



# HOUSING JOURNAL

*Voice of New Mexico Home Builders Association for More Than 35 Years*

Volume 44 Issue 5

July 2014

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- Would You Like to Win a Trip to IBS?
- Are You Paying Too Much GRT on Real Estate Commissions?
- Alternate Dispute Resolution – An Alternative to the Courts



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505-344-7072, Toll Free 1-800-523-8421 FAX: 505-344-3103  
E-mail: info@nmhba.org or Website: www.nmhba.org  
Executive VP & CEO, Jack C. Milarch, Jr.  
Governmental Affairs Director, Melanie Lawton  
Office Manager, Nancy Barron  
Bookkeeper/Bonding/Meeting Admin, Melinda Bolivar  
Receptionist/Membership, Kami Showalter

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Executive VP & CEO, Jack C. Milarch, Jr.  
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Graphic Design - The Graphics Station  
505-480-8687

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## About The Cover



Polston Construction built this southwest style spec home with a modern feel. Finding a modern fireplace was a challenge.

Polston ended up ordering a European fireplace on the internet and had a local dealer install it. The mantel and hearth are cantilevered stained concrete.

*Photo by Derald Polston*

## Membership Statistics

	Apr	May
Central New Mexico	609	607
Eastern NM	92	93
South Eastern NMHBA	91	90
Lincoln County	110	111
Las Cruces	314	321
Southwestern NMHBA	49	45
San Juan County	166	167
Santa Fe Area	456	463
Otero County	<u>106</u>	<u>108</u>
<b>Total</b>	<b>1993</b>	<b>2005</b>

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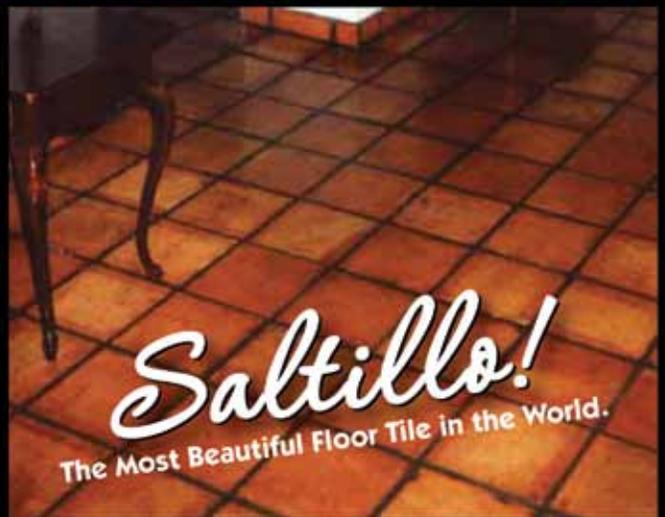
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# A Message From The *President* PRESIDENT



Ray Gee

## NAHB Caucus Meetings Reveal Varying State Issues

National Association of Home Builders (NAHB) recently concluded its Spring Board Meeting in Washington, DC. One benefit of these meetings is access to information, and one example of this is access to the state reports.

NAHB has divided the country into 5 regions and 15 areas. New Mexico is in Region E and Area 13. Area 13 also includes Arizona, Colorado, Nevada, Utah, and Wyoming. The Area is represented by a National Area Chairman (NAC) and the states are represented by a State Representative. New Mexico is represented by Peter Merrill as State Representative and Area 13 is represented by Michael Sivage as National Area Chairman. They each have many duties and serve on NAHB's Executive Committee.

One of the State Representative's duties is to present a report on activities of the state and local homebuilders associations and also on the health of the construction industry in their state. These reports are available in a summary from NAHB but are also presented verbally at what is called the Area Caucus, which takes place just prior to the actual Board Meeting. All attendees of the Board Meeting and various committee meetings from the Area states are welcome at the Caucus. The reports often lead to a discussion among the participants and it is here that the access to information is most valuable. Often one state is just encountering an issue that another state has dealt with successfully, and the exchange of timely information is invaluable. These discussions often provide a window into our future.

Here is a synopsis from some states' reports in Area 13:

**Arizona** reported that, after a very sluggish first quarter, it experienced a slight increase in permit activity over the past few months. In addition, they stated that, for several months they had heard that Federal OSHA believed Arizona's residential fall protection standards were not as effective as the federal standard. While there were several concerns, they said the primary issue was that the Arizona standard did not protect workers between 6' and 15'.

