

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT
RELATING TO HOMEOWNER ASSOCIATIONS; AMENDING DISCLOSURE
REQUIREMENTS; ALLOWING ALTERNATIVE DISPUTE RESOLUTION TO
RESOLVE CERTAIN DISAGREEMENTS RELATED TO HOMEOWNER
ASSOCIATIONS; BROADENING THE APPLICABILITY OF THE HOMEOWNER
ASSOCIATION ACT; ADDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 47-16-2 NMSA 1978 (being Laws 2013,
Chapter 122, Section 2) is amended to read:

"47-16-2. DEFINITIONS.--As used in the Homeowner
Association Act:

A. "articles of incorporation" means the articles
of incorporation, and all amendments thereto, of an
association on record in the office of the county clerk in
the county or counties in which the association is located;

B. "association" means a homeowner association;

C. "board" means the body, regardless of name,
designated in the declaration or bylaws to act on behalf of
the association;

D. "bylaws" means the code of rules adopted for
the regulation or management of the affairs of the
association, irrespective of the name by which such rules are
designated;

E. "common area" means property within a

1 development that is designated as a common area in the
2 declaration and is required by the declaration to be
3 maintained or operated by an association for use of the
4 association's members;

5 F. "common expenses" means expenditures made by,
6 or the financial liabilities of, the association, together
7 with any allocations to reserves;

8 G. "community documents" means all documents
9 governing the use of the lots and the creation and operation
10 of the association, including the declaration, bylaws,
11 articles of incorporation and rules of the association;

12 H. "conflict of interest" means that a person
13 accepts or is a beneficiary of a fee, brokerage, gift or
14 other thing of value, other than a fixed salary or
15 compensation, as consideration for an investment, loan,
16 deposit, purchase, sale, exchange, insurance, reinsurance or
17 other transaction made by or for the association, an officer
18 of the board or the board; or that a person is financially
19 interested in any capacity in a transaction for the
20 association, except on behalf of the association, an officer
21 of the board or the board;

22 I. "declarant" means the person or group of
23 persons designated in a declaration as declarant or, if no
24 declarant is designated, the person or group of persons who
25 sign the declaration and their successors or assigns who may

1 submit property to a declaration;

2 J. "declaration" means an instrument, however
3 denominated, including amendments or supplements to the
4 instrument, that:

5 (1) imposes on the association maintenance
6 or operational responsibilities for common areas, easements
7 or portions of rights of way; and

8 (2) creates the authority in the association
9 to impose on lots or on the owners or occupants of such lots,
10 or on any other entity, any mandatory payment of money in
11 connection with the provision of maintenance or services for
12 the benefit of some or all of the lots, the owners or
13 occupants of the lots or the common areas. "Declaration"
14 does not include a like instrument for a condominium or
15 time-share project;

16 K. "development" means real property subject to a
17 declaration that contains residential lots and common areas
18 with respect to which any person, by virtue of ownership of a
19 lot, is a member of an association and is obligated to pay
20 assessments provided for in a declaration;

21 L. "development right" means a right or
22 combination of rights reserved by the declarant in a
23 declaration;

24 M. "disclosure certificate" or "disclosure
25 statement" means:

1 (1) a statement disclosing the existence and
2 terms of any right of first refusal or other restraint on the
3 free alienability of the lot;

4 (2) a statement setting forth the amount of
5 the monthly common expense assessment and any unpaid common
6 expense or special assessment currently due and payable from
7 the selling lot owner;

8 (3) a statement of any other fees payable by
9 lot owners;

10 (4) a statement of any capital expenditures
11 anticipated by the association and approved by the board for
12 the current fiscal year and the two next succeeding fiscal
13 years;

14 (5) a statement of the amount of any
15 reserves for capital expenditures and of any portions of
16 those reserves designated by the association for any approved
17 projects;

18 (6) the most recent regularly prepared
19 balance sheet and income and expense statement, if any, of
20 the association;

21 (7) the current operating budget of the
22 association;

23 (8) a statement of any unsatisfied judgments
24 or pending suits against the association and the status of
25 any pending suits material to the association of which the

