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AN ACT

RELATING TO REAL PROPERTY; ENACTING THE HOMEOWNER ASSOCIATION ACT; PROVIDING FOR THE FORMATION AND MANAGEMENT OF HOMEOWNER ASSOCIATIONS; PROVIDING FOR DISCLOSURE OF RECORDS; REQUIRING DISCLOSURE OF HOMEOWNER ASSOCIATION INFORMATION TO PURCHASERS.

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

SECTION 1. SHORT TITLE.--This act may be cited as the "Homeowner Association Act".

SECTION 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. "declarant" means the person or group of
13 persons designated in a declaration as declarant or, if no
14 declarant is designated, the person or group of persons who
15 sign the declaration and their successors or assigns who may
16 submit property to a declaration;

17 I. "declaration" means an instrument, however
18 denominated, including amendments or supplements to the
19 instrument, that:

20 (1) imposes on the association maintenance
21 or operational responsibilities for common areas, easements
22 or portions of rights of way; and

23 (2) creates the authority in the association
24 to impose on lots or on the owners or occupants of such lots,
25 or on any other entity, any mandatory payment of money in

1 connection with the provision of maintenance or services for
2 the benefit of some or all of the lots, the owners or
3 occupants of the lots or the common areas. "Declaration"
4 does not include a like instrument for a condominium or
5 time-share project;

6 J. "development" means real property subject to a
7 declaration that contains residential lots and common areas
8 with respect to which any person, by virtue of ownership of a
9 lot, is a member of an association and is obligated to pay
10 assessments provided for in a declaration;

11 K. "development right" means a right or
12 combination of rights reserved by the declarant in a
13 declaration;

14 L. "disclosure certificate" or "disclosure
15 statement" means:

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

19 (2) a statement setting forth the amount of
20 the monthly common expense assessment and any unpaid common
21 expense or special assessment currently due and payable from
22 the selling lot owner;

23 (3) a statement of any other fees payable by
24 lot owners;

25 (4) a statement of any capital expenditures

1 anticipated by the association and approved by the board for
2 the current fiscal year and the two next succeeding fiscal
3 years;

4 (5) a statement of the amount of any
5 reserves for capital expenditures and of any portions of
6 those reserves designated by the association for any approved
7 projects;

8 (6) the most recent regularly prepared
9 balance sheet and income and expense statement, if any, of
10 the association;

11 (7) the current operating budget of the
12 association;

13 (8) a statement of any unsatisfied judgments
14 or pending suits against the association and the status of
15 any pending suits material to the association of which the
16 association has actual knowledge;

17 (9) a statement describing any insurance
18 coverage provided for the benefit of lot owners and the board
19 of the association;

20 (10) a statement of the remaining term of
21 any leasehold estate affecting the association and the
22 provisions governing any extension or renewal thereof; and

23 (11) the contact person and contact
24 information for the association;

25 M. "homeowner association" means an incorporated

1 or unincorporated entity upon which maintenance and
2 operational responsibilities are imposed and to which
3 authority is granted in the declaration;

4 N. "lot" means a parcel of land designated for
5 separate ownership or occupancy shown on a recorded
6 subdivision plat for a development or the boundaries of which
7 are described in the declaration or in a recorded instrument
8 referred to or expressly contemplated by the declaration,
9 other than a common area;

10 O. "lot owner" means a person or group of persons
11 holding title to a lot, including a declarant;

12 P. "master planned community" means a large-scale
13 residential development that allows for a phasing of
14 development that will take place over a long period of time,
15 following comprehensive and coordinated planning review by a
16 local government and approval of design and development
17 standards beyond conventionally platted subdivisions;
18 provided that additional design and development standards
19 approved by the local government shall be included in a site
20 plan, area plan or master plan as required by the local
21 government approving the development; and

22 Q. "proxy" means a person authorized to act for
23 another.

24 SECTION 3. CREATION OF A HOMEOWNER ASSOCIATION.--An
25 association pursuant to the Homeowner Association Act shall

1 be organized in accordance with the laws of the state and be
2 identified in a recorded declaration. The membership of the
3 association shall consist exclusively of all lot owners in
4 the development.

