

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 6 RISK MANAGEMENT
PART 6 TORT CLAIMS COVERAGE FOR COMMUNITY LAND GRANTS;
EXCLUDING COVERAGE FOR BUSINESS ENTERPRISE ACTIVITIES

1.6.6.1 ISSUING AGENCY: General Services Department, Risk Management Division.
[1.6.6.1 NMAC - N, 7/30/2010]

1.6.6.2 SCOPE: This rule applies to community land grants governed as a political subdivision of the state in making application to and obtaining coverage from the risk management division of the general services department for coverage for any risk for which immunity has been waived under the Tort Claims Act, through the public liability fund.
[1.6.6.2 NMAC - N, 7/30/2010]

1.6.6.3 STATUTORY AUTHORITY: This rule is statutorily authorized and promulgated pursuant to NMSA 1978, Section 15-7-3(A)(7)(which authorizes the risk management division to issue certificates of coverage in accordance with the rulemaking procedures contained in NMSA 1978, Section 9-17-5(E), granting the secretary of the general services department the general power to make and adopt such reasonable administrative and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions, including the risk management division). In addition, Section 41-4-23(D) of the Tort Claims Act authorizes the general services department, risk management division to regulate claims made against the public liability fund. Pursuant to NMSA 1978, Section 41-4-30, community land grants governed as political subdivisions of the state may obtain Tort Claims Act coverage from the risk management division, exclusive of coverage for activities determined by the director to be a business enterprise.
[1.6.6.3 NMAC - N, 7/30/2010]

1.6.6.4 DURATION: Permanent.
[1.6.6.4 NMAC - N, 7/30/2010]

1.6.6.5 EFFECTIVE DATE: July 30, 2010, unless a later date is cited at the end of a section.
[1.6.6.5 NMAC - N, 7/30/2010]

1.6.6.6 OBJECTIVE: This rule describes the activities of community land grants that are business enterprise activities, and that are thereby excluded from coverage through the public liability fund of risks for which immunity has been waived under the Tort Claims Act. Coverage will be provided to community land grants governed as political subdivisions of the state, for such official activities as are typically undertaken by governmental entities in New Mexico.
[1.6.6.6 NMAC - N, 7/30/2010]

1.6.6.7 DEFINITIONS:

- A. "Approved activities" means activities conducted at a community center that are approved through procedures established by the board of trustees.
- B. "Board of trustees" means the governing body of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.
- C. "Certificate of coverage" means the liability certificate issued by the director pursuant to Title 1, Chapter 6, Part 5 NMAC.
- D. "Community center" means any structure that is owned by a community land grant and managed by and at the direction of the community land grant's board of trustees for the benefit of the community land grant as a whole, and excludes any structure used or designated for habitation, whether or not currently inhabited.
- E. "Community land grant" means a land grant governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.
- F. "Coverage" means the type of protection provided against specific risks or losses.
- G. "Director" means the general services department, risk management division director.
- H. "Division" means the general services department, risk management division.
- I. "Member" means a person who is a member of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

J. "Official activity" or "official activities" means activities of the community land grant that are approved by, and undertaken at the direction of, the board of trustees of the community land grant, for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico.

K. "Public liability fund" means the fund described in 1978 NMSA, Section 41-4-23 of the Tort Claims Act.

L. "Trustee" means a member of a board of trustees of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.
[1.6.6.7 NMAC - N, 7/30/2010]

1.6.6.8 PROVIDING COVERAGE UPON APPLICATION AND PAYMENT FOR OFFICIAL ACTIVITIES AND APPROVED ACTIVITIES OF COMMUNITY LAND GRANTS GOVERNED AS A POLITICAL SUBDIVISION OF THE STATE:

A. Community land grants that wish to obtain tort claims coverage from the division shall make application for such coverage by providing information requested by the director.

B. The director shall annually determine the assessment which the community land grant is to pay for tort claims coverage to the public liability fund. In conjunction with this assessment, the director may require purchase of supplemental events coverage for specified approved activities, such as an event with large attendance.

C. Tort claims coverage for any community land grant is contingent upon prompt payment of the annual assessment by the community land grant to the public liability fund.

D. Tort claims coverage for any community land grant is contingent upon the community land grant continuing to be managed, controlled and governed by a board of trustees consistent with 1978 NMSA, Chapter 49, Article 1.

E. Tort claims coverage for any community land grant is limited to:

(1) official activities of the community land grant as explicitly authorized by its board of trustees for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico, and that are not excluded by virtue of being business enterprise activity; and

(2) approved activities of the community land grant that are not excluded by virtue of being business enterprise activity.

F. The tort claims coverage provided to a community land grant for any risk for which immunity has been waived under the Tort Claims Act, shall be as described in the liability certificate of coverage promulgated by the division.

[1.6.6.8 NMAC - N, 7/30/2010]

1.6.6.9 EXCLUDING COVERAGE OF INDIVIDUAL MEMBERS: Tort claims coverage for any community land grant does not include coverage for any enterprise or activities undertaken by any of the individual members of the community land grant, whether singly or in association with others.

[1.6.6.9 NMAC - N, 7/30/2010]

1.6.6.10 EXCLUDING COVERAGE OF BUSINESS ENTERPRISE ACTIVITIES:

A. Tort claims coverage for a community land grant does not include coverage for any liability attributable to the business enterprise activities of a community land grant.

B. Business enterprise activities include the following:

(1) any activity undertaken for purposes of earning a monetary profit for the community land grant or for any of its members; the term "monetary profit" as used herein does not include reasonable incidental charges or fees, such as may be made to recoup costs of furnishing meals or refreshments at official activities, or such as a reasonable fee for conducting an approved activity at the community center;

(2) any activity involving the lease or sale of any property of the community land grant;

(3) any activity organized to operate on a non-profit basis, which activity is typically operated on a for-profit basis when conducted by non-governmental entities, such as, but not limited to, the operation of a restaurant or inn, unless the director upon application specifically gives prior approval of coverage for such activity, and only in accordance with such conditions as the director may require; or

(4) any activity involving the provision, sale, or consumption of alcoholic beverages.

C. Business enterprise activities are excluded from coverage regardless of whether they are authorized by the board of trustees, and regardless of whether they are undertaken by individual trustees, or by members, individually, as partnerships or as other types of associations, or in any corporate form.
[1.6.6.10 NMAC - N, 7/30/2010]

HISTORY OF 1.6.6 NMAC: [RESERVED]