

1 **4-904B. Petition by owner for restitution.**
2 [Sections 47-8-42 and 47-8-46 NMSA 1978; for use
3 only with the Eviction Prevention and Diversion Program]

4
5 STATE OF NEW MEXICO
6 COUNTY OF _____
7 _____ COURT

8 _____, Plaintiff(s),

9
10 v. No. _____

11
12 _____, Defendant(s).

13
14
15 **PETITION BY OWNER FOR RESTITUTION**
16 ***(Uniform Owner-Resident Relations Act)***

17
18 Plaintiff, whose name is _____
19 _____ *(include names of all Plaintiffs, if more than one)*, alleges:

20
21 1. Plaintiff is an owner¹ lawfully entitled to possession of the premises located at:
22 _____,
23 _____, New Mexico _____.
24 *(include street number and street, name of apartment complex, building, and unit number*
25 *(if any), city, and zip code).*

26
27 2. Defendant entered into possession of the premises under a rental agreement² and has
28 breached the terms of the agreement by *(check all that apply)*:
29 nonpayment of rent; substantial violation of, or material non-
30 damage to premises; compliance with, rental or other agreement; or
31 other *(explain facts)*:
32 _____
33 _____

34 A copy of any relevant rental agreement with Defendant is attached to this petition.

35
36 3. Defendant's contact information is as follows *(check one of the following)*:
37 Per Plaintiff's good faith search, Defendant's last known contact information is as
38 follows *(include for all Defendants, if more than one)*:
39 Physical address: _____
40 _____
41 Mailing address *(if different)*: _____
42 _____
43 Phone number with area code: _____
44 _____

1 Email address: _____
2

3 Despite Plaintiff's good faith search, Plaintiff has been unable to determine
4 Defendant's current physical, mailing, or email address or phone number, and
5 Plaintiff states that Plaintiff communicates with Defendant as follows (*include*
6 *information for all Defendants, if more than one*): _____
7 _____
8 _____
9

10 4. On _____, _____ (*specific date*), Plaintiff gave Defendant
11 written notice of (*check all that apply*):

12 termination of the rental agreement or residency; and
13 breach of the rental agreement that Defendant has failed to remedy.
14

15 This notice was given by (*select all delivery methods Plaintiff used*):

16 hand delivery to the Defendant; hand delivery to _____
17 mail; (full name); and
18 posting on exterior door.
19

20 A copy of any relevant written notice given to Defendant is attached to this Petition.

21 5. Plaintiff certifies that Plaintiff has provided, or immediately will provide, a copy of
22 the Resource Information Sheet³ designated for use in this particular Court to the
23 Defendant, along with this Petition for Restitution.
24

25 6. Plaintiff certifies that the property at issue in this case (*check one*):

26 IS subject to federal 30-day notice to vacate requirements;
27 IS NOT subject to federal 30-day notice to vacate requirements.⁴
28

29 (*check and complete Questions 7 and 8, if applicable*)

30 7. Defendant owes the Plaintiff the following itemized unpaid rent and/or other
31 charges in the total amount of \$ _____ as of the date of this Petition.
32

33 (*attach an itemized list or insert amounts below for the monthly rent and other charges*
34 *due through the date of this Petition, as may be evidenced by the rental agreement(s)*)
35

36 Itemized charges: _____
37 _____
38 _____
39

40 8. Plaintiff has received \$ _____ in total government emergency
41 rental assistance on behalf of the Defendant for the premises listed in Paragraph 1.
42 \$ _____ addressed back rent, and \$ _____ was applied as future rent.
43

44 Plaintiff is aware of a pending government rental assistance application made on
45 behalf of Defendant for the premises listed in Paragraph 1 by:

- 1 Defendant
- 2 Plaintiff
- 3 Other (*specify*): _____
- 4

5 9. Plaintiff holds \$_____ as a damage deposit for Defendant under the rental agreement.

6

7 10. Plaintiff requests separate trials on the issues of restitution and damages.