5 SECTION 4. RECORDING OR FILING OF HOMEOWNER ASSOCIATION
6 NOTICE AND DECLARATION.--

7 A. An association organized after July 1, 2013
8 shall record a notice of homeowner association in the office
9 of the county clerk of the county or counties in which the
10 real property affected thereby is situated no later than
11 thirty days after the date on which the association's
12 declaration is recorded as provided in Section 3 of the
13 Homeowner Association Act.

14 B. An association organized prior to July 1, 2013
15 shall, before June 30, 2014, record a notice of homeowner
16 association in the office of the county clerk of the county
17 or counties in which the development is situated.

18 C. A notice of homeowner association pursuant to
19 Subsection A or B of this section shall fully and accurately
20 disclose the name and address of the association and any
21 management company charged with preparation of a disclosure
22 certificate and shall contain the recording data for the
23 subdivision plat and the declaration governing the lots
24 within the development. A notice of homeowner association
25 pursuant to Subsection A of this section shall also include

1 the public regulation commission number, if any, of the
2 association.

3 D. If an association fails to record a notice of
4 homeowner association pursuant to this section, the
5 association's authority to charge an assessment, levy a fine
6 for late payment of an assessment or enforce a lien for
7 nonpayment of an assessment shall be suspended until the
8 notice of homeowner association is recorded.

9 SECTION 5. RECORD DISCLOSURE TO MEMBERS--UPDATED
10 INFORMATION.--

11 A. All financial and other records of the
12 association shall be made available for examination by a lot
13 owner within ten business days of the request.

14 B. The association shall not charge a fee for
15 making financial and other records available for review. The
16 association may charge a reasonable fee for copies.

17 C. As used in this section, "financial and other
18 records" includes:

- 19 (1) the declaration of the association;
20 (2) the name, address and telephone number
21 of the association's designated agent;
22 (3) the bylaws of the association;
23 (4) the names of all association members;
24 (5) minutes of all meetings of the
25 association's lot owners and board for the previous five

1 years, other than executive sessions, and records of all
2 actions taken by a committee in place of the board or on
3 behalf of the association for the previous five years;

4 (6) the operating budget for the current
5 fiscal year;

6 (7) current assessments, including both
7 regular and special assessments;

8 (8) financial statements and accounts,
9 including amounts held in reserve;

10 (9) the most recent financial audit or
11 review, if any;

12 (10) all current contracts entered into by
13 the association or the board on behalf of the association;
14 and

15 (11) current insurance policies, including
16 company names, policy limits, deductibles, additional named
17 insureds and expiration dates for property, general liability
18 and association director and officer professional liability,
19 and fidelity policies.

20 SECTION 6. DUTIES OF A HOMEOWNER ASSOCIATION.--

21 A. The association shall exercise any powers
22 conferred to the association in the community documents.

23 B. The association shall have a lien on a lot for
24 any assessment levied against that lot or for fines imposed
25 against that lot's owner from the time the assessment or fine

1 becomes due. If an assessment is payable in installments,
2 the full amount of the assessment shall be a lien from the
3 time the first installment becomes due. The association's
4 lien may be foreclosed in like manner as a mortgage on real
5 estate.

6 C. Recording the declaration constitutes notice
7 recorded in the office of the county clerk in the county or
8 counties in which any part of the real property is located
9 and perfection of the lien.

10 D. Upon written request by a lot owner, the
11 association shall furnish a recordable statement setting
12 forth the amount of unpaid assessments against the lot
13 owner's lot. The statement shall be furnished within ten
14 business days after receipt of the request and is binding on
15 the association and the board.

16 SECTION 7. BOARD MEMBERS AND OFFICERS--DUTIES--
17 BUDGET.--

18 A. Except as provided in the community documents
19 or other provisions of the Homeowner Association Act, the
20 board acts on behalf of the association. In the performance
21 of their duties, officers and members of the board shall
22 exercise, if appointed by the declarant, the degree of care
23 and loyalty required of a fiduciary of the lot owners and, if
24 elected by the lot owners, ordinary and reasonable care.

25 B. The board or the lot owners, as provided for in SJC/SB 497

1 the community documents, shall adopt a budget annually.
2 Within thirty calendar days after adoption of any proposed
3 budget for the association, the board shall provide a summary
4 of the budget to all the lot owners.