1 association has actual knowledge;

2 (9) a statement describing any insurance
3 coverage provided for the benefit of lot owners and the board
4 of the association;

5 (10) if applicable, a statement stating that
6 the records of the association reflect alterations or
7 improvements to the lot that violate the declaration;

8 (11) a statement of the remaining term of
9 any leasehold estate affecting the association and the
10 provisions governing any extension or renewal thereof; and

11 (12) the contact person and contact
12 information for the association;

13 N. "homeowner association" means an incorporated
14 or unincorporated entity upon which maintenance and
15 operational responsibilities are imposed and to which
16 authority is granted in the declaration;

17 O. "lot" means a parcel of land designated for
18 separate ownership or occupancy shown on a recorded
19 subdivision plat for a development or the boundaries of which
20 are described in the declaration or in a recorded instrument
21 referred to or expressly contemplated by the declaration,
22 other than a common area;

23 P. "lot owner" means a person or group of persons
24 holding title to a lot, including a declarant;

25 Q. "master planned community" means a large-scale

1 residential development that allows for a phasing of
2 development that will take place over a long period of time,
3 following comprehensive and coordinated planning review by a
4 local government and approval of design and development
5 standards beyond conventionally platted subdivisions;
6 provided that additional design and development standards
7 approved by the local government shall be included in a site
8 plan, area plan or master plan as required by the local
9 government approving the development; and

10 R. "proxy" means a person authorized to act for
11 another."

12 SECTION 2. Section 47-16-5 NMSA 1978 (being Laws 2013,
13 Chapter 122, Section 5) is amended to read:

14 "47-16-5. RECORD DISCLOSURE TO MEMBERS--UPDATED
15 INFORMATION.--

16 A. All financial and other records of the
17 association shall be made available during regular business
18 hours for examination by a lot owner within ten business days
19 of a written request.

20 B. The association shall not charge a fee for
21 making financial and other records available for review. The
22 association may charge a fee of not more than ten cents
23 (\$.10) per page for copies.

24 C. As used in this section, "financial and other
25 records" includes:

- 1 (1) the declaration of the association;
- 2 (2) the name, address and telephone number
- 3 of the association's designated agent;
- 4 (3) the bylaws of the association;
- 5 (4) the names and addresses of all
- 6 association members;
- 7 (5) minutes of all meetings of the
- 8 association's lot owners and board for the previous five
- 9 years, other than executive sessions, and records of all
- 10 actions taken by a committee in place of the board or on
- 11 behalf of the association for the previous five years;
- 12 (6) the operating budget for the current
- 13 fiscal year;
- 14 (7) current assessments, including both
- 15 regular and special assessments;
- 16 (8) financial statements and accounts,
- 17 including bank account statements, transaction registers,
- 18 association-provided service or utility records and amounts
- 19 held in reserve;
- 20 (9) the most recent financial audit or
- 21 review, if any;
- 22 (10) all current contracts entered into by
- 23 the association or the board on behalf of the association;
- 24 (11) current insurance policies, including
- 25 company names, policy limits, deductibles, additional named

1 insureds and expiration dates for property, general liability
2 and association director and officer professional liability,
3 and fidelity policies; and

4 (12) any electronic record of action taken
5 by the board.

6 D. The failure of an association to provide access
7 to the financial and other records within ten business days
8 after receipt of a written request creates a rebuttable
9 presumption that the association willfully failed to comply
10 with the Homeowner Association Act. A lot owner that is
11 denied access to financial and other records is entitled to
12 the greater of the actual damages incurred for the
13 association's willful failure to comply with this subsection
14 or fifty dollars (\$50.00) per calendar day, starting on the
15 eleventh business day after the association's receipt of the
16 written request."

17 SECTION 3. Section 47-16-7 NMSA 1978 (being Laws 2013,
18 Chapter 122, Section 7) is amended to read:

19 "47-16-7. BOARD MEMBERS AND OFFICERS--DUTIES--
20 BUDGET.--

21 A. Except as provided in the community documents
22 or other provisions of the Homeowner Association Act, the
23 board acts on behalf of the association. In the performance
24 of their duties, officers and members of the board shall
25 exercise, if appointed by the declarant, the degree of care

1 and loyalty required of a fiduciary of the lot owners and, if
2 elected by the lot owners, ordinary and reasonable care free
3 from any undisclosed conflict of interest.

