

OWNER-RESIDENT RELATIONS

This pamphlet concerns only residential leases and does not pertain to leases of commercial property, mobile homes¹ and/or government housing. The New Mexico law that covers landlord-tenant relations for most kinds of residential rental housing is called the Uniform Owner-Resident Relations Act (“UORRA”), and may be found within the New Mexico Statutes Annotated (NMSA) at Section 47-8-1 through Section 47-8-52.² This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet or that it meets your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

WHAT IS A RESIDENTIAL LEASE

A residential *Lease or Rental Agreement* is an agreement between a person or entity (the “**Landlord**”), who owns a dwelling unit or residence, such as a home or apartment (the “**Residence**”), and who grants to another person (the “**Tenant**”) the right to possess, occupy, use, and live in the **Residence** in exchange for the **Tenant’s** payment of **Rent**. If there is a written *Lease or Rental Agreement*, the Landlord must provide a copy of it to each **Tenant** prior to their moving into the **Residence**.

WHAT ARE THE LANDLORD’S DUTIES UNDER A RESIDENTIAL LEASE?

A **Landlord** must follow the terms of the *Lease or Rental Agreement* and is responsible for providing the **Tenant** with possession of the **Residence** until the *Lease* is terminated or the **Tenant** is **Evicted**. Subject to the terms of the *Lease*, the law requires the **Landlord** to:

- Substantially comply with applicable minimum housing codes materially affecting health and safety;
- Make repairs and do what is necessary so that the **Residence** are kept in a safe condition as required by applicable laws, rules and regulations;
- Keep common areas of the **Residence** in a safe condition;
- Maintain in good and safe working order the electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by the **Landlord**;
- Provide and maintain garbage and other waste receptacles and arrange for emptying of the receptacles; and
- Supply running water and a reasonable amount of hot water at all times; and reasonable heat, except where heat or hot water is generated by an installation within the exclusive control of the **Tenant** and supplied by a direct public utility connection.

WHAT ARE THE TENANT’S DUTIES UNDER A RESIDENTIAL LEASE?

A **Tenant** must also follow the terms of the *Lease* and has minimum requirements to follow by law. The law requires the **Tenant** to:

- Comply with applicable minimum housing codes materially affecting health and safety;

¹ Evictions from a mobile home park (land used for continuous accommodation of twelve (12) or more occupied mobile homes) are governed by the **Mobile Home Park Act**, found in Sections 47-10-1 through 47-10-23 of the New Mexico Statutes Annotated.

² Certain types of housing are exempt from UORRA (it does not apply). For example, UORRA does not cover stays in a hotel or motel if **Rent** is paid more often than weekly; stays in dormitories, hospital rooms, places where people stay while receiving medical or mental health treatment, religious or educational institutions, and housing used primarily for agricultural purposes. In addition, if a house is being purchased under a land or real estate contract, the UORRA does not apply. This pamphlet does not deal with those types of living arrangements.

- Keep the occupied part of the **Residence** as clean and safe as conditions permit, and upon termination of the *Lease or Rental Agreement*, return the **Residence** to the same clean condition it was in when the *Lease or Rental Agreement* term began, except for ordinary wear and tear;
- Dispose from the **Residence**, garbage and other waste in a clean and safe manner;
- Keep all plumbing fixtures in the **Residence** or used by the **Tenant** as clean as their condition permits;
- Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilation, air conditioning and other facilities and appliances including elevators, if any, in the **Residence**;
- Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the **Residence** or let another person do so;
- **Tenant(s)** and guests at the **Residence** with the **Tenant's** consent must conduct themselves in a way that will not disturb their neighbors' peaceful enjoyment of their residence;
- Abide by all bylaws, covenants, rules, or regulations of any applicable condominium regime, cooperative housing agreement, or neighborhood association not inconsistent with **Landlord's** rights or duties; and
- Not knowingly commit or consent to any other person knowingly committing a substantial violation.

WHAT IS EVICTION AND HOW DOES IT BEGIN?

