

1 SENATE BILL 491

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Mimi Stewart

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10 AN ACT

11 RELATING TO HOMEOWNER ASSOCIATIONS; PROVIDING FOR ALTERNATIVE
12 DISPUTE RESOLUTION; REQUIRING CERTAIN BOARD MEETINGS TO BE OPEN
13 TO LOT OWNERS; BROADENING THE APPLICABILITY OF THE HOMEOWNER
14 ASSOCIATION ACT; ADDING A PENALTY.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of the Homeowner Association Act
18 is enacted to read:

19 "[NEW MATERIAL] ALTERNATIVE DISPUTE RESOLUTION.--

20 A. A dispute between the association and a lot
21 owner may be submitted for alternative dispute resolution. The
22 cost of the alternative dispute resolution services shall be
23 divided equally among the disputing parties, unless otherwise
24 determined.

25 B. The New Mexico alternative dispute resolution

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1 commission shall appoint a neutral party to preside over the
2 alternative dispute resolution process. The form of
3 alternative dispute resolution chosen pursuant to this section
4 may be binding or nonbinding, with the voluntary consent of the
5 parties.

6 C. If an agreement is reached, it shall be
7 presented to a court of competent jurisdiction as a
8 stipulation. The court may enter the stipulation as an order
9 of the court. Thereafter, if either party violates the
10 stipulation, the other party may apply immediately to the court
11 for relief.

12 D. Unless otherwise agreed, prior to an agreement
13 being presented to a court pursuant this section, either party
14 to the alternative dispute resolution process may terminate the
15 process at any time without prejudice.

16 E. As used in this section, "alternative dispute
17 resolution" means mediation, arbitration, conciliation or other
18 nonjudicial procedure that involves a neutral party in the
19 decision-making process."

20 SECTION 2. A new section of the Homeowner Association Act
21 is enacted to read:

22 "[NEW MATERIAL] BOARD MEETINGS OPEN TO MEMBERS--
23 EXCEPTIONS.--

24 A. A lot owner may attend any meeting of the board
25 except for meetings of the board held in executive session as

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1 described in Subsection B of this section.

2 B. A meeting of the board may be closed for
3 executive session only to address:

- 4 (1) pending or contemplated litigation; or
- 5 (2) personnel matters.

6 C. The reason for executive session shall be noted
7 in the minutes."

8 SECTION 3. A new section of the Homeowner Association Act
9 is enacted to read:

10 "[NEW MATERIAL] PENALTY FOR VIOLATION OF ACT.--An
11 association found guilty of violating a provision of the
12 Homeowner Association Act shall be fined one hundred dollars
13 (\$100) per violation per day, not to exceed ten thousand
14 dollars (\$10,000) per violation."

15 SECTION 4. Section 47-16-1 NMSA 1978 (being Laws 2013,
16 Chapter 122, Section 1) is amended to read:

17 "47-16-1. SHORT TITLE.--~~[This act]~~ Chapter 47, Article 16
18 NMSA 1978 may be cited as the "Homeowner Association Act"."

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

21 "47-16-2. DEFINITIONS.--As used in the Homeowner
22 Association Act:

23 A. "articles of incorporation" means the articles
24 of incorporation, and all amendments thereto, of an association
25 on record in the office of the county clerk in the county or

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1 counties in which the association is located;

2 B. "association" means a homeowner association;

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

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

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

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

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

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

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

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

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

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

20 K. "development right" means a right or combination
21 of rights reserved by the declarant in a declaration;

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

24 (1) a statement disclosing the existence and
25 terms of any right of first refusal or other restraint on the

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1 free alienability of the lot;

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

6 (3) a statement of any other fees payable by
7 lot owners;

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

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

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

18 (7) the current operating budget of the
19 association;

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

24 (9) a statement describing any insurance
25 coverage provided for the benefit of lot owners and the board

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1 of the association;

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

5 (11) the contact person and contact
6 information for the association;

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

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

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

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

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1 the local government shall be included in a site plan, area
2 plan or master plan as required by the local government
3 approving the development; ~~and~~

4 Q. "protected personal identifier information"
5 means:

- 6 (1) all but the last four digits of a:
 - 7 (a) taxpayer identification number;
 - 8 (b) financial account number; or
 - 9 (c) driver's license number;
- 10 (2) all but the year of a person's date of
11 birth; and
- 12 (3) a social security number; and

13 ~~[Q-]~~ R. "proxy" means a person authorized to act
14 for another."

15 **SECTION 6.** Section 47-16-5 NMSA 1978 (being Laws 2013,
16 Chapter 122, Section 5) is amended to read:

17 "47-16-5. RECORD DISCLOSURE TO MEMBERS--UPDATED
18 INFORMATION.--

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

22 B. The association shall not charge a fee for
23 making financial and other records available for review and
24 shall provide all records electronically at no cost to a lot
25 owner. The association may charge a reasonable fee for paper

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1 copies.

2 C. Protected personal identifier information
3 contained in association records may be redacted before
4 inspection or copying of those records. The presence of
5 protected personal identifier information in a record does not
6 exempt the record from inspection.

7 [~~G.~~] D. As used in this section, "financial and
8 other records" includes:

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

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1 if any;

2 (10) all current contracts entered into by the
3 association or the board on behalf of the association; and

4 (11) current insurance policies, including
5 company names, policy limits, deductibles, additional named
6 insureds and expiration dates for property, general liability
7 and association director and officer professional liability,
8 and fidelity policies."

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

11 "47-16-15. APPLICABILITY.--

12 A. Except as provided in Subsections B and C of
13 this section, the Homeowner Association Act shall apply to all
14 [~~homeowner~~] associations created and existing within this
15 state; provided that by July 1, 2016, all associations shall
16 comply with the Homeowner Association Act, notwithstanding
17 Subsections B and C of this section.

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

24 C. Except as provided in Sections [~~4 and 8 of~~
25 47-16-4 and 47-16-10 NMSA 1978], the Homeowner Association Act

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1 ~~[that act]~~ does not invalidate existing provisions of the
2 articles of incorporation, declaration, bylaws or rules of a
3 homeowner association created before July 1, 2013.

4 D. The Homeowner Association Act does not apply to
5 a condominium governed by the Condominium Act."

6 **SECTION 8. EFFECTIVE DATE.**--The effective date of the
7 provisions of this act is July 1, 2015.