**Colorado** reported its economy was booming on the Front Range, stating that the mountain areas were starting to recover, but they were still waiting for better weather, making it difficult to read demand. Colorado also reported on their challenges that come with a construction boom, including a large labor shortage, a serious shortage of buildable lots, soaring home prices, and appraisal issues.

**Nevada** reported stagnant growth but a year-to-year growth rate for both median price and the number of sales. They stated demand was greatest at entry level – below \$250,000. They also said their association was actively engaged in state legislative activities, with construction defect continuing to be the top issue. They claimed to be educating legislators and were actively supporting housing-friendly candidates.

**Utah** reported that its seven Parade of Homes were showing record numbers of participation and attendance. They noted their builders were still a little cautious and struggling with hiring the help they needed. They noted that home sales were increasing.

Here are a few more examples from other Areas:

**Alaska** reported that Anchorage adopted a private plan review process by ordinance allowing builders of one and two family dwellings to submit a private plan review to the city, therefore bypassing plan check but still using municipal inspections.

**Massachusetts** reported that fire officials were trying to get local ordinances requiring sprinklers in one and two family homes by including it as a line item in the state budget. The association stated they were working to keep the sprinkler issue in the codes and not in legislation.

**New York** reported they were promoting legislation establishing a green development home tax exemption

*Continued on page 5*

# A Message From The EXECUTIVE VICE PRESIDENT AND CEO



Jack C. Milarch, Jr.

## Are You Getting Your Share of the Benefits of Membership?

The decision to join any organization these days is all about services and benefits. Gone are the days when a monthly dinner meeting is considered sufficient benefit to pay dues. The vast majority of NMHBA members participate in our work comp group self-insurance program, Builders Trust, which by itself is a great benefit of membership. But as those campy TV ads always say “Stand By - There’s Even More!!” If you are reading this article you probably have already made the decision to join the “home builders” association for one reason or another. You’ve already paid your dues! Now the next question: Are you taking advantage of all that is available to you and your business? Between the local, state, and national organizations that you have already joined, it’s a very broad offering! Here are some examples.

As many of you who’ve heard me speak know already, I always promote the annual International Builders Show (IBS) as the premier benefit of membership.



2015 NAHB International Builders' Show®

opportunity. The upcoming IBS will again feature the annual Kitchen and Bath Industry Show co-located with

By percentage of membership, New Mexico already has high attendance numbers compared to other HBAs, but unfortunately some of our members are still overlooking this

IBS, and I would say that show alone is worth the trouble of showing up in Las Vegas in January. Over the years my opinion of the value of IBS has been reinforced by people who have taken my advice and attended for their first time. They ALWAYS come back and tell me some version of “WOW, I had no idea it would be that good!” (If you have never attended before, you have a chance to get a Builders Trust sponsored scholarship. See details on page 6 of this **Housing Journal** issue.)

Here is another membership benefit you may have overlooked. I suggest you look at a new offering that is the result of a special project of the National Association of Home Builders (NAHB) in regard to sample contracts. At the NMHBA office we often get calls asking if we can provide suggested language for documents such as remodel agreements, subcontractor contracts, change orders, lien documents, and the like. And we do keep a few representative examples that we are happy to share, but as you might suspect our budgets and our sources for such things are always limited. NAHB has the same requests and they recently undertook a project to update and expand their offerings, and the result is worth a look. The new service will be subscription-based, but after listening to the plans I believe it will be very reasonable for what is being offered. Those of us who attended the last national meeting got a preview of what will be available. It looked high quality and the web-based collaborative features you can use seem useful. The forms include the ability to edit, store, and share your versions online. Introductory pricing for this service is offered for early subscribers. You may learn more and sign up at the [www.nahb.org](http://www.nahb.org) website by going to NAHB Electronic Contracts & Subscription Service. Actual launch of the service is expected in September of this year. Contact Melanie at the NMHBA office if you need help navigating the NAHB site to find this service.

