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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE HOMEOWNER ASSOCIATION ACT; PROVIDING FOR THE FORMATION AND MANAGEMENT OF PLANNED COMMUNITIES; REQUIRING NOTICE AND OPEN MEETINGS; PROVIDING FOR DISCLOSURE OF RECORDS; ALLOWING AUDITS; PROVIDING FOR ATTORNEY FEES; REQUIRING DISCLOSURE OF HOMEOWNER ASSOCIATION INFORMATION TO PURCHASERS; LIMITING RESTRICTIONS ON THE INSTALLATION OR USE OF SOLAR COLLECTORS AND WATER CONSERVATION MEASURES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 21 of this act may be cited as the "Homeowner Association Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Homeowner Association Act:

A. "association" means an incorporated association

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1 of parcel owners that is organized under Section 5 of the
2 Homeowner Association Act;

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

6 C. "common areas" means any real estate within a
7 planned community that is owned or leased by the association,
8 other than a parcel and any other interests in real estate for
9 the benefit of the parcel owners that are subject to the
10 declaration;

11 D. "community documents" means all documents
12 governing the creation and operation of the association,
13 including the declaration, bylaws, articles of incorporation
14 and rules of the association;

15 E. "declarant" means the person or group of persons
16 designated in a declaration as declarant or, if no declarant is
17 designated, the person or group of persons who signs the
18 original declaration or who succeeds to special rights,
19 preferences or privileges designated in the declaration as
20 belonging to the signator of the declaration;

21 F. "declaration" means any instrument, however
22 denominated, that establishes a planned community and any
23 amendment to that instrument;

24 G. "development rights" means any right or
25 combination of rights reserved by a declarant in a declaration

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1 to add parcels to a planned community;

2 H. "parcel" means a physical portion of a planned
3 community designated for separate ownership or occupancy, the
4 boundaries of which are described in the declaration;

5 I. "parcel owner" or "member" means a person
6 holding title to a parcel in the planned community;

7 J. "planned community" means real estate, portions
8 of which are designated for separate ownership and the
9 remainder of which is designated for common ownership solely by
10 the owners of those portions; but "planned community" does not
11 include a condominium governed by the Condominium Act. Real
12 estate is not a planned community unless the undivided
13 interests in the common areas are vested in the parcel owners;
14 and

15 K. "residential use" means use for dwelling or
16 recreational purposes, or both.

17 SECTION 3. [NEW MATERIAL] APPLICABILITY--RESIDENTIAL--NEW
18 PLANNED COMMUNITIES--EXISTING PLANNED COMMUNITIES--ADOPTION OF
19 ACT--SMALL AND LIMITED EXPENSE LIABILITY COMMUNITIES--LOCAL
20 ORDINANCES, REGULATIONS AND BUILDING CODES.--

21 A. Except as otherwise provided in this section,
22 the Homeowner Association Act applies to all residential use
23 planned communities established in the manner set forth in
24 Section 4 of that act and after July 1, 2011. Amendments to
25 the Homeowner Association Act apply to all planned communities

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1 established July 1, 2011 or made subject to that act by
2 amendment of the declaration of the common interest community
3 under the provisions of Subsection C of this section,
4 regardless of when the amendment to that act becomes effective.

5 B. Except for a planned community described in
6 Subsection D of this section, and only with respect to events
7 and circumstances occurring after July 1, 2012, the following
8 sections of that act apply to a planned community organized in
9 the state before the effective date of that act:

- 10 (1) Section 3;
- 11 (2) Subsection C of Section 4;
- 12 (3) Section 7;
- 13 (4) Section 11;
- 14 (5) Section 12;
- 15 (6) Section 14;
- 16 (7) Section 16;
- 17 (8) Sections 17 through 21; and
- 18 (9) definitions to the extent necessary to
19 construe any of the sections that apply under this subsection.

20 C. The community documents of any planned community
21 organized before July 1, 2012 may be amended to achieve any
22 result permitted by that act, regardless of what applicable law
23 provided before adoption of that act, provided that:

- 24 (1) any amendment to the community documents
25 authorized by this subsection shall be adopted in conformity

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1 with any procedures and requirements for amending the
2 instruments specified by those instruments or, if there are
3 none, in conformity with the amendment procedures of that act;
4 and

5 (2) if any amendment to the community
6 documents grants to a person a right, power or privilege
7 permitted by that act, any correlative obligation, liability or
8 restriction in that act also applies to that person.

9 D. The Homeowner Association Act does not apply to
10 a planned community that contains five or fewer parcels.

11 E. The provisions of the Homeowner Association Act
12 do not invalidate or modify any provision of any building code,
13 zoning, subdivision or other real estate use law, ordinance,
14 rule or regulation governing the use of real estate. The
15 planned community's association or board shall not act contrary
16 to or in violation of any provision of any building code,
17 zoning, subdivision or other real estate use law, ordinance,
18 rule or regulation governing the use of real estate or the
19 planned community. A building code shall not impose any
20 requirement upon any structure in a planned community that it
21 would not impose upon a physically identical development under
22 a different form of ownership.

