



HOUSING JOURNAL

Voice of New Mexico Home Builders Association Since 1970

Volume 46 Issue 1

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- Your UI Rates Could Depend on Your Attendance Policy
- NAHB Study Reveals What "Green" Means to Home Buyers
- A Big Win for Small Builders: EPA's Streamlined Stormwater Compliance Guide
- Reviewing 2015 Efforts and Accomplishments
- You're Doing it Wrong: How to Estimate Defensively for Bigger Remodeling Profits
- Higher Gas Furnace Standards Set in 2007 Now in Effect

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On The Cover



RayLee Homes: A New Generation

This 3 Bdrm., 2.5 Ba. home by RayLee Homes: A New Generation in northern Rio Rancho's Mariposa development blends traditional with contemporary design in 2,644 sq. ft. This home won awards for Best Kitchen, Best Bath, and a Premier Award in HBA CNM's "Homes of Enchantment" October 2015 Parade. The home features multicolored kitchen cabinets, floating shelves, a built-in bar, his-and-hers closets, and plenty of windows to capture our abundant sunshine.

Membership Statistics

	Oct	Nov
Central New Mexico	654	657
Eastern NM	97	96
South Eastern NMHBA	90	90
Lincoln County	119	120
Las Cruces	310	307
Southwestern NMHBA	50	48
San Juan County	158	157
Santa Fe Area	436	435
Otero County	<u>111</u>	<u>111</u>
Total	2025	2021

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2016 NMHBA Meeting Calendar

January

- 1 New Year's Day – NMHBA & NMLB Offices Closed
- 19-21 NAHB International Builders Show – Las Vegas

February

- 3 NMHBA Senior Officers/Executive Committee Meeting 9-11 am @ AOC
NMHBA Board Meeting 1-5 pm @ Albuquerque Marriott
Legislative Dinner 6-9 pm @ Albuquerque Marriott
- 4 Legislative Bus Trip – Members @ the Roundhouse 7 am – 2:30 pm

March

- 31 Government Affairs Committee Meeting 1-3 pm @ AOC
Building Issues Committee Meeting 3:13-5 pm @ AOC

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Pat Bellestri-Martinez

What is our responsibility to our Industry?

As a contractor, or someone in the business of providing products and services to consumers for the construction or remodeling of their home, you no doubt have heard a story about a “contractor” who fell short of his/her obligations to complete a job, or do a job as promised. Sometimes they are not even a licensed contractor, but they will provide “the lowest price” for the job. As you listen to the story, you can only think to yourself - "The lowest price does not guarantee the best job." My heart goes out to those people who really do feel like they hired the right company, for a fair price, and they do not get what they paid for, often leaving them with an unfinished job.

As a contractor, what do you think your responsibility is to the industry to deal with this? How does a consumer assure that they are dealing with an honest, trustworthy contractor/tradesperson? The bad apples in our industry give the Construction Industry Division of the State of New Mexico a lot of grief. They really tarnish those of us who provide quality work at a fair price.

I don't have answers, just a lot of questions. What I would like to put out there is a perspective from someone who has been working in this industry for over 25 years. Addressing this to the younger contractors in our midst, here are my top 10 rules for running your business as a contractor or remodeler:

1. Establish ground rules from the beginning of your relationship with your clients – how you expect to be paid, how you process change orders, and how you will communicate with them.
2. Communicate with your clients. With email and text options there is no reason that you cannot keep your clients in the loop. Whether it is good news or bad news they deserve to know as soon as possible. It is their money you are spending.
3. Establish respect for your clients. Let them know that you are honored to have been hired to do the work.
4. Put in writing the “Scope of the Work”. If it is in writing, there will be less of a misunderstanding of what is to be done for the agreed upon cost.
5. List all aspects of the work in the “Scope of Work”. The more detail you provide the better their expectations will be met.
6. As soon as the words “can we change.....” are spoken, state the agreement. Have a blank change order available to fill out, or go back to your office and immediately write up the change order to provide to the client via email. Do not agree to a change order without the cost attached to the conversation.
7. Always write an agreement or contract for the work, be it simple or not.
8. Establish a schedule for yourself from the beginning. Even if you do not share it with your client, it will help you to gauge your time.
9. If you are behind schedule from the agreed-upon completion date, let the client know as soon as possible. Their lives are complicated and they should be aware of what you are doing that impacts their lives.
10. It is a good idea to put the gross receipts tax money you collect into a separate account. It will then be available to you when it is due. Do not get into the bind of not having the money available to pay your taxes when they are due!