### Contracts will be available in the following series:

- **CONSTRUCTION CONTRACTS**  
Fixed fee and cost-plus – Owner’s lot; Fixed fee – Contractor’s lot; Design Services; Green Building; Construction Management

- **SALES CONTRACTS – COMPLETED DWELLINGS**

Sale of Spec House with Builder’s Warranty; Sale of Spec House “as is”

- **CONTRACT EXHIBITS – ADDITIONAL TERMS**

Plans and Specifications; Selection Allowance Worksheet - fixed fee and cost-plus; Change Order – fixed fee and cost-plus; Pricing Request; Final Payment with Retainage; Certificate of Acceptance; Notice and Opportunity to Repair; Limited Warranty

- **REMODELING CONTRACTS**

Home Improvement Contract; Home Improvement Contract – short form; Cancellation Notice; Lead Paint

- **SUBCONTRACTS**

Master Agreement; Job Acceptance form; Subcontract – complete agreement; Change Order – subcontract; Insulation Disclosure form



*Continued from page 3*

authorizing a 35% exemption from local property taxation for homes built to the National Green Building Standard.

In addition to these examples, there are numerous issues that pop up as you read through the state reports. Some of these relate to slow markets, booming markets, labor shortages, material/cost increases, appraisal issues, market share going to public/national builders, lot shortages and association membership changes. Interestingly, many of these reports describe conditions that are the opposite of those in other states. There are at least two reasons for this. One is that recovery is sporadic and does not affect all markets equally, as we know all too well here in New Mexico. The other is that many statistics are used without reference to a benchmark. A good example is that many states report increases in association membership without referring to their peak membership. Those that do refer to peak membership indicate a less optimistic outcome. For example, Florida now has 6,000 members, down from a peak of 22,000. This means they are at 27% of their peak membership. Georgia now has 3,200 members, down from a peak of 15,000. This means they are at 21% of their peak membership. This same selective use of statistics may be taking place in some of the conflicting reports on market conditions.

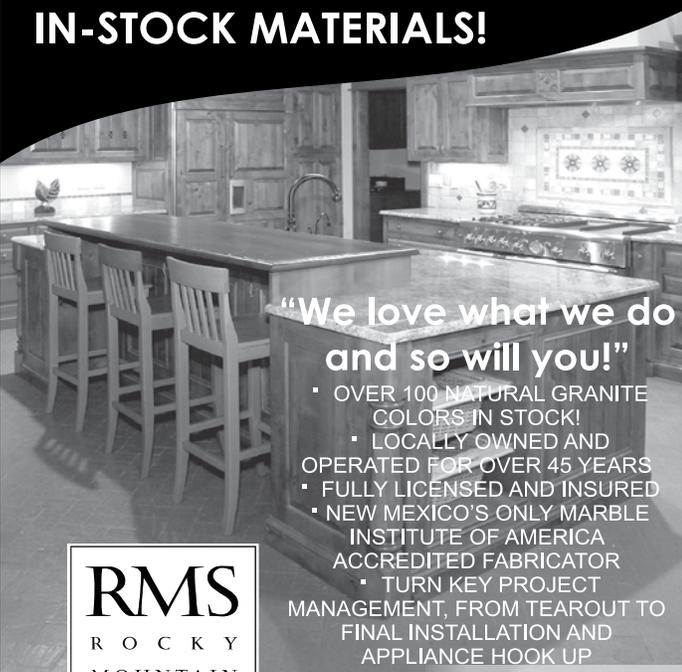
Even with these apparent anomalies, this information is very valuable and is a great potential benefit of membership. NMHBA consistently sends its leadership to the NAHB Board Meetings and they are tasked with bringing information back to share with the state and local association members. The amount of information available can be overwhelming, with dozens of committee meetings taking place during a 3-4 day Board Meeting schedule. The very best way to benefit is to have members and officers of the local associations attend these events.



**Editors Note:**

The excerpts printed in the May **Housing Journal** (“Pressure for Consumer Protection in Construction”) were used by permission from an article entitled “The Licensing Law Cycle” (December 1997 **Qualified Remodeler**).

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## Would You Like to Win a Trip to IBS?



2015 NAHB International Builders' Show®

As in years past, Builders Trust and NMHBA are offering to send one member from each Local HBA to the International Builders' Show® (IBS)!

Beginning with the 2007 IBS, BT and NMHBA have teamed up to offer this exciting opportunity for BT participants who have never before attended NAHB's Show. Earlier this year, the 2014 IBS was held in the Las Vegas Convention Center simultaneously with the Kitchen & Bath Industry Show.

This year's contest winners considered it a "must-see" event.