Eviction is the civil process by which the **Landlord** ends the **Tenant's** possession of the **Residence** under the *Lease* and may legally remove the **Tenant** from the **Residence**. The **Eviction** process starts with a written notice from the **Landlord** to the **Tenant** regarding the *Lease*. There are four (4) basic types of *Eviction Notices*:

▶ A **Thirty-Day Notice to Terminate Rental Agreement**, where the **Landlord** tells the **Tenant** that the *Lease* is ending and that the **Tenant** must move out by a specific date (This type of notice must be given at least thirty (30) days before the **Tenant's** next rental period listed in the **Thirty-Day Notice to Terminate Rental Agreement** begins to terminate a month-to-month residency.).

▶ A **Seven-Day Notice of Noncompliance with Rental Agreement** is used to notify the **Tenant** to correct violations of the *Lease or Rental Agreement* (for other than failure to pay rent) within seven (7) days of **Tenant's** receipt of the **Seven-Day Notice of Noncompliance with Rental Agreement** or to enforce obligations imposed on the **Tenant** by law. The **Notice** must clearly list the acts and omissions (including dates and specific facts alleged) constituting the **Tenant's** violations and give the **Tenant** no less than seven (7) days to cure (fix) the listed problems. If the **Tenant** fails to do so, the **Landlord** may terminate the rental agreement and file a *Petition by Owner for Restitution* to evict the **Tenant**. The **Seven-Day Notice of Noncompliance with Rental Agreement** must be given within thirty (30) days after the problem occurs or the **Landlord** learns of it.

Upon a second, **Seven-Day Notice of Noncompliance with Rental Agreement** (within six (6) months of the first **Seven-Day Notice of Noncompliance with Rental Agreement**), The second **Seven-Day Notice of Noncompliance with Rental Agreement** must clearly list the problem (including dates and specific facts alleged) constituting the **Tenant's** violations. After the **Seven-Day Notice of Noncompliance with Rental Agreement** is received by the **Tenant**, the **Tenant** does not have the right to cure (fix) the listed problems. Instead, at least seven (7) days after service of the **Seven-Day Notice of Noncompliance with Rental Agreement** on the **Tenant**, the **Landlord** may terminate the *Lease or Rental Agreement* and file a *Petition by Owner for Restitution* to evict the **Tenant**. The **Seven-Day Notice of Noncompliance with Rental Agreement** must be given within thirty (30) days after the problem occurs or the **Landlord** learns of it.

▶ A **Three-Day Notice of Nonpayment of Rent**, which gives the **Tenant** three (3) days to pay **Rent** from the date of delivery of the **Three-Day Notice of Nonpayment of Rent** on the **Tenant**. If the **Tenant** does not pay the **Rent** (including late charges if provided for in the *Lease or Rental Agreement*) within three (3)

days of receiving the **Three-Day Notice of Nonpayment of Rent**, the the **Landlord** may terminate the *Lease or Rental Agreement* and file a *Petition by Owner for Restitution* to evict the **Tenant**.

► A **Three-Day Notice of Substantial Violation of Rental Agreement**, which the **Landlord** gives when the **Tenant** or another person, with the **Tenant's** consent, *knowingly* commits a *substantial violation* of the *Lease* or the law and as a result of this conduct, the *Lease or Rental Agreement* will terminate three (3) days from the date of service listed on the **Three-Day Notice of Substantial Violation of Rental Agreement** on the **Tenant**.

Substantial Violations are conduct that occurred within three hundred (300) feet of the **Residence** and includes:

- Possession, use, sale, distribution or manufacture of a controlled substance, other than misdemeanor possession and use;
- Unlawful use of a deadly weapon; unlawful action causing serious physical harm to another person;
- Sexual assault or sexual molestation of another person;
- Entry into the dwelling unit or vehicle of another person without that person's 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; or
- Intentional or reckless damage to property in excess of one thousand dollars (\$1,000.00).

