 common by occupants of the dwelling units. As referred to in
4 this subsection, "major facility", in the case of a bathroom,
5 means toilet and either a bath or shower and, in the case of
6 a kitchen, means refrigerator, stove or sink;

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

13 U. "single family residence" means a structure
14 maintained and used as a single dwelling unit.
15 Notwithstanding that a dwelling unit shares one or more walls
16 with another dwelling unit, it is a single family residence
17 if it has direct access to a street or thoroughfare and
18 shares neither heating facilities, hot water equipment nor
19 any other essential facility or service with any other
20 dwelling unit;

21 V. "substantial violation" means a violation of
22 the rental agreement or rules and regulations by the resident
23 or occurring with the resident's consent that occurs in the
24 dwelling unit, on the premises or within three hundred feet
25 of the premises and that includes the following conduct,

1 which shall be the sole grounds for a substantial violation:

2 (1) possession, use, sale, distribution or
3 manufacture of a controlled substance, excluding misdemeanor
4 possession and use;

5 (2) unlawful use of a deadly weapon;

6 (3) unlawful action causing serious physical
7 harm to another person;

8 (4) sexual assault or sexual molestation of
9 another person;

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

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

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

17 W. "term" is the period of occupancy specified in
18 the rental agreement; and

19 X. "transient occupancy" means occupancy of a
20 dwelling unit for which rent is paid on less than a weekly
21 basis or where the resident has not manifested an intent to
22 make the dwelling unit a residence or household."

23 SECTION 2. A new section of the Uniform Owner-Resident
24 Relations Act is enacted to read:

25 "OWNER DISCLOSURE TO APPLICANTS.--An owner shall

1 disclose to applicants in plain language all costs of a
2 rental agreement in a published listing of the dwelling unit,
3 including the base rent that will be assessed and a
4 description of all fees or charges that will be assessed
5 during the residency, which shall be itemized and readily
6 identifiable in the listing. An owner shall not be liable
7 for violating the provisions of the Uniform Owner-Resident
8 Relations Act for a third-party website's failure to
9 represent all costs provided by the owner."

10 SECTION 3. A new section of the Uniform Owner-Resident
11 Relations Act is enacted to read:

12 "DWELLING UNIT APPLICANT SCREENING FEE--PROHIBITED
13 FEES.--

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

19 (1) provides the applicant with written or
20 digital notice of the screening fee and the applicant agrees
21 in writing to pay the screening fee;

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

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

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

8 (5) shall not charge any other fees to
9 process an application.

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

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

14 (2) the owner does not:

15 (a) obtain a consumer credit report;
16 (b) perform a reference check;
17 (c) use a screening service to obtain
18 information about the applicant; or

19 (d) process the application.

20 C. A screening fee that is returned as provided in
21 Subsection B of this section shall be:

22 (1) returned by certified mail;
23 (2) destroyed upon the applicant's request
24 if paid by check; or

25 (3) made available for the applicant to

1 retrieve."

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

4 "BACKGROUND CHECKS.--

5 A. An owner may require a background check of an
6 applicant before entering a rental agreement. An owner shall
7 not charge more than one screening fee to the same applicant
8 if the screening was completed within ninety calendar days of
9 the application date for any properties under the same
10 ownership.

11 B. An owner shall provide the applicant with a
12 copy of any reports used to screen the applicant."

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

15 "NOTICE OF FEE CHANGES REQUIRED.--An owner may increase
16 a fee that is provided pursuant to the terms of a rental
17 agreement by providing written notice at least sixty days
18 prior to the periodic rental date specified in the rental
19 agreement or at least sixty days prior to the end of the term
20 of a fixed term residency. In the case of a periodic
21 residency of less than one month, written notice shall be
22 provided at least one rental period in advance of the first
23 fee payment to be increased."

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

1 "47-8-15. PAYMENT OF RENT.--

2 A. The resident shall pay rent in accordance with
3 the rental agreement. In the absence of an agreement, the
4 resident shall pay as rent the fair rental value for the use
5 of the premises and occupancy of the dwelling unit.

6 B. Rent is payable without demand or notice at the
7 time and place agreed upon by the parties. Unless otherwise
8 agreed, rent is payable at the dwelling unit. Unless
9 otherwise agreed, periodic rent is payable at the beginning
10 of any term of one month or less and otherwise in equal
11 monthly installments at the beginning of each monthly period.
12 The date of one month to the same date of the following month
13 shall constitute a term of one month.