All of these rules are simple on the surface. I am surprised by how many people in business to not adhere to these rules and find themselves in at the least a shortfall and at the most having to close up shop because they did not take care of business.

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Yet Another “First” for New Mexico

Employers Now Required To Reimburse Injured Workers For The Cost of “Medical” Marijuana

New Mexico is now the first state in the nation to require workers’ compensation providers to reimburse an injured worker for cost of using “medical” marijuana. This news comes courtesy of the New Mexico Court of Appeals decision in the Gregory Vialpando vs. Ben’s Automotive Services and Redwood Fire & Casualty case.

Jack C. Milarch, Jr.

Following the court’s decision, the Workers’ Compensation Administration just issued new rules requiring the employer (via the insurance provider) to reimburse a worker up to

approximately \$11,000 per year for “medical” marijuana cost.

This whole subject is already confusing and contradictory for employers, so let’s peel this onion back and I will try to sort this out for our readers.

A number of years ago the New Mexico legislature passed a law authorizing people to obtain a medical marijuana usage card from a treating doctor. That law allows a person to procure and use marijuana on an “as-needed” basis. I was lobbying for NMHBA when the debate over the use of marijuana occurred, and my memory of the people promoting such use was based on evidence that some people with terminal cancers should be able to use marijuana as part of their end-of-life pain management regimen. Now we are told employers will be required to reimburse injured workers for the cost of their marijuana! I believe usage for work comp injuries was never contemplated in the original “medical” marijuana bill, however I would also say the wording in the law ended up much broader than the testimony promoting the bill discussed.

Marijuana is still illegal to possess, buy, or sell under federal law. However, the New Mexico court cited a recent memo from the feds listing their marijuana enforcement priorities, and “medical marijuana” was not on that list. Therefore, while possession and use of marijuana is still technically illegal nationwide, the New Mexico court apparently felt free to broadly interpret New Mexico’s “medical” marijuana law, read in conjunction with the Workers’ Compensation Act, to require marijuana be provided as a workers’ compensation pain management treatment at the employers’ expense.

One of the problems with non-standard “medical” treatments, such as marijuana usage, is that actual consumption of the treatment is not regulated. It is left to the user to “consume” as much as they desire. This isn’t the sort of drug where a doctor prescribes 10mg twice per day for 30 days. Users can simply buy as much as they want, and in this case the employer is expected to reimburse costs up to about \$11,000 annually.

Marijuana usage is often advocated as a less addictive pain management opiate replacement. Opiate addiction is a very big problem nation-wide. If marijuana is an effective substitute, such usage might be a desirable option. Will that be the case? It is simply too soon to tell from our own experience as a work comp “carrier” if marijuana usage actually results in less opiate usage. There is some evidence that marijuana is being allowed in addition to opiate-type drugs.

And then there is the problem of people re-selling drugs that have been given to them and that have “street” value. Drugs are sometimes inappropriately re-sold, and it is difficult to control. We know this is true with opiate-type drugs. It’s no secret that marijuana has a big recreational usage following so I think we can expect transfers from work comp pain management usage into the recreational realm. How is the employer/insurer expected to control that?

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continued from page 4

In regard to on-the-job usage of “medical” marijuana, Builders Trust, our affiliated workers’ compensation carrier, stands firm in the opinion that construction employers should simply say “NO” to anything that impairs the ability of their workers to be alert and mindful of what they are doing, with no exceptions. That includes impairment due to alcohol, illegal drugs, and various medications including “medical” marijuana. Employers must have strong policy on this and strong and consistent enforcement of that policy.

“Medical” marijuana is an unfolding story. The Housing Journal will keep you up to date on this situation.



Message From the President *continued from page 3*

If you have any thoughts on this subject or any others feel free to contact me at pat@adobe-home.com.