8

9 11. Plaintiff requests judgment against Defendant, remedied by (*select all remedies that*

10 *Plaintiff seeks*):

- 11 1. Immediate possession of the premises;
- 12 2. Unpaid rent of \$_____, plus future rent calculated as
- 13 \$_____ per _____ (*time period*) up to the date of restitution;
- 14 3. Damages as may be determined by the Court;⁵
- 15 4. Court costs;⁶
- 16 5. Reasonable attorney fees;⁶
- 17 6. A civil penalty as provided by law;⁷
- 18 7. Other relief as the court may deem reasonable.
- 19

AFFIRMATION

(*required, unless signed by an active New Mexico attorney*)

23 I SWEAR OR AFFIRM, under penalty of perjury under the laws of the State of New Mexico,
24 that the statements in this petition are true and correct to the best of my knowledge.

25 Dated: _____

26 _____

27

28 **Plaintiff Signature**

29 _____

30 **Plaintiff Name (*print*)**

31 _____

32 **Plaintiff Address (*print*)**

33 _____

34 **City, State and Zip Code (*print*)**

35 _____

36 **Plaintiff Telephone Number**

37 _____

38 **Plaintiff Email Address**

USE NOTES

40

41

42 1. See Section 47-8-3 NMSA 1978 (defining "owner" under the Uniform Owner-

43 Resident Relations Act); Section 47-8-19(C) NMSA 1978 (addressing owner disclosures under

44 the Uniform Owner-Resident Relations Act and describing who constitutes the owner's agent).

1 2. The owner must bring a copy of any written rental agreement to court for any
2 hearing or trial on the Petition for Restitution.

3 3. Provide the Resource Information Sheet designated for use in the applicable court.
4 For example, separate sheets exist for: (1) unincorporated areas of Bernalillo County; (2) Doña
5 Ana County; and (3) Albuquerque and other parts of the State of New Mexico.

6 4. This may be a complicated legal determination, and Plaintiff is encouraged to
7 consult an attorney. See generally the commentary to this form.

8 5. *See* Section 47-8-33(F) NMSA 1978 (addressing the recovery of damages and
9 injunctive or other relief); Section 47-8-35 NMSA 1978 (addressing claims for rent, damages, and
10 reasonable attorney fees).

11 6. *See* Section 47-8-48(A) NMSA 1978 (addressing attorney fees and court costs).

12 7. *See* Section 47-8-22(F) NMSA 1978 (providing that a "resident shall . . . not
13 deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or
14 knowingly permit any person to do so"); Section 47-8-48(C) NMSA 1978 (providing that a
15 "resident who intentionally violates a provision of Subsection F of Section 47-8-22 NMSA 1978
16 shall be subject to a civil penalty equal to two times the amount of the monthly rent.").

17
18 [Provisionally adopted by Supreme Court Order No. 22-8300-003, effective for all cases filed or
19 pending on or after February 1, 2022, that are subject to the Eviction Prevention and Diversion
20 Program.]

21
22 **Commentary** — Question 6 requires the plaintiff to state whether the property at issue is subject
23 to federal thirty (30)-day notice to vacate requirements. Most properties associated with the U.S.
24 Department of Housing and Urban Development (HUD) are subject to this requirement at this
25 time. *See* Extension of Time and Required Disclosures for Notification of Nonpayment of Rent,
26 86 Fed. Reg. 55693 (proposed Oct. 7, 2021) (to be codified at 24 C.F.R. pts. 247, 880, 882, 884,
27 966) (specifying application to public housing and project based rental assistance, including
28 "Section 8, Section 8 Moderate Rehabilitation, Section 202/162 Project Assistance Contract,
29 Section 202/162, Section 202 Project Rental Assistance Contract (PRAC), Section 811 PRAC,
30 Section 236 Rental Housing Assistance Program and Rent Supplement").

31
32 Other properties, including those subject to a federally backed mortgage loan, may fall under a
33 thirty (30)-day notice requirement in the Coronavirus Aid, Relief, and Economic Security Act
34 ("CARES Act"). *See generally* 15 U.S.C. § 9058 (2021). A federally backed mortgage is any loan
35 secured by the real property and made, "insured, guaranteed, supplemented, [secured,
36 administered,] or assisted in any way" by any federal officer or any part of the federal government.
37 *See id.* at §§ 9058(a)(4)-(5).

38
39 While the current HUD and CARES Act provisions may or may not expire, some federal thirty
40 (30)-day notice to vacate requirements are permanent. *See, e.g.*, 24 CFR § 92.253(c) (2021).

41
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44 Program.]