5 SECTION 8. DECLARANT CONTROL OF BOARD.--

6 A. Subject to the provisions of this section, the
7 declaration shall provide for a period of declarant control
8 of the association, during which period a declarant, or
9 persons designated by the declarant, may appoint and remove
10 the officers and members of the board.

11 B. Regardless of the period provided in the
12 declaration, the period of declarant control shall terminate
13 no later than the earlier of:

14 (1) sixty days after conveyance of
15 seventy-five percent of the lots that are part of the
16 development and any additional lots that may be added to the
17 development to lot owners other than a declarant;

18 (2) two years after all declarants have
19 ceased to offer lots for sale in the ordinary course of
20 business;

21 (3) two years after a development right to
22 add new lots was last exercised; or

23 (4) the day that the declarant or the
24 declarant's designee, after giving written notice to the
25 association, records an instrument voluntarily terminating

1 all rights to declarant control.

2 C. Subsection B of this section does not apply to
3 a master planned community.

4 D. A declarant may voluntarily terminate the right
5 to appoint and remove officers and members of the board
6 before termination of the period of declarant control, but in
7 that event, the declarant may require, for the duration of
8 the period of declarant control, that specified actions of
9 the association or board, as described in a recorded
10 instrument executed by the declarant, be approved by the
11 declarant or the declarant's designee before they become
12 effective.

13 E. Not later than sixty days after conveyance of
14 twenty-five percent of the lots that are part of the
15 development, and any additional lots that may be added to the
16 development, to lot owners other than a declarant, at least
17 one member and not less than twenty-five percent of the
18 members of the board shall be elected by lot owners.

19 F. Not later than sixty days after conveyance of
20 fifty percent of the lots that are part of the development,
21 and any additional lot that may be added to the development,
22 to lot owners other than the declarant, no less than
23 thirty-three percent of the members of the board shall be
24 elected by lot owners other than the declarant.

25 G. Not later than the termination of a period of

1 declarant control, the lot owners shall elect a board of at
2 least three members, at least a majority of whom shall be lot
3 owners. The board shall elect the officers. The board
4 members and officers shall take office upon election.

5 H. No amendment to the declaration that would
6 limit, prohibit or eliminate the exercise of a development
7 right shall be effective without the concurrence of the
8 declarant.

9 I. A declarant shall not utilize cumulative or
10 class voting for the purpose of evading any limitation
11 imposed on declarants by the Homeowner Association Act, nor
12 shall lots constitute a class because they are owned by a
13 declarant.

14 SECTION 9. PROXY AND ABSENTEE VOTING--BALLOT
15 COUNTING.--

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

19 B. Vote by proxy is allowed for lot owner
20 meetings. The proxy vote shall:

21 (1) be dated and executed by a lot owner,
22 but if a lot is owned by more than one person, each owner of
23 the lot may vote or register protest to the casting of votes
24 by the other owners of the lot through a duly executed proxy,
25 but in no case shall the total vote cast be more than that

1 allocated to the lot under the declaration;

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

5 (3) be valid only for the meeting at which
6 it is cast.

7 C. If proxy voting is utilized at a lot owner
8 meeting, a person shall not pay a company or person to
9 collect proxy votes.

10 D. Where directors or officers are to be elected
11 by members, the bylaws may provide that such elections may be
12 conducted by mail.

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

15 F. Ballots, if used, shall be counted by a neutral
16 third party or by a committee of volunteers. The volunteers
17 shall be selected or appointed at an open meeting, in a fair
18 manner, by the chair of the board or another person presiding
19 during that portion of the meeting. The volunteers shall not
20 be board members and, in the case of a contested election for
21 a board position, shall not be candidates.

22 SECTION 10. FINANCIAL AUDIT.--

23 A. Unless any provision in the community documents
24 requires an annual audit by a certified public accountant,
25 the board of directors of an association managing a master

1 planned community or a development consisting of one hundred
2 or more lots shall provide for an annual financial audit,
3 review or compilation of the association. The audit, review
4 or compilation shall be completed no later than one hundred
5 eighty days after the end of the association's fiscal year
6 and shall be made available upon request to the members
7 within thirty days after its completion.