On a separate Note

I have begun my travels around the State. I have visited Santa Fe area Home Builders Association for a Membership luncheon; Central New Mexico HBA for their Installation/Holiday party, and the Building Contractors Association in Alamogordo for their Installation/holiday party. I enjoyed meeting everyone. I hope to visit each local association over the course of the year. I accept invitations for any events at your Local Association. I will do my best to try to make it!



BT Employee Recipient of Stirling Award for Excellence



Richard Lobato, Builders Trust of New Mexico Claims Adjuster, was named as a recipient of a 2015 Stirling Award for Excellence from the Workers’ Compensation Association of New Mexico (WCANM). Rich was the recipient of the Adjuster Stirling Award on December 10, 2015 as the WCANM

recognized the top professionals in the workers’ compensation industry.

The award is named after Helen Stirling, a respected and popular Workers’ Compensation judge who died in 2014.

The Workers' Compensation Association of New Mexico serves the workers' compensation community of New Mexico by promoting educational meetings, seminars and conferences, and by providing higher education scholarships for the children of New Mexico workers who, through a work-related incident, became permanently or catastrophically injured or died.

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Your UI Rates Could Depend on Your Attendance Policy

In previous articles in this magazine on the rates an employer must pay for Unemployment Insurance (UI) there has been an emphasis on keeping the UI rate down by legitimately denying benefits to an employee who has been fired “for cause.” During the 2015 New Mexico Employer Summit conference conducted by the NM Department of Workforce Solutions (DWS), there was much discussion about how employers are losing their appeals on denying benefits over one simple concept -- absenteeism.

According to both attorneys representing employers and DWS judges hearing these appeals hearings, these types of claims are usually determined before the claim is ever filed because the employer’s policy is either upheld or rejected under case law. Therefore, your policies and day-to-day personnel practices will determine your success in disputing UI claims.

Your attendance policy probably says if a worker doesn’t show up to work, and doesn’t give notice, then the employee is fired “for cause.” According to the experts, it should also say failure to show up for how long, is cause for employment termination. For instance, how many times a one-day absence, without notice, would be allowed. These policies need to be written notices of expectations, and they must be enforced uniformly and fairly across all levels of employees.

If your attendance policy contains the outdated concept of the worker is considered to have quit if he doesn’t show up or give notice within three days, you need to update your policy now. According to the DWS experts, you will have to prove the worker intended to quit to win a case for not paying benefits. If the worker didn’t specifically state “I quit,” then you will lose an appeal of a decision to award benefits. It’s much simpler and more straightforward just to make it clear that not showing up for work without calling in to tell you is cause for firing. Then, if your worker doesn’t call you, benefits can be denied because you fired a worker “for cause.”

Tardiness and minor absenteeism must be “chronic and persistent without notice, in the face of warnings” to be considered “misconduct,” according to the experts. So, you need to have a specific policy on absenteeism.

Other “musts” for an employer to win an appeal to deny benefits according to the experts include:

- Communicate your policies to employees. Get all employees to sign something showing they have received the company’s policies.
- Don’t let someone violate the rules 10 times, and then write them up for the 11th violation. Document misbehavior early.
- Don’t give the written warning on the same day you fire the employee; and don’t try to go back and generate the documentation later.
- Don’t delay termination – continuing to let an employee work after flagrant violations of policy makes it seem as if the violation was no big deal. Certainly not big enough to fire someone over!
- If you must, put the employee on paid leave while you complete your investigation of an incident before firing the worker.
- If possible, get your worker’s signature on warnings – both verbal and written. If the employee refuses to sign, call in another employee to witness your second request for a signature. If the employee still refuses to sign, you can have the witness sign the document under the statement that the first employee refused to sign.



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NAHB Study Reveals What “Green” Means to Home Buyers

What do consumers think of green homes? And, what are the most important elements of a green-built home? Builders and other industry professionals now have an opportunity to find out what green means to home buyers with a new publication from the National Association of Home Builders (NAHB).