4 B. Within ninety days after being elected or
5 appointed to the board, each board member shall certify in
6 writing to the secretary of the association that the member:

7 (1) has read the community documents;

8 (2) will work to uphold the community
9 documents and policies to the best of the member's ability;
10 and

11 (3) will faithfully discharge the member's
12 duties to the association.

13 C. A board member who does not file the written
14 certification pursuant to Subsection B of this section shall
15 be suspended from the board until the member complies with
16 Subsection B of this section.

17 D. The association shall retain each board
18 member's written certification for inspection by lot owners
19 for five years after the board member's election or
20 appointment. The failure of an association to have a board
21 member's written certification on file does not affect the
22 validity of any action taken by the board or any protections
23 provided to board members under the:

24 (1) Homeowner Association Act; or

25 (2) Nonprofit Corporation Act, if the

1 association is organized under the Nonprofit Corporation Act.

2 E. The board or the lot owners, as provided for in
3 the community documents, shall adopt a budget annually.

4 Within thirty calendar days after adoption of any proposed
5 budget for the association, the board shall provide a copy of
6 the budget to all the lot owners.

7 F. The board shall provide to all lot owners a
8 statement included with a copy of the annual budget listing
9 all fees and fines that may be charged to a lot owner by the
10 association or any management company retained by the
11 association to act on behalf of the association, including
12 charges for a disclosure certificate pursuant to Subsection H
13 of Section 47-16-12 NMSA 1978.

14 G. Any management contract negotiated between the
15 board and a management company retained by the association to
16 act on behalf of the association shall include:

17 (1) a disclosure to the board of any
18 existing relationships the management company has with any
19 vendor or contractor for the association from which a
20 conflict of interest may arise; and

21 (2) a list of all fees to be charged to the
22 association or lot owners by the management company during
23 the term of the contract."

24 SECTION 4. Section 47-16-9 NMSA 1978 (being Laws 2013,
25 Chapter 122, Section 9) is amended to read:

1 "47-16-9. PROXY AND ABSENTEE VOTING--BALLOT COUNTING.--

2 A. The association shall provide for votes to be
3 cast in person, by absentee ballot or by proxy and may
4 provide for voting by some other form of delivery.

5 B. Vote by proxy is allowed for lot owner
6 meetings. The proxy vote shall:

7 (1) be dated and executed by a lot owner,
8 but if a lot is owned by more than one person, each owner of
9 the lot may vote or register protest to the casting of votes
10 by the other owners of the lot through a duly executed proxy,
11 but in no case shall the total vote cast be more than that
12 allocated to the lot under the declaration;

13 (2) allow for revocation if notice of
14 revocation is provided to the person presiding over a lot
15 owner meeting; and

16 (3) be valid only for the meeting at which
17 it is cast.

18 C. If proxy voting is utilized at a lot owner
19 meeting, a person shall not pay a company or person to
20 collect proxy votes.

21 D. Where directors or officers are to be elected
22 by members, the bylaws may provide that such elections may be
23 conducted by mail.

24 E. Votes cast by proxy and by absentee ballot are
25 valid for the purpose of establishing a quorum.

1 F. Ballots, if used, shall be counted by a neutral
2 third party or by a committee of volunteers. The volunteers
3 shall be selected or appointed at an open meeting, in a fair
4 manner, by the chair of the board or another person presiding
5 during that portion of the meeting. The volunteers shall not
6 be board members and, in the case of a contested election for
7 a board position, shall not be candidates.

8 G. Nothing in this section shall be considered in
9 conflict with or a replacement of voting member councils or
10 representative voting systems created by the community
11 documents."