See NMSA 1978, Section 47-8-33(I) and Rule (Form) 4-901A NMRA regarding “*substantial violations.*”

After the date stated in the **Three-Day Notice**, **Seven-Day Notice** and/or **Thirty-Day Notice** has expired, the **Landlord** may pursue a lawsuit to *Evict* the **Tenant** by filing a *Petition by Owner for Restitution* with the Court asking the Judge to *Evict* the **Tenant** and award the **Landlord** money for past and future **Rents**, late fees, utility charges, property damage, other contractual damages, attorney's fees and/or Court costs. However, if the number of days stated in the notice has not passed or if the **Tenant** pays the **Rent** or corrects the violations in the time set out in the notice, then the Judge may not allow the *Eviction*. Also, if the **Residence** is in foreclosure, the **Tenant** may be entitled to additional notice before the **Tenant** has to move out of the **Residence**. Under the federal Protecting Tenants at Foreclosure Act (“PTFA”), most tenants will have at least ninety (90) days to move out after a home is foreclosed on.

WHAT DOES A LANDLORD NEED IN ORDER TO FILE AN EVICTION CASE?

A **Landlord** may need to bring the following to Court:

- A *Petition by Owner for Restitution* form, which has been completed and signed and to which copies of all of the written notices (three-day, seven-day, and/or thirty-day) from the **Landlord** to the **Tenant** and the *Lease or Rental Agreement* are attached as Exhibits;
- Copies of the *Petition by Owner for Restitution* with Exhibits for the **Landlord** and for service on each of the **Tenants**; and
- The fee to file a *Petition* is \$77.00.

METHODS OF PAYMENT

Personal checks are not accepted. Acceptable forms of payment are: Cash (\$20 are the largest bills accepted:), Money Orders, Cashier's Checks, and Debit/Credit cards (with 2.4% surcharge) Make money orders and checks payable to “Dona Ana County Magistrate Court”. Attorneys may pay fees by official business firm checks.

When the **Landlord** files a *Petition by Owner for Restitution*, the Clerk of the Court (“Clerk”) will prepare a *Service Packet*, which includes the date of the Trial, a copy of the *Petition by Owner for Restitution*, an *Answer*

to *Petition for Restitution* form, and the *Summons*. The Clerk sets the Trial seven (7) to ten (10) days *after* the date the **Landlord** is expected to serve the *Petition by Owner for Restitution, Summons, and Answer to Petition for Restitution* form on the **Tenant**. The Judge may continue the Trial date for up to seven (7) days from the initial Trial date upon a finding of good cause (a legally sufficient reason). In this type of lawsuit, the **Landlord** is the **Plaintiff** and the **Tenant** is the **Defendant**.

COURT EMPLOYEES ARE NOT PERMITTED TO FILL OUT FORMS OR GIVE LEGAL ADVICE.

<i>Trial Note:</i>	Please, remember that neither court staff nor a judge can give you legal advice and that at the time of trial the Judge cannot assist you in presenting your case.
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WHAT ACTIONS CAN A TENANT TAKE AGAINST THE LANDLORD?

Until a *Lease* ends or is terminated, so long as a **Tenant** is paying **Rent** and not violating the *Lease* or the law, the **Tenant** may possess, use and occupy the **Residence**. If the **Landlord** violates the law or a material term of the *Lease*, or if the **Residence** being rented is dangerous or unhealthy, then the **Tenant** may serve the **Landlord** with a *Resident's Seven-Day Notice of Abatement or Termination* notifying the **Landlord** that they breached the *Lease or Rental Agreement* or the Uniform Owner-Resident Relations Act and requesting the **Landlord** follow the law, perform its obligations under the *Lease*, and/or repair/remedy the dangerous or unhealthy conditions at the **Residence**. If the **Landlord** fails to perform and/or the repairs are not finished within seven (7) days (or not begun if such repairs reasonably cannot be completed within seven (7) days), then the **Tenant** may:

- Terminate the *Lease* and leave the property without penalty;
- Reduce (abate) the **Rent** by one-third (1/3) of the pro-rata daily rental amount for each day that the repairs are unfinished from the date he **Tenant** notified the **Landlord** of the conditions needing repair through the day the conditions in the notice are remedied, (unless the **Residence** is completely uninhabitable and the **Tenant** does not inhabit the **Residence** as a result of the conditions, in which case the **Tenant** may abate one hundred percent (100%) of the **Rent** until the conditions needing repair are remedied); or
- File a *Petition by Resident for Possession* (for example, to bring a claim for damages against the **Landlord** or for quiet enjoyment (interference with the **Tenant's** right to reasonable use of the **Residence**) and proceed through the Court process.