"It was an excellent experience overall," said Mario Moreno (Pioneer Roofing & Specialties, Inc. – Las Cruces). "Being able to talk to factory reps with so many manufacturers and products is a must for anyone in the building and remodeling trades."

"With the show being so close, there is no reason not to attend," said Rob Hughes (R.M.H. General Contractor Inc. – Albuquerque). "You'll improve your business, your professionalism, and your bottom line."

BT participants who don't take full advantage of their HBA membership may not realize how valuable IBS can be for their own businesses. In February, more than 1,700 exhibitors covered over 650,000 square feet of floor space, enabling the 75,000+ attendees from across the globe to learn about the latest building trends and techniques. Next year's Show takes place in Las Vegas, January 20-22, 2015.

Shortly, every BT participant will receive an entry form. Any eligible participant should complete the form and fax it in. One winner from each Local HBA will be chosen in August. Up to \$1,100 of their registration, airfare, and hotel expenses will be reimbursed. Winners must agree to report back to their Local HBA, Builders Trust, and NMHBA about their Builders' Show experience. Winners will be listed in the August issue of the **Housing Journal**.



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# Are You Paying Too Much GRT on Real Estate Commissions?

The current economy has resulted in many contractors brushing off their (or their spouse's) Real Estate Broker's license, and keeping sales transactions truly "in-house." A few NMHBA members have been audited by the NM Tax and Revenue Department regarding their handling of the Gross Receipts Tax (GRT) on those sales and real estate commissions. There was a surprise discovery that the amount of GRT due on the real estate commission earned on the sale of a new home was mostly over-paid to the state.

Most NMHBA members are aware the receipts from sales of vacant land are deductible, and no GRT is paid on the purchase/sale of vacant land under Section 7-9-53 of our tax law. However, GRT must be paid by the broker on the entire amount of the real estate commission primarily because the total receipts from the sale of the real property are deductible from GRT.

Land costs are allowed to be "backed out" of the total sales price when contractors report the sale of the completed construction project. Few are aware the real estate commission is also allowed a deduction because the land costs are "backed out." An overpayment of GRT by the real estate broker might occur if this process isn't understood.

Here are the pertinent sections of the New Mexico Administrative Code (NMAC) with the rules for application of the law. Members are encouraged to discuss the proper implementation of these rules with their accountants. The examples in NMAC assume the real estate commission is 6%.

## “3.2.226.8 CALCULATING THE DEDUCTIBLE PORTION OF A REAL ESTATE COMMISSION

A. The portion of a real estate commission which is deductible is calculated using the following formula: Deductible commission equals total real estate commission times a fraction, the numerator of which is the taxable receipts from the sale of the property and the denominator of which is the total receipts from the sale of the property, or

$$\frac{\text{Total commission x taxable receipts from sale} = \text{deductible commission}}{\text{total receipts from sale}}$$

B. Taxable receipts from the sale means that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of the seller's construction business.

C. Example: A real estate broker receives a \$6,000 commission on a \$100,000 sale of property by a construction contractor. Of the \$100,000, \$70,000 is the value of improvements constructed by the seller, for which the seller is subject to gross receipts tax. \$30,000 is the value of the underlying land, which the seller (contractor) can deduct from gross receipts pursuant to Section 7-9-53 NMSA 1978. The real estate broker must report \$6,000 as gross receipts. The real estate broker may calculate the deductible portion using the formula given in Subsection A of Section 3.2.226.8 NMAC:

$$\frac{\$6,000 \times \$70,000 = \$4,200}{\$100,000}$$

Thus, the real estate broker deducts \$4,200 and pays tax on the remaining \$1,800.”

## “3.2.226.9 REAL ESTATE COMMISSION ON SALES NOT SUBJECT TO GROSS RECEIPTS TAX ARE FULLY TAXABLE

A. No portion of a real estate commission is deductible if the total receipts from the sale of the real property are either deductible or exempt from gross receipts tax.

B. Example 1: A real estate broker receives a \$6,000 commission on the sale of a home by the owner. The receipts of the homeowner from the sale are exempt as receipts from an isolated or occasional sale pursuant to Section 7-9-28 NMSA 1978. The real estate broker must pay tax on the entire \$6,000 commission.

C. Example 2: A real estate broker receives a \$6,000 commission on the sale of a piece of raw land by a developer. Receipts from the sale of the land are deductible from gross receipts as receipts from the sale of real property pursuant to Section 7-9-53 NMSA 1978. The real estate broker must pay tax on the entire \$6,000 commission.”