12 SECTION 5. Section 47-16-10 NMSA 1978 (being Laws 2013,
13 Chapter 122, Section 10) is amended to read:

14 "47-16-10. FINANCIAL AUDIT.--At least every three
15 years, the board shall provide for a financial audit, review
16 or compilation of the association's records in accordance
17 with generally accepted accounting principles by an
18 independent certified public accountant and shall provide
19 that the cost thereof be assessed as a common expense. The
20 audit, review or compilation shall be made available to lot
21 owners within thirty calendar days of its completion."

22 SECTION 6. Section 47-16-12 NMSA 1978 (being Laws 2013,
23 Chapter 122, Section 12) is amended to read:

24 "47-16-12. SALE OF LOTS--DISCLOSURE CERTIFICATE.--

25 A. Unless exempt pursuant to Subsection F of this

1 section, prior to closing, a lot owner shall furnish to a
2 purchaser copies of:

3 (1) the declaration of the association,
4 other than the plats and plans;

5 (2) the bylaws of the association;

6 (3) any covenants, conditions and
7 restrictions applicable to the lot;

8 (4) the rules of the association; and

9 (5) a disclosure certificate from the
10 association.

11 B. Within ten business days after receipt of a
12 written request from a lot owner or the lot owner's
13 representative, the association shall furnish a disclosure
14 certificate containing the information necessary to enable
15 the lot owner to comply with the provisions of this section.

16 A lot owner providing a disclosure certificate pursuant to
17 Subsection A of this section shall not be liable to the
18 purchaser for any erroneous information provided by the
19 association and included in the disclosure certificate.

20 C. A purchaser shall not be liable for any unpaid
21 assessment or fee greater than the amount, prorated to the
22 date of closing, set forth in the disclosure certificate
23 prepared by the association.

24 D. A lot owner shall not be liable to a purchaser
25 for the failure or delay of the association to provide the

1 disclosure certificate in a timely manner.

2 E. The information contained in the disclosure
3 certificate shall be current as of the date on which the
4 disclosure certificate is furnished to the lot owner by the
5 association.

6 F. A disclosure certificate shall not be required
7 in the case of a disposition:

- 8 (1) pursuant to court order;
- 9 (2) by a government or governmental agency;
- 10 (3) by foreclosure or deed in lieu of
11 foreclosure; or
- 12 (4) that may be canceled at any time and for
13 any reason by the purchaser without penalty.

14 G. The statements contained in the disclosure
15 certificate pursuant to Paragraphs (2) and (3) of Subsection
16 M of Section 47-16-2 NMSA 1978 shall only be valid for sixty
17 days from their creation. Beginning sixty-one days after the
18 creation of the disclosure certificate, the lot owner may
19 request that the association update any changes to statements
20 contained in the disclosure certificate pursuant to
21 Paragraphs (2) and (3) of Subsection M of Section 47-16-2
22 NMSA 1978. Upon a lot owner's request for changes to
23 statements contained in the disclosure certificate pursuant
24 to this subsection, the association shall provide the updated
25 information within three business days of the lot owner's

1 request and may impose a reasonable fee not to exceed fifty
2 dollars (\$50.00). The updated information shall only be
3 valid for sixty days from the update.

4 H. Notwithstanding any local ordinance or
5 ordinance enacted by a home rule municipality, an association
6 may impose reasonable charges not to exceed three hundred
7 dollars (\$300) for preparation of a disclosure certificate as
8 required by the Homeowner Association Act, to be collected at
9 the time of closing; provided that the transaction closes."

10 SECTION 7. Section 47-16-15 NMSA 1978 (being Laws 2013,
11 Chapter 122, Section 15, as amended) is amended to read:

12 "47-16-15. APPLICABILITY.--

13 A. Except as provided in Subsection B of this
14 section, the Homeowner Association Act shall apply to all
15 homeowner associations created and existing within this
16 state.

17 B. Sections 47-16-9, 47-16-10 and 47-16-14 NMSA
18 1978 do not apply to homeowner associations created before
19 July 1, 2013 and that have fewer than thirty lots; provided
20 that any amendment to the community documents of an
21 association created before July 1, 2013 shall comply with the
22 Homeowner Association Act.