For example, if a **Tenant** is illegally locked out of or denied access to the **Residence**, or if the utilities are wrongfully disconnected by the **Landlord**, then the **Tenant** may file a *Petition by Resident for Possession* claiming that he/she is entitled to damages due to the **Landlord's** wrongful actions and/or that **Tenant** be allowed to move back into the **Residence**. When the **Tenant** files a completed and signed *Petition by Resident for Possession* form with the Court, a copy of the *Resident's Seven-Day Notice of Abatement or Termination* served on the **Landlord** must be attached as an Exhibit. The Clerk of the Court will prepare a *Service Packet*, which includes the date of the Trial and assigned Judge, a copy of the *Petition by Resident for Possession*, a blank *Answer to Petition for Restitution* form, and a *Summons*. The Clerk sets the Trial three (3) to five (5) days *after* the date the **Tenant** is expected to serve the *Petition* on the **Landlord**. The Judge may continue the Trial date for up to seven (7) days upon a finding of good cause (a legally sufficient reason). In this type of lawsuit, the **Tenant** is the **Plaintiff** and the Landlord is the **Defendant**.

HOW DOES THE DEFENDANT GET NOTICE OF THE PETITION AND COURT DATE?

The **Defendant** MUST be notified that a lawsuit has been filed. It is the **Plaintiff's** responsibility to have the *Service Packet* served on the **Defendant** not less than seven (7) or more than ten (10) days before the

Trial/Court date in *Petition by Owner for Restitution* cases and not less than three (3) or more than five (5) days before the Trial/Court date in *Petition by Resident for Possession* cases.

The **Plaintiff** is prohibited by law from delivering the *Service Packet* to the **Defendant**. Instead, the **Plaintiff** must have one of the following persons deliver the *Service Packet* to the **Defendant** at the **Plaintiff's** additional expense (**Plaintiff** is responsible for providing extra copies as required by the person serving the documents):

- **The Sheriff of the county where the Defendant may be found; or**
- **A private process server; or**
- **Any person eighteen (18) years of age or older who is not a party in the lawsuit.**

There are specific rules that must be followed to give proper notice of the lawsuit to the **Defendant**. The two (2) basic ways to serve the **Defendant** properly are by:

1. **MAIL:** Mailing copies of the *Petition by Owner for Restitution* (where the **Landlord** is the **Plaintiff**) or *Petition by Resident for Possession* (where the **Tenant** is the **Plaintiff**), *Summons*, *Answer to Petition for Restitution* form, two (2) copies of an *Acknowledgment of Service* form, and a return envelope, postage prepaid, addressed to the sender to the **Defendant**. If no *Acknowledgment of Service* is received by the **Plaintiff** sufficiently prior to the Trial date, service of the *Summons*, *Petition by Owner* (or *Petition by Resident*) and *Answer to Petition for Restitution* form shall be made by **Personal Service**, as described below. A **Defendant** does not have to sign the *Acknowledgment of Service* form, but may have to pay service fees even if the **Defendant** wins the lawsuit.
2. **PERSONAL SERVICE:** a) Delivering the *Petition by Owner for Restitution* (where the **Landlord** is the **Plaintiff**) or *Petition by Resident for Possession* (where the **Tenant** is the **Plaintiff**), *Summons*, *Answer to Petition for Restitution* form, directly to the **Defendant**.; b) If refuses to accept service, it can be left at the location where **Defendant** has been found, and service shall be considered valid; c) If **Defendant** is not present, service can be made by delivering a copy of the process to some person residing at the usual abode of the **Defendant** who is over the age of fifteen (15); d) If no person is present or willing to accept service, it can be posted in the most public part of the **Defendant's** premises and then mailed to the **Defendant** at their last known address.

