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HOUSE BILL 380

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Monica Youngblood

AN ACT

RELATING TO PROPERTY; AMENDING THE HOMEOWNER ASSOCIATION ACT TO  
ELIMINATE CERTAIN DISCLOSURE REQUIREMENTS; PROVIDING A CAP ON  
FEES CHARGED FOR A DISCLOSURE CERTIFICATE.

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

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

"47-16-1. SHORT TITLE.--~~[This act]~~ Chapter 47, Article 16  
NMSA 1978 may be cited as the "Homeowner Association Act"."

**SECTION 2.** 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

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1 on record in the office of the county clerk in the county or  
2 counties in which the association is located;

3 B. "association" means a homeowner association;

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

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

10 E. "common area" means property within a  
11 development that is designated as a common area in the  
12 declaration and is required by the declaration to be maintained  
13 or operated by an association for use of the association's  
14 members;

15 F. "common expenses" means expenditures made by, or  
16 the financial liabilities of, the association, together with  
17 any allocations to reserves;

18 G. "community documents" means all documents  
19 governing the use of the lots and the creation and operation of  
20 the association, including the declaration, bylaws, articles of  
21 incorporation and rules of the association;

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

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1 property to a declaration;

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

5 (1) imposes on the association maintenance or  
6 operational responsibilities for common areas, easements or  
7 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 occupants  
13 of the lots or the common areas. "Declaration" does not  
14 include a like instrument for a condominium or time-share  
15 project;

16 J. "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 K. "development right" means a right or combination  
22 of rights reserved by the declarant in a declaration;

23 L. "disclosure certificate" or "disclosure  
24 statement" means:

25 [~~(1) a statement disclosing the existence and~~

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1 ~~terms of any right of first refusal or other restraint on the~~  
2 ~~free alienability of the lot;~~

3 ~~(2)]~~ (1) a statement setting forth the amount  
4 of the monthly common expense assessment and any unpaid common  
5 expense or special assessment currently due and payable from  
6 the selling lot owner;

7 ~~[(3)]~~ (2) a statement of any other fees  
8 payable by lot owners;

9 ~~[(4)]~~ (3) a statement of any capital  
10 expenditures anticipated by the association and approved by the  
11 board for the current fiscal year and the two next succeeding  
12 fiscal years;

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

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

19 ~~(7)~~ the current operating budget of the  
20 association;

21 ~~(8)]~~ (4) a statement of any unsatisfied  
22 judgments or pending suits against the association and the  
23 status of any pending suits material to the association of  
24 which the association has actual knowledge;

25 ~~[(9)]~~ a statement describing any insurance

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1 ~~coverage provided for the benefit of lot owners and the board~~  
2 ~~of the association;~~

3 ~~(10) a statement of the remaining term of any~~  
4 ~~leasehold estate affecting the association and the provisions~~  
5 ~~governing any extension or renewal thereof;]~~ and

6 [~~(11)~~] (5) the contact person and contact  
7 information for the association;

8 M. "homeowner association" means an incorporated or  
9 unincorporated entity upon which maintenance and operational  
10 responsibilities are imposed and to which authority is granted  
11 in the declaration;

12 N. "lot" means a parcel of land designated for  
13 separate ownership or occupancy shown on a recorded subdivision  
14 plat for a development or the boundaries of which are described  
15 in the declaration or in a recorded instrument referred to or  
16 expressly contemplated by the declaration, other than a common  
17 area;

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

20 P. "master planned community" means a large-scale  
21 residential development that allows for a phasing of  
22 development that will take place over a long period of time,  
23 following comprehensive and coordinated planning review by a  
24 local government and approval of design and development  
25 standards beyond conventionally platted subdivisions; provided

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1 that additional design and development standards approved by  
2 the local government shall be included in a site plan, area  
3 plan or master plan as required by the local government  
4 approving the development; and

5 Q. "proxy" means a person authorized to act for  
6 another."

7 SECTION 3. Section 47-16-12 NMSA 1978 (being Laws 2013,  
8 Chapter 122, Section 12) is amended to read:

9 "47-16-12. SALE OF LOTS--DISCLOSURE CERTIFICATE.--

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

13 (1) the declaration of the association, other  
14 than the plats and plans;

15 (2) the bylaws of the association;

16 (3) any covenants, conditions and restrictions  
17 applicable to the lot;

18 (4) the rules of the association; and

19 (5) a disclosure certificate from the  
20 association.

21 B. Within ten business days after receipt of a  
22 written request from a lot owner, the association shall furnish  
23 a disclosure certificate containing the information necessary  
24 to enable the lot owner to comply with the provisions of this  
25 section. A lot owner providing a disclosure certificate

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1 pursuant to Subsection A of this section shall not be liable to  
2 the purchaser for any erroneous information provided by the  
3 association and included in the disclosure certificate.

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

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

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

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

- 17 (1) pursuant to court order;  
18 (2) by a government or governmental agency;  
19 (3) by foreclosure or deed in lieu of  
20 foreclosure; or  
21 (4) that may be canceled at any time and for  
22 any reason by the purchaser without penalty.

23 G. An association may impose [~~reasonable charges~~] a  
24 charge not to exceed one hundred fifty dollars (\$150) for  
25 preparation of a disclosure certificate as required by the

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Homeowner Association Act."

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.