8 B. Unless otherwise provided in the community
9 documents, in an association managing a development
10 consisting of fewer than one hundred lots, upon a majority
11 vote of all of the lot owners, the board shall provide for a
12 financial audit, review or compilation of the association's
13 records and shall provide that the cost thereof be assessed
14 as a common expense. The audit, review or compilation shall
15 be made available to lot owners within thirty calendar days
16 of its completion.

17 SECTION 11. CONTRACT DISCLOSURE STATEMENT OR DISCLOSURE
18 CERTIFICATE--RIGHT OF CANCELLATION OF PURCHASE CONTRACT.--

19 Except as provided in Section 12 of the Homeowner Association
20 Act, a person selling a lot that is subject to an association
21 shall provide in writing a disclosure certificate that states
22 that the lot is located within a development that is subject
23 to an association. If the lot is located within a
24 development that is subject to an association and the
25 association is subject to the Homeowner Association Act:

1 A. A seller or the seller's agent shall obtain a
2 disclosure certificate from the association and provide it to
3 the purchaser no later than seven days before closing; and

4 B. A purchaser or the purchaser's agent has the
5 right to cancel the purchase contract within seven days after
6 receiving the disclosure certificate.

7 SECTION 12. SALE OF LOTS--DISCLOSURE CERTIFICATE.--

8 A. Unless exempt pursuant to Subsection F of this
9 section, prior to closing, a lot owner shall furnish to a
10 purchaser copies of:

11 (1) the declaration of the association,
12 other than the plats and plans;

13 (2) the bylaws of the association;

14 (3) any covenants, conditions and
15 restrictions applicable to the lot;

16 (4) the rules of the association; and

17 (5) a disclosure certificate from the
18 association.

19 B. Within ten business days after receipt of a
20 written request from a lot owner, the association shall
21 furnish a disclosure certificate containing the information
22 necessary to enable the lot owner to comply with the
23 provisions of this section. A lot owner providing a
24 disclosure certificate pursuant to Subsection A of this
25 section shall not be liable to the purchaser for any

1 erroneous information provided by the association and
2 included in the disclosure certificate.

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

7 D. A lot owner shall not be liable to a purchaser
8 for the failure or delay of the association to provide the
9 disclosure certificate in a timely manner.

10 E. The information contained in the disclosure
11 certificate shall be current as of the date on which the
12 disclosure certificate is furnished to the lot owner by the
13 association.

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

16 (1) pursuant to court order;
17 (2) by a government or governmental agency;
18 (3) by foreclosure or deed in lieu of
19 foreclosure; or

20 (4) that may be canceled at any time and for
21 any reason by the purchaser without penalty.

22 G. An association may impose reasonable charges
23 for preparation of a disclosure certificate as required by
24 the Homeowner Association Act.

25 SECTION 13. PURCHASER'S CANCELLATION OF A PURCHASE

1 CONTRACT.--If a purchaser elects to cancel a purchase
2 pursuant to Section 11 of the Homeowner Association Act, the
3 purchaser may do so by hand delivering notice of the
4 cancellation to the lot owner or by mailing notice of
5 cancellation, by prepaid United States mail, to the lot
6 owner, or to the lot owner's agent for service of process.
7 Cancellation shall be without penalty, and all payments made
8 by the purchaser before cancellation shall be refunded within
9 fifteen days.

10 SECTION 14. ATTORNEY FEES AND COSTS.--A court may award
11 attorney fees and costs to any party that prevails in a civil
12 action between a lot owner and the association or declarant
13 based upon any provision of the declaration or bylaws;
14 provided that the declaration or bylaws allow at least one
15 party to recover attorney fees or costs.

16 SECTION 15. APPLICABILITY.--

17 A. Except as provided in Subsections B and C of
18 this section, the Homeowner Association Act shall apply to
19 all homeowner associations created and existing within this
20 state.

21 B. Sections 9, 10 and 14 of the Homeowner
22 Association Act do not apply to homeowner associations
23 created before July 1, 2013; provided that any amendment to
24 the community documents of an association created before
25 July 1, 2013 shall comply with the Homeowner Association Act.