**DISCLAIMER:** This article provides general coverage of its subject area. It is provided free, with the understanding that the author, publisher and/or publication do not intend this article to be viewed as rendering legal advice or service. If legal advice is sought or required, the services of a competent professional should be sought. The author and the publisher shall not be responsible for any damages resulting from any error, inaccuracy or omission contained in this publication.



## NOTICE TO MEMBERS

NMHBA is proposing to amend its bylaws regarding Employee Affiliate membership as well as the number of Board Directors.

The bylaws would be amended to state:

**Employee Affiliate members may serve on, but not chair, Association committees and may vote on such committees. Employee Affiliate members may not serve on the Association's Board of Directors or serve in a leadership position as a Senior Officer. In addition, an Employee Affiliate member may not serve as a representative for NAHB.**

The bylaws also would be amended to state:

**The Board of Directors shall be nominated in the following manner: Each "local association" or "chapter" shall be entitled to nominate, and be represented by, Directors in proportion to the total of its Builder, Associate, and Employee Affiliate membership as follows:**

Total Members	Number of Directors
1 through 300	Three (3)
301 and over	Five (5)

This notice is being published to comply with the NMHBA Bylaws requirement that proposed amendments must be published to the membership in advance.

## JUST A NOTE TO ALL MEMBERS...

Make sure your Local HBA has your correct contact information (including address, phone number, and email address). NAHB and NMHBA, as well as your Local HBA, use this info to send you information that could be important for your business.

## NMHBA Board Meeting Sponsorship Program

NMHBA is offering a sponsorship opportunity for one company at each of its three annual board meetings. If your company is looking for statewide recognition, you may want to consider what NMHBA will provide.

### \$1,500 sponsorship

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- Speak during board meeting (or lunch) - 5 minutes
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For more details, please contact Nancy Barron at (505)344-7072 or [nancy@nmhba.org](mailto:nancy@nmhba.org)



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We're happy to introduce the NMHBA Member Rebate Program, a free member benefit, aimed at increasing your bottom line. For the minimal effort of informing us about the products you use, and telling us when you close on a home or project, you'll be putting money back in your pocket. When you participate in the NMHBA Member Rebate Program, every home you build can earn you rebate checks! Remember, both Builders AND Remodelers qualify for the NMHBA Member Rebate Program. **Over 70% of the Builders & Remodelers who participated last year received back in rebates more than they paid in annual dues to the Association!**



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If you have any questions, please contact Nancy Barron at 505-344-7072 or toll-free in New Mexico at 800-523-8421.

# Alternate Dispute Resolution – An Alternative to the Courts

By Peter G. Merrill

For many years, we all have been accustomed to believing that we had to “go to court” when we had a dispute over a construction contract item, if we had trouble collecting our monies due, or if our clients had a problem with the standards of construction we use while building or remodeling a house or commercial building. However, that is far from true today. Both you and your client have another option called “alternate dispute resolution” (ADR). Although there are many forms of ADR, by far the most popular, inexpensive, and simple form that offers a final and binding decision is arbitration.

In binding arbitration, the parties agree to abide by the decision of the arbitrator, and the arbitrator’s decision is final and binding and not generally subject to appeal. The arbitration process usually allows the parties to select an individual with a specialized expertise in the subject matter of the dispute to review the evidence, listen to the parties and witnesses or other specialists, and render a decision. In residential construction arbitrations, there is usually one arbitrator. In more complex cases, there are three arbitrators. One of the main advantages that arbitration offers over civil litigation is that in civil litigation, a judge is randomly assigned to hear a particular case and may not have the necessary substantive or technical expertise to fully appreciate the intricacies of the arguments or have a comprehensive knowledge of the construction matters in dispute.

Also keep in mind that if you go to court and you do not like the judge or jury’s verdict, you can appeal that decision and you or the other party can continue to appeal the next court’s decision all the way to the Supreme Court. It can be very costly and may take years to settle. An Arbitration Award is final and binding and very limited as to appeals as all appeals are based on the arbitration procedure and not the merits of the Arbitration Award. Most courts are now working on scheduling cases several months in the future. A typical arbitration hearing is held about 60-90 days from the initiation of the arbitration process.