If the **Defendant** is a legal business entity, such as a corporation, limited liability company, or a partnership, the *Service Packet* must be given to the Registered Agent, an officer, managing agent, general partner, or other person in charge of the entity. A copy of the *Service Packet* must also be mailed to the **Defendant**.

After the *Service Packet* is properly served on the **Defendant**, the *Return of Service* located on the backside of the *Summons*, must be completed by the person who delivered the *Service Packet* to the **Defendant** and filed with the Court. If the *Return of Service* is not returned to and filed with the Court, the Judge may not take any action and the case may be delayed and could be dismissed.

WHO WILL BE THE JUDGE?

A Judge is randomly assigned to a case when the case is filed. Each party may excuse one (1) Judge. In an **Eviction** case, the time limit for excusing a Judge for the **Landlord** or the **Tenant** is three (3) days after the service of the *Petition by Owner for Restitution*. In a *Petition by Resident for Possession* case, the deadline to excuse a Judge for the **Tenant** is three (3) days from filing the *Petition by Resident for Possession* and for the **Landlord** is three (3) days from service of the *Petition by Resident for Possession*. If either the **Landlord** or the **Tenant** disqualifies a Judge, the Court will assign a new Judge to the case. However, the Court date and time probably will remain the same with the new Judge.

WHEN IS THE DEADLINE FOR THE DEFENDANT TO FILE AN ANSWER?

The **Defendant** has until the deadline in the *Summons* to file a written *Answer* or the date of Trial, whichever is earlier. However, The **Defendant** may go to trial and give evidence of his/her defense to the *Eviction*, even if he/she has not filed an *Answer to Petition for Restitution*. The **Defendant** may also file a *Counterclaim* for damages against the **Plaintiff**, such as when the **Landlord** does not return the **Tenant's** security deposit (as required by the Uniform Owner-Resident Relations Act). Neither the *Answer* nor *Counterclaim* is proof; it is only a statement of what the **Defendant** hopes to prove at the Trial. The **Defendant** must appear at the Trial to prove his/her case.

CAN THE COURT DATE BE CHANGED?

Only the Judge may decide whether or not to change the court date. To request a court date change, a party must file a written *Motion for Continuance* with the Court before the scheduled hearing or Trial. If both parties are represented by attorneys, prior to filing a written *Motion for Continuance*, the party seeking a continuance must attempt to contact the opposing party's attorney for the opposing party's position on the *Motion for Continuance*. The written *Motion for Continuance* must state the opposing party's position, or whether the opposing party did not respond. If the Judge finds good cause (a legally sufficient reason), the Court may continue the hearing or Trial date up to seven (7) days from the date of the initial hearing or Trial date.

WHAT HAPPENS IF THE DEFENDANT DOES NOT APPEAR AT THE TRIAL?

If the **Defendant** does not appear at a Trial, and the **Tenant** was properly served with the *Summons*, the Court may conduct the Trial as though the **Defendant** was present. The **Plaintiff** may request the Court to enter a *Judgment by Default* against the **Defendant**, which means that the **Plaintiff** automatically wins the case and is usually awarded the dollar amount and relief requested in the *Petition*. If the **Plaintiff** in the case does not appear at Trial the Judge may dismiss the **Plaintiff's** case.

Therefore, if a **Defendant** wants to protect his/her rights it is extremely important that the **Defendant** respond to the **Plaintiff's** *Petition* and appear at the Trial.

WHEN DOES THE TENANT HAVE TO MOVE OUT OF THE RENTAL PROPERTY?

If a *Judgment for Restitution* is entered in favor of the **Landlord**, the Judge will set an *Eviction* date. The *Eviction* date may be no less than three (3) days and no more than seven (7) days from the Trial/Court date, unless otherwise agreed upon by the parties.