NAHB’s publishing arm, BuilderBooks, recently released *What Green Means to Home Buyers: Perceptions and Preferences*, a study of consumer preferences focusing exclusively on green/high-performance features in the home and the community. The study examines consumers’ attitudes of various green features, concepts or terminologies, the resonance of those terms as potential marketing tools, and the likelihood that the home purchase decision may be influenced by any of these features or terms.

The study was conducted by NAHB in 2015 and is based on a survey of home buyers nationwide. Results from the study are available by age, income, race and U.S. Census division, among other demographic characteristics.

The key findings include:

Top Influencers in a Home Purchase Decision:

- 90% Safe community
- 88% Energy efficient
- 85% Low maintenance
- 85% Lower operating costs
- 84% Durable/Resilient

Common Words Home Buyers Use to Describe Green Homes:

- 32%: Efficient, Energy Efficient, Water Efficient, High Efficiency
- 15%: Eco-friendly, Environmentally-friendly, Environmentally-responsible, Environmentally-safe, Environmentally-conscious
- 8%: Solar, Solar Power, Solar Energy, Solar Panels
- 4%: Lower Costs, Lower Utility Bills, Saves Money

What Green Means to Home Buyers: Perceptions and Preferences is available for purchase (\$115.95 Retail/\$79.95 NAHB Member, ISBN 978-0-86718-739-7) at BuilderBooks.com or by calling 800-223-2665. The eBook is available at ebooks.builderbooks.com (\$89.99 Retail/\$55.99 for NAHB Members).

The NAHB webinar, *What Does ‘Green’ Mean to Home Buyers* is also available for purchase (\$64.95 Retail/\$44.95 NAHB Member) at NAHB.org.



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A Big Win for Small Builders: EPA's Streamlined Stormwater Compliance Guide

The Environmental Protection Agency (EPA) has approved a new form for Stormwater Pollution Prevention Permits (SWPPPs) on small construction lots within a larger development. It just seemed wrong to require a contractor building on a 1/3-acre lot within a large development to complete a full-on SWPPP when the developer was taking care of most of the concerns. NMHBA EVP & CEO, Jack Milarch, began asking NAHB and the EPA for a "SWPPP-Lite" format in these situations nearly 10 years ago. Jack and a delegation of members met with EPA regulators in Washington, D.C. and a year later, with EPA Region 6 administrators. Each time NAHB staff participated in the discussion, and for the past six years NAHB has been actively working with the EPA on this issue. Now it has finally come to pass. In federal regulatory terms, the 10-year timeline is lightning fast!

Since the economic downturn, there are new home builders in the industry who may figure that the developer took care of any paperwork requirements before they graded the lots and don't know they need to provide their own SWPPPs as well.

NAHB has often discussed this issue with Environmental Protection Agency officials and offered suggestions to help streamline the process. Last month the *Housing Journal* contained an article on the EPA's launch of the requirement for online SWPPP applications for Notices of Intent, Notices of Termination and Low Erosivity Waivers.

SWPPP-Lite comes to New Mexico

Today, there's an answer, at least for New Mexico builders: In direct response to NAHB's request, EPA announced the release of a voluntary Construction General Permit (CGP) compliance template for residential lots disturbing one acre or less. The template and a fact sheet explaining how it works are on EPA's website.

"We have repeatedly argued that EPA's CGP is too complex for many of our members, who typically build about five homes a year," said NAHB Chairman Tom Woods. "The permitting process is more suited to large land developers, rather than smaller companies that are building homes on individual lots within a subdivision," he said.

The new compliance template can be used immediately in the states and territories where EPA is the direct permitting authority, such as New Mexico. And if all goes according to plan, home builders in other states will eventually be able to use the streamlined template too by modifying it to fit any extra state-specific requirements.

Who Needs It?

It's helpful to remember that all builders must obtain CGP coverage for any construction activity disturbing over one acre, or activity disturbing less than one acre when that jobsite is within a larger subdivision or development. Builders often draft a SWPPP, using EPA's current template, which can be onerous – sometimes even 100 pages long – and costly to produce. We have heard the typical cost of a SWPPP for a custom home in New Mexico is around \$800.

EPA's streamlined SWPPP template – which is 19 pages – provides a simplified list of compliance options for typical small residential construction. This includes a check-list menu

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of Best Management Practices – such as silt fences – from which to choose. Although the new template will not change requirements in EPA’s CGP, it will make the SWPPP-writing process far less complicated, saving small builders time and money.