If you build green, are a green rater or verifier, or if you are an architect or home designer who specified green products, you should definitely put dispute resolution

language in your contract that will limit your liability for the green-related performance of the house. Having the proper dispute resolution language in your contract is like having an insurance policy against expensive litigation, and it is easy to add it to your contract. There is no cost to have ADR specified in your construction contract. Take the time to put a proper arbitration clause in your contract. If you end up in a dispute with a client, you will be glad that you can turn to arbitration as opposed to having to go to court.

I know there are many of you who take a great deal of pride in your work, never seem to have any disputes with your clients, and take care of their concerns right away. However, I also know of contractors who have been forced out of business and/or into bankruptcy because of just one major lawsuit they had with a totally off-the-wall client who had money to burn on litigation in order to get their way. Civil litigation will not only cost you a lot of money, it will cost you a great deal of time away from your business and emotional strain to yourself, your employees, and your family. The choice is yours.

In a short article like this one, it is also impossible to fully explain all the benefits of arbitration as compared to civil litigation. If you would like more information, please log on to my website [www.cdrsllc.com](http://www.cdrsllc.com) where you will find a great deal of additional information on ADR processes. You will also find a section on “Suggested Contract Language” that offers you a variety of clauses that you could add to your construction contract to make certain you and your clients will not have to resort to a lengthy and costly civil litigation process if you run into any disputes on your construction project.

*Construction Dispute Resolution Services (CDRS) is the largest exclusive provider of construction ADR in the U.S. with ADR specialists located in all 50 states, Washington DC and in several foreign countries. In addition to providing ADR services to the general construction industry, CDRS provides arbitration services to several home warranty companies such as 2-10 HBW, Residential Warranty Company, Bonded Builders, and to many home inspection companies.*



# NM Residential Building Permits – Now and Then

(May YTD 2014, 2013, 2012, 2011, 2010 & 2006)

<u>County</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>	<u>Peak Year</u>
New Mexico Balance of State*	204	202	229	306	348	732
Bernalillo	332	336	432	339	418	2018
Chaves	19	11	10	19	10	38
Colfax	4	6	4	3	6	27
Curry	58	50	57	46	91	97
Dona Ana	242	295	295	278	382	944
Eddy	72	59	56	25	37	35
Lea	2	26	11	8	8	24
Lincoln	38	23	17	16	23	89
Los Alamos	19	1	1	3	2	25
Luna	0	2	4	8	10	43
McKinley	1	2	1	0	1	12
Otero <sup>+</sup>	39	43	45	77	78	99
Rio Arriba	0	0	0	0	0	4
Roosevelt	0	25	22	19	25	14
Sandoval	8	319	232	181	230	683
San Juan	312	78	82	68	99	202
Santa Fe	72	65	48	39	48	209
Sierra	1	1	0	0	1	2
Socorro	69	1	0	0	2	15
Taos	0	50	25	19	25	119
Valencia	2	56	42	32	39	147
<b>Total</b>	<b>1494</b>	<b>1651</b>	<b>1613</b>	<b>1486</b>	<b>1883</b>	<b>5578</b>

\* Includes the following counties: Catron, Cibola, De Baca, Grant, Guadalupe, Harding, Hidalgo, Mora, Quay, San Miguel, Torrance, and Union

+ Source: Otero County Assessor's Office

Source: U.S. Census Bureau

## 2014 NMHBA Meeting Calendar

### July

- 4 Independence Day – NMHBA/BT offices closed
- 18 Executive, BIC, and Nominating committee meetings

### August

- 15 Senior Officers and Nominating Committee meetings

### September

- 1 Labor Day – NMHBA/BT offices closed
- 3-6 NAHB Fall Board Meeting – Phoenix
- 25 Senior Officers, Compensation, and Finance committee meetings
- 26 Executive Committee meeting

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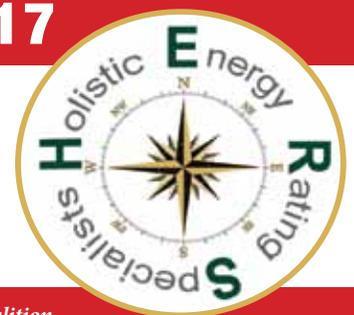
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- Actual photo or on a CD (300 dpi, jpg or tif at final size)
- If the photo was professionally done, please obtain permission from the photographer.

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