23 F. Except for those changes required pursuant to
24 Subsection B of this section, nothing in this section shall be
25 deemed to invalidate existing provisions of the community

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1 documents of an existing planned community.

2 SECTION 4. [NEW MATERIAL] ESTABLISHMENT OF A PLANNED
3 COMMUNITY--CONTENTS OF DECLARATION--NOTICE BY EXISTING
4 COMMUNITIES.--

5 A. A planned community may be established pursuant
6 to the Homeowner Association Act only by recording a
7 declaration executed in the same manner as a deed. The
8 declaration shall be recorded in each county in which any
9 portion of the planned community is located.

10 B. The declaration shall contain:

11 (1) the names of the planned community and the
12 association;

13 (2) the name of every county in which any part
14 of the planned community is situated;

15 (3) a legally sufficient description of the
16 real estate included in the planned community;

17 (4) a description of any development rights
18 reserved by the declarant, and the period of time those rights
19 shall be exercised, together with a legally sufficient
20 description of the total number of parcels in the planned
21 community, present and anticipated, and the type of development
22 allowed on the parcels;

23 (5) any other conditions or limitations under
24 which the rights described in Paragraph (4) of this subsection
25 may be exercised or will lapse;

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1 (6) a statement of the allocation of the
2 association's financial liabilities, expenses, reserves and
3 voting interests for each parcel in the manner described in
4 Section 9 of the Homeowner Association Act; and

5 (7) any restrictions on use, occupancy and
6 alienation of the parcels.

7 C. A planned community organized in New Mexico
8 prior to July 1, 2012 shall record notice of the association in
9 the same manner as a deed in each county in which any portion
10 of the planned community is located. The notice shall, at a
11 minimum, include:

12 (1) the name of the planned community and the
13 name of the association; and

14 (2) a legally sufficient description of the
15 real estate included in the planned community.

16 SECTION 5. [NEW MATERIAL] ORGANIZATION OF AN
17 ASSOCIATION.--

18 A. An association shall be organized as a nonprofit
19 corporation in accordance with the laws of the state of New
20 Mexico. The membership of the association shall consist
21 exclusively of all parcel owners in the planned community.

22 B. An association shall be organized no later than
23 the date on which the first parcel in the planned community is
24 conveyed to a purchaser, and the first meeting of the
25 association shall be convened when five of the total parcels in

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1 the planned community have sold.

2 C. For associations formed by parcel owners
3 creating a planned community in an existing neighborhood, the
4 association shall be organized after the community documents
5 have been created and the declaration recorded.

6 SECTION 6. [NEW MATERIAL] QUORUMS.--

7 A. Unless the bylaws provide otherwise, a quorum is
8 present throughout any meeting of the parcel owners if persons
9 entitled to cast twenty percent of the votes in the
10 association:

11 (1) are present in person or by proxy at the
12 beginning of the meeting;

13 (2) have cast absentee ballots pursuant to
14 Section 10 of the Homeowner Association Act; or

15 (3) are present by any combination of
16 Paragraphs (1) and (2) of this subsection.

17 B. Unless the bylaws specify a larger percentage, a
18 quorum of the board is present to determine the validity of any
19 action taken at a meeting of the board only if individuals
20 entitled to cast a majority of the votes on the board are
21 present at the time a vote regarding that action is taken. If
22 a quorum is present when the vote is taken, the affirmative
23 vote of a majority of the board members present is the act of
24 the board unless a greater vote is required by the community
25 documents.

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1 SECTION 7. [NEW MATERIAL] BOARD MEMBERS AND OFFICERS--

2 DUTIES--REMOVAL--BUDGET.--

3 A. Except as provided in the community documents or
4 other provisions of the Homeowner Association Act, the board
5 acts on behalf of the association. In the performance of their
6 duties, officers and members of the board shall exercise, if
7 appointed by the declarant, the degree of care and loyalty
8 required of a trustee of the parcel owners and, if elected by
9 the parcel owners, ordinary and reasonable care.

10 B. The board shall not act on behalf of the
11 association to amend the declaration, to terminate the planned
12 community or to elect members of the board or determine the
13 qualifications, powers and duties or terms of office of board
14 members, but the board shall fill vacancies in its membership
15 for the unexpired portion of any term.

16 C. Notwithstanding any provision of the community
17 documents to the contrary, the parcel owners, by a two-thirds'
18 vote of all persons present and entitled to vote at any meeting
19 of the parcel owners at which a quorum is present, may remove
20 any member of the board with or without cause other than a
21 member appointed by the declarant.