23 C. The Homeowner Association Act does not apply to
24 a condominium governed by the Condominium Act."

25 SECTION 8. A new section of the Homeowner Association

1 Act is enacted to read:

2 "REMOVAL OF BOARD MEMBERS.--Unless a process for removal
3 of board members is provided for in the community documents,
4 the lot owners, by a two-thirds' vote of all lot owners
5 present and entitled to vote at a lot owner meeting at which
6 a quorum is present, may remove a member of the board."

7 SECTION 9. A new section of the Homeowner Association
8 Act is enacted to read:

9 "MEETINGS OF ASSOCIATION.--

10 A. The association shall hold an annual meeting at
11 least once every thirteen months.

12 B. Notwithstanding a provision to the contrary in
13 the community documents, written notice of the meeting
14 stating the time, date and location of the annual meeting
15 and, in the case of a special meeting, the purpose or
16 purposes for which the meeting is called, shall be delivered
17 electronically, hand-delivered or sent by mail not less than
18 ten and no more than fifty days before the meeting. If sent
19 by mail, the notice shall be deemed to be delivered when
20 addressed to a lot owner at the address as it appears in the
21 association's records and deposited in the United States
22 mail, postage prepaid.

23 C. Unless a longer period of time is required by
24 an association's community documents, notice of the time,
25 date and location of board meetings and drafts of any

1 proposed policy resolutions shall be provided to lot owners
2 at least forty-eight hours in advance electronically, by
3 conspicuous posting, posting on the association's website or
4 social media or by any other reasonable means as determined
5 by the board.

6 D. All lot owners shall have the right to attend
7 and speak at all open meetings, but the board may place
8 reasonable time restrictions on those persons speaking.

9 E. Any portion of a meeting may be closed only if
10 that portion is limited to consideration of:

11 (1) legal advice from an attorney for the
12 board or association;

13 (2) pending or contemplated litigation; or

14 (3) personal, health or financial
15 information about an individual member of the association, an
16 individual employee of the association or an individual
17 contractor for the association.

18 F. The association shall maintain a written copy
19 of the minutes of all association meetings, including
20 summaries of all agenda items and formal actions taken."

21 SECTION 10. A new section of the Homeowner Association
22 Act is enacted to read:

23 "ENFORCEMENT OF COVENANTS--DISPUTE RESOLUTION.--

24 A. Each association and each lot owner and the
25 owner's tenants, guests and invitees shall comply with the

1 Homeowners Association Act and the association's community
2 documents.

3 B. Unless otherwise provided for in the community
4 documents, the association may, after providing written
5 notice and an opportunity to dispute an alleged violation
6 other than failure to pay assessments:

7 (1) levy reasonable fines for violations of
8 or failure to comply with any provision of the community
9 documents; and

10 (2) suspend, for a reasonable period of
11 time, the right of a lot owner or the lot owner's tenant,
12 guest or invitee to use common areas and facilities of the
13 association.

14 C. Prior to imposition of a fine or suspension,
15 the board shall provide an opportunity to submit a written
16 statement or for a hearing before the board or a committee
17 appointed by the board by providing written notice to the
18 person sought to be fined or suspended fourteen days prior to
19 the hearing. Following the hearing or review of the written
20 statement, if the board or committee, by a majority vote,
21 does not approve a proposed fine or suspension, neither the
22 fine nor the suspension may be imposed. Notice and a hearing
23 are not required for violations that pose an imminent threat
24 to public health or safety.

25 D. If a person against whom a violation has been

1 alleged fails to request a hearing or submit a written
2 statement as provided for in Subsection C of this section,
3 the fine or suspension may be imposed, calculated from the
4 date of violation.

5 E. A lot owner or the association may use a
6 process other than litigation used to prevent or resolve
7 disputes, including mediation, facilitation, regulatory
8 negotiation, settlement conferences, binding and nonbinding
9 arbitration, fact-finding, conciliation, early neutral
10 evaluation and policy dialogues, for complaints between the
11 lot owner and the association or if such services are
12 required by the community documents."

13 SECTION 11. TEMPORARY PROVISION.--All homeowner
14 associations created prior to July 1, 2013 shall comply with
15 the provisions of the Homeowner Association Act no later than
16 January 1, 2018.

17 SECTION 12. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2017. _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25