If you’re also building in an adjacent state where EPA is *not* the permitting authority and have interest in using this tool, contact NAHB to get started with the process of adopting the template for use in that other state.

Questions? Contact NAHB’s [Eva Birk](#), Environmental Policy Program Manager, at 800-368-5242 x8124.



Reviewing 2015 Efforts and Accomplishments

By Jack Milarch Jr.

The New Mexico Home Builders Association 2015 year has had its challenges, but also its accomplishments, and it is appropriate that I give you a report of our progress.

What’s different “out there” because we were here?

Storm Water Permitting “Lite” Now Available

For a number of years we have asked federal EPA and our Region 6 regulators to give us a version of the construction storm water permitting system that is easier to accomplish than the original concept. Most of us could see from the start of this that the system as established was overly detailed and very labor intensive. Although the stated intention of EPA was that the contractor should be able to easily accomplish the required tasks by themselves it was apparent that many contractors would require professional assistance, which added more cost than EPA was willing to acknowledge.

The good news on this topic is the EPA has just announced a new internet-enabled and streamlined version of the Storm Water Construction Permitting system. As I write this, The National Association of Home Builders is in the process of holding phone conferences with associations and builders discussing how to use this new process and seeing if it is working out in the field as intended. I consider this a significant victory for NMHBA and the industry. [See page 8 of this issue for more details on this.]

Vital Workers’ Compensation Changes Successful

The major victory of the 2015 Legislative Session was the successful signing into law of a fix for our New Mexico workers’ compensation law. A higher court ruling had endangered the entire work comp system by removing the cap on the number of weeks that an injured worker was allowed to stay off work and continue collecting wage replacement benefits. Under the new ruling it was impossible to predict how long an injured worker would collect benefits, and therefore what a claim would eventually cost. Faced with those facts claims managers had little choice but to assume the worst and set expected costs much higher than they would have previously done. This isn’t just a problem for the work comp carrier because anticipated claims costs are figured into each business’s Experience Modifier. A fix was needed – and fast. Thankfully the Legislature and Governor Martinez agreed with NMHBA and Builders Trust, helping to overcome opposition, and get a change done.

Sustainable Building Tax Credit Extension and Modifications Set

In conjunction with local home builders associations, NMHBA was pleased to help with the successful extension of the Sustainable Building Tax Credit (SBTC) and modifications to the program to include water conservation. This tax credit has been a real benefit for our green building members, and its continuance (even at lower rates per square foot) was seen as a “must” for that segment of our membership.

Stay tuned -- there were more accomplishments for 2015 that we will include in our March 2016 issue!



NOTICE TO MEMBERS

NMHBA is proposing to amend its bylaws regarding Board of Director status for non-voting Life Directors. Non-voting Life Directors who have not met the attendance requirements for a period of two years shall lose their appointment as a member of the NMHBA Board of Directors.

This notice is being published to comply with the NMHBA Bylaws requirement that the substance of proposed amendments must be published to the membership in advance. This proposed amendment will be on the agenda for a vote by the full NMHBA Board of Directors at its next meeting, on February 3, 2016.

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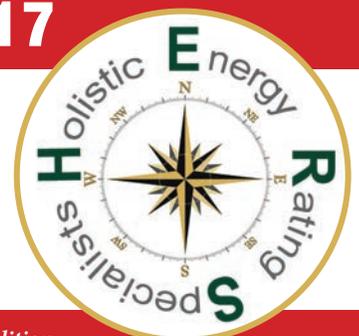
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You're Doing it Wrong: How to Estimate Defensively for Bigger Remodeling Profits

Do you know how much slippage costs on an average job? Do you bill employees at different hourly rates? What's your markup on materials?

Good estimating is good business. But remodelers may be leaving profits on the table because they are underbidding projects due to poor estimating.

Labor is the biggest variable in profit. Every extra hour of labor comes out of net profit, whether it was spent on work outside the scope of the bid, wasted at the lumber store or chalked up to talkative clients. Other profit drains include poor specs, bad weather, project and product experience deficiencies and hidden conditions. Sound familiar?