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

17 D. If the rental agreement provides for the
18 charging of a late fee and if the resident does not pay rent
19 in accordance with the rental agreement, the owner may charge
20 the resident a late fee in an amount not to exceed five
21 percent of the rent for each rental period that the resident
22 is in default. Late fees shall be calculated only based on
23 rent. Rent calculations to determine late fees shall not
24 include deposits, additional fees or utilities. To assess a
25 late fee, the owner shall provide notice of the late fee

1 charged no later than the last day of the next rental period
2 immediately following the period in which the default
3 occurred.

4 E. An owner may not assess a fee from the resident
5 for occupancy of the dwelling unit by a reasonable number of
6 guests for a reasonable length of time. This shall not
7 preclude charges for use of premises or facilities other than
8 the dwelling unit by guests.

9 F. An owner may increase the rent payable by the
10 resident in a month-to-month residency by providing written
11 notice to the resident of the proposed increase at least
12 thirty days prior to the periodic rental date specified in
13 the rental agreement or, in the case of a fixed term
14 residency, at least thirty days prior to the end of the term.
15 In the case of a periodic residency of less than one month,
16 written notice shall be provided at least one rental period
17 in advance of the first rental payment to be increased.

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

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

23 "47-8-48. PREVAILING PARTY RIGHTS IN LAWSUIT--PRIVATE
24 ENFORCEMENT.--

25 A. If suit is brought by an applicant or any party SJC/SB 267
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1 to the rental agreement to enforce the terms and conditions
2 of the rental agreement or to enforce any provisions of the
3 Uniform Owner-Resident Relations Act, the prevailing party
4 shall be entitled to reasonable attorneys' fees and court
5 costs to be assessed by the court.

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

9 C. An owner who violates a provision of
10 Section 47-8-36 or 47-8-39 NMSA 1978 shall be liable for two
11 times the amount of the monthly rent.

12 D. A resident who intentionally violates a
13 provision of Subsection F of Section 47-8-22 NMSA 1978 shall
14 be liable for two times the amount of the monthly rent."

15 SECTION 8. Section 57-12-2 NMSA 1978 (being Laws 1967,
16 Chapter 268, Section 2, as amended) is amended to read:

17 "57-12-2. DEFINITIONS.--As used in the Unfair Practices
18 Act:

19 A. "person" means, where applicable, natural
20 persons, corporations, trusts, partnerships, associations,
21 cooperative associations, clubs, companies, firms, joint
22 ventures or syndicates;

23 B. "seller-initiated telephone sale" means a sale,
24 lease or rental of goods or services in which the seller or
25 the seller's representative solicits the sale by telephoning

1 the prospective purchaser and in which the sale is
2 consummated entirely by telephone or mail, but does not
3 include a transaction:

4 (1) in which a person solicits a sale from a
5 prospective purchaser who has previously made an authorized
6 purchase from the seller's business; or

7 (2) in which the purchaser is accorded
8 the right of rescission by the provisions of the federal
9 Consumer Credit Protection Act, 15 U.S.C. 1635, or
10 regulations issued pursuant thereto;

11 C. "trade" or "commerce" includes the advertising,
12 offering for sale or distribution of any services and any
13 property and any other article, commodity or thing of value,
14 including any trade or commerce directly or indirectly
15 affecting the people of this state;

16 D. "unfair or deceptive trade practice" means an
17 act specifically declared unlawful pursuant to the
18 Unfair Practices Act, a false or misleading oral or written
19 statement, visual description or other representation of any
20 kind knowingly made in connection with the sale, lease,
21 rental or loan of goods or services or in the extension of
22 credit or in the collection of debts by a person in the
23 regular course of the person's trade or commerce, that may,
24 tends to or does deceive or mislead any person and includes:

25 (1) representing goods or services as those

1 of another when the goods or services are not the goods or
2 services of another;

3 (2) causing confusion or misunderstanding as
4 to the source, sponsorship, approval or certification of
5 goods or services;

6 (3) causing confusion or misunderstanding as
7 to affiliation, connection or association with or
8 certification by another;

9 (4) using deceptive representations or
10 designations of geographic origin in connection with goods or
11 services;