If the **Landlord** claims an amount for damage to the **Residence**, the Judge must be provided with a list of damages and the **Landlord** must be prepared to verify the cost of repairs. The Court will often set a separate hearing on the merits of the damage claim after the *Eviction* Trial, and will notify the parties of the date and time of the hearing.

WHAT IF THE TENANT DOES NOT MOVE OUT BY THE EVICTION DATE?

If the **Tenant** does not move out by the *Eviction* date set by the Judge, the **Landlord** may ask the Court Clerk to issue a *Writ of Restitution* ordering the Sheriff to remove the Tenant from the **Residence**. After the Court Clerk issues the *Writ of Restitution*, the **Landlord** may deliver the *Writ of Restitution* to the Sheriff's Office. The Sheriff will then go to the **Residence** and *Evict* (remove) the **Tenant** and their property from the **Residence** (The Sheriff may either order the **Tenant** to remove personal property immediately or lock up the **Residence** and advise the tenant to arrange for removal of the property within a strict time limit). Note that the Sheriff's Office is the only entity authorized by the Court to *Evict* a **Tenant** and the Sheriff's Office charges a fee for this service.

WHAT CAN A PLAINTIFF/DEFENDANT DO IF THEY DO NOT AGREE WITH THE JUDGE'S DECISION?

If either party does not agree with the *Judgment*, that party may appeal the Judge's decision to the District Court of the county where the **Residence** is located within fifteen (15) days of the entry of the *Judgment*, by filing with the Clerk of the District Court a Notice of Appeal with proof of service (that the Notice of Appeal was served on the opposing party (appellee)); filing with the Magistrate Court a copy of the Notice of Appeal which has been endorsed by the Clerk of the District Court; and a copy of the receipt of payment of the docket fee. The party who files the Notice of Appeal is called the appellant.

An appeal by the **Tenant** may stay (stop temporarily) the execution of any *Writ of Restitution*, if within five (5) days of filing the *Notice of Appeal*, the **Tenant** pays to the owner or into an escrow account with a professional escrow agent the balance of the **Rent** owed from the day after the *Judgment* through the end of that rental period. The **Tenant** must continue to pay the monthly **Rent** amount established by the *Lease* or *Rental Agreement* at the time the *Petition for Restitution by Owner* was filed, on the day **Rent** would normally be due. Payments made by a **Tenant** receiving **Rent** subsidies need to be the actual amount of the monthly **Rent** paid by the **Tenant**. If the **Tenant** pays the **Landlord** directly, the **Landlord** must immediately give the **Tenant** a written receipt when requested. If the **Tenant** pays into an escrow account, the **Tenant** must have the escrow agent pay the amount to the **Landlord** immediately, unless the Court ordered something different. If the **Tenant** or the escrow agent does not make a monthly rental payment on the day **Rent** is due, the **Landlord** may serve the **Tenant** a three-day written notice. If the **Tenant** or the **Tenant's** escrow agent fails to pay the **Rent** within the three (3) days, a hearing will be scheduled within ten (10) days from the day the Court is notified of the failure to pay **Rent**. After the Notice of Appeal is filed, a hearing will be set in the District Court where the *Judgment* was appealed. If the District Court finds that **Rent** was not paid, the District Court may immediately lift the stay and issue the *Writ of Restitution* unless the **Tenant** demonstrates to the District Court Judge legal justification for their failing to comply with the rent payment requirement.

In order to stay the execution of a money *Judgment*, the trial court has discretion to require an appellant to deposit with the Clerk of the trial Court the amount of *Judgment* and costs or to give a *supersedeas bond* (a bond required to obtain a stay of execution of a *Judgment* that continues in effect until final disposition of the appeal) in the amount of the *Judgment* and costs, with or without a surety. The bond or deposit is not refundable during the pendency of an appeal.

Other Pamphlets and Forms are available at the Magistrate Court or New Mexico's Judiciary website (www.nmcourts.gov).