Here's help. A new presentation from NAHB Business Management offers great advice for deciding on your profit margin and sticking to it.

- Beware of over-reliance on estimating software that doesn't reflect your actual costs
- Track hours spent from set-up to clean-up with time cards in 15-minute increments
- Factor vacations, holidays, meetings and training into your overhead labor cost
- Calculate your labor burden and slippage to the penny with an Excel spreadsheet
- Estimates need good specs, but more importantly, they need great exclusions
- Working for difficult people isn't worth it. Just say no!

Defensive Estimating: Shortcuts to More Profits was written by Business Information and Technology Committee member Alan Hanbury Jr., CGR, CAPS, CGP, GMR. It's intended for use by individual members or in small-group discussions.

The slide presentation can be downloaded on [nahb.org](http://www.nahb.org/en/members/biz-tools/financial-and-accounting/better-estimating-leads-to-better-profits.aspx). Find it at <http://www.nahb.org/en/members/biz-tools/financial-and-accounting/better-estimating-leads-to-better-profits.aspx> – but remember you must be logged in to access this content. Call Melanie Lawton in the NMHBA office at 505-344-7072 if you have trouble accessing the presentation, and she can email it to you.



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Higher Gas Furnace Standards Set in 2007 Now in Effect

DOE Begins Rulemaking to Increase Standards Further



In 2007 the Department of Energy (DOE) finalized its rulemaking procedure to require all residential gas furnaces to achieve a minimum efficiency of 80% AFUE. AFUE stands for annual fuel utilization efficiency, and is a measure for furnaces roughly comparable to the SEER rating for air conditioning units.

The requirement for manufacturers to produce only minimum 80% AFUE furnaces or better took effect on November 19, 2015.

At the same time, the DOE began a new round of rulemaking to propose the minimum standard be increased to 92% AFUE for residential non-weatherized gas furnaces.

However, increases above 80% AFUE have been under consideration since a more stringent federal rule was introduced in 2011, which was successfully challenged in court by the American Public Gas Association. The Department of Energy's current proposal for non-weatherized gas furnaces is 92% AFUE, requiring condensing combustion. Negotiations between the DOE, manufacturers, and the housing industry for modification of this proposed minimum are still underway, but so far have not led to a replacement or supplemental change to the official federal notice of proposed rulemaking.

The 78% AFUE furnaces that have already been produced can be sold, but they can no longer be manufactured. For the time being, 80% AFUE is the least-efficient furnace that can be manufactured.

The DOE cites Title III, Part B of the Energy Policy and Conservation Act of 1975 as the authorizing law for improved energy efficiency and led to the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. These include the types of residential furnaces that are the subject of this rulemaking.

NAHB will continue to update members if and when the Department of Energy settles the challenge and makes a ruling. For further information contact Don Surrena at 800-368-5242 x8574.



Lobbying Tax Deduction for 2016 NAHB and NMHBA Dues

In 1993, the U.S. Congress enacted the Omnibus Budget Reconciliation Act that contained provisions affecting trade associations. The Act provided that taxpayers will no longer be able to deduct from their federal income taxes any portion of the association dues attributable to that association's "lobbying activities" as an ordinary and necessary cost of doing business.

For 2016, NAHB estimates that the non-deductible portion of **national** dues—the portion that is applicable to lobbying is 15%. Thus, for a member who pays their NAHB dues of \$182.00 in 2016, 15% or \$27.30 will not be eligible for deduction as a business expense. Similarly, for an affiliate member who pays their NAHB dues in 2016, 11% will not be eligible for deduction as a business expense.

For 2016, NMHBA estimates that the non-deductible portion of **state** dues—the portion that is applicable to lobbying is 8.7%. Thus, for a member who pays their NMHBA dues of \$145.00 in 2016, 8.7% or \$12.59 will not be eligible for deduction as a business expense. Similarly, for an affiliate member who pays their NMHBA dues of \$20.00 in 2016, 8.7% or \$1.74 will not be eligible for deduction as a business expense.

For additional information on NAHB lobbying tax deductions, contact Tracy Spatz at 800-368-5242, ext. 8152.

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