12 (5) representing that goods or services have
13 sponsorship, approval, characteristics, ingredients, uses,
14 benefits or quantities that they do not have or that a person
15 has a sponsorship, approval, status, affiliation or
16 connection that the person does not have;

17 (6) representing that goods are original or
18 new if they are deteriorated, altered, reconditioned,
19 reclaimed, used or secondhand;

20 (7) representing that goods or services are
21 of a particular standard, quality or grade or that goods are
22 of a particular style or model if they are of another;

23 (8) disparaging the goods, services or
24 business of another by false or misleading representations;

25 (9) offering goods or services with intent

1 not to supply them in the quantity requested by the
2 prospective buyer to the extent of the stock available,
3 unless the purchaser is purchasing for resale;

4 (10) offering goods or services with intent
5 not to supply reasonable expectable public demand;

6 (11) making false or misleading statements
7 of fact concerning the price of goods or services, the prices
8 of competitors or one's own price at a past or future time or
9 the reasons for, existence of or amounts of price reduction;

10 (12) making false or misleading statements
11 of fact for the purpose of obtaining appointments for the
12 demonstration, exhibition or other sales presentation of
13 goods or services;

14 (13) packaging goods for sale in a container
15 that bears a trademark or trade name identified with goods
16 formerly packaged in the container, without authorization,
17 unless the container is labeled or marked to disclaim a
18 connection between the contents and the trademark or trade
19 name;

20 (14) using exaggeration, innuendo or
21 ambiguity as to a material fact or failing to state a
22 material fact if doing so deceives or tends to deceive;

23 (15) stating that a transaction involves
24 rights, remedies or obligations that it does not involve;

25 (16) stating that services, replacements or

repairs are needed if they are not needed;

(17) failing to deliver the quality or quantity of goods or services contracted for;

(18) violating the Tobacco Escrow Fund Act;

(19) offering or providing unposted or unadvertised pricing or service based on the buyer's gender or perceived gender identity; provided, however, that this provision does not apply to persons regulated by the office of superintendent of insurance pursuant to the New Mexico Insurance Code; or

(20) charging an applicant a fee in violation of the Uniform Owner-Resident Relations Act; and

E. "unconscionable trade practice" means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts that to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid."

SECTION 9. A new section of the Unfair Practices Act is enacted to read:

1 "PROHIBITED CONDUCT IN RENTING OF DWELLING UNITS.--

2 A. As used in this section:

3 (1) "applicant" means a person who submits
4 an application to rent a dwelling unit to the owner or agrees
5 to act as a guarantor or cosigner on a rental agreement;

6 (2) "dwelling unit" means a structure,
7 mobile home or the part of a structure, including a hotel or
8 motel, that is used as a home, residence or sleeping place by
9 one person who maintains a household or by two or more
10 persons who maintain a common household and includes a parcel
11 of land leased by the owner for use as a site for the parking
12 of a mobile home;

13 (3) "owner" means one or more persons,
14 jointly or severally, in whom is vested all or part of the:

15 (a) legal title to a property, but does
16 not include the limited partner in an association regulated
17 under the Uniform Revised Limited Partnership Act; or

18 (b) beneficial ownership and a right to
19 present use and enjoyment of the premises and agents thereof
20 and includes a mortgagee in possession and the lessors, but
21 does not include a person or persons, jointly or severally,
22 who as owner leases the entire premises to a lessee of vacant
23 land for apartment use;

24 (4) "rent" means payments in currency or
25 in-kind under terms and conditions of the rental agreement

1 for use of a dwelling unit or premises, to be made to the
2 owner by the resident, but does not include deposits; and

3 (5) "rental agreement" means all agreements
4 between an owner and resident and valid rules and regulations
5 adopted pursuant to Section 47-8-23 NMSA 1978 embodying the
6 terms and conditions concerning the use and occupancy of a
7 dwelling unit or premises.

8 B. It is an unfair or deceptive trade practice for
9 an owner to charge a fee to an applicant that is not a
10 screening fee or deposit or that was not published in a
11 listing for rental of a dwelling unit in violation of the
12 Uniform Owner-Resident Relations Act.

13 C. It is an unfair or deceptive trade practice for
14 an owner to charge fees that are not included in the rental
15 agreement in violation of the Uniform Owner-Resident Relations
16 Act."