22 D. Within thirty calendar days after adoption of
23 any proposed budget for the association, the board shall
24 provide a summary of the budget to all the parcel owners and
25 shall set a date for a meeting of the parcel owners to consider

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1 ratification of the budget not less than fourteen nor more than
2 thirty calendar days after mailing of the summary. Unless at
3 that meeting a majority of all the parcel owners or any larger
4 vote specified in the declaration rejects the budget, the
5 budget shall be ratified, whether or not a quorum is present.
6 In the event the proposed budget is rejected, the budget last
7 ratified by the parcel owners shall be continued until such
8 time as the parcel owners ratify a subsequent budget proposed
9 by the board.

10 SECTION 8. [NEW MATERIAL] DECLARANT CONTROL OF BOARD.--

11 A. Subject to the provisions of this section, the
12 declaration may provide for a period of declarant control of
13 the association, during which period a declarant, or persons
14 designated by the declarant, may appoint and remove the
15 officers and members of the board. Regardless of the period
16 provided in the declaration, the period of declarant control
17 shall be terminated no later than the earlier of:

18 (1) sixty days after conveyance of seventy-
19 five percent of the parcels that may be created to parcel
20 owners other than a declarant;

21 (2) two years after all declarants have ceased
22 to offer parcels for sale in the ordinary course of business;

23 (3) two years after any development right to
24 add new parcels was last exercised; or

25 (4) the day the declarant or the declarant's

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1 designee, after giving written notice to parcel owners, records
2 an instrument voluntarily surrendering all rights to control
3 activities of the association.

4 B. Subsection A of this section does not apply to a
5 master planned community. As used in this subsection, "master
6 planned community" means a planned community that receives,
7 through a local government public hearing process, local
8 government review and approval of design and development
9 standards beyond those required for standard state or local
10 zoning and subdivision platting; provided that additional
11 design and development standards approved by the local
12 government shall be included in a site plan, area plan or
13 master plan as required by the local government approving the
14 community.

15 C. A declarant may voluntarily surrender the right
16 to appoint and remove officers and members of the board before
17 termination of the period of declarant control, but in that
18 event, the declarant may require, for the duration of the
19 period of declarant control, that specified actions of the
20 association or board, as described in a recorded instrument
21 executed by the declarant, be approved by the declarant or the
22 declarant's designee before they become effective.

23 D. Not later than sixty days after conveyance of
24 twenty-five percent of the parcels that may be created to
25 parcel owners other than a declarant, at least one member and

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1 not less than twenty-five percent of the members of the board
2 shall be elected by parcel owners other than the declarant.

3 E. Not later than sixty days after conveyance of
4 fifty percent of the parcels that may be created to parcel
5 owners other than the declarant, no less than thirty-three
6 percent of the members of the board shall be elected by parcel
7 owners other than the declarant.

8 F. Not later than the termination of any period of
9 declarant control, the parcel owners shall elect a board of at
10 least three members, at least a majority of whom shall be
11 parcel owners. The board shall elect the officers. The board
12 members and officers shall take office upon election.

13 G. The board, during the period of declarant
14 control and after termination of the period of declarant
15 control, shall not act contrary to or in violation of any
16 provision of any building code, zoning, subdivision or other
17 real estate use law, ordinance, rule or regulation governing
18 the use of real estate or the planned community in accordance
19 with the provisions of Subsection E of Section 3 of the
20 Homeowner Association Act.

21 SECTION 9. [NEW MATERIAL] ALLOCATION OF ASSOCIATION
22 FINANCIAL LIABILITIES, EXPENSES, RESERVES AND VOTING.--

23 A. The declaration shall allocate to each parcel in
24 a planned community a fraction or percentage of the
25 association's expenses, financial liabilities and reserves and

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1 a portion of the votes in the association for each parcel.

2 B. The declaration shall state the formulas used to
3 establish the allocations. The allocations shall not
4 discriminate in favor of parcels owned by an affiliate of the
5 declarant. The allocations may allow for a twenty-five percent
6 reduction in the percentage of association expenses and
7 financial liabilities allocated to parcels owned by the
8 declarant; provided that any financial shortfall of the
9 association shall be the responsibility of the declarant based
10 on a pro rata share of declarant-owned parcels.

11 C. If parcels may be added to or withdrawn from the
12 planned community, the declaration shall state the formulas to
13 be used to reallocate the allocations and votes among all
14 parcels included in the planned community after the addition or
15 withdrawal.

16 D. The declaration may provide:

17 (1) that different allocations of votes shall
18 be made to the parcels on particular matters specified in the
19 declaration;

20 (2) for cumulative voting only for the purpose
21 of electing members of the board; and

22 (3) for class voting on specified issues
23 affecting the class if necessary to protect valid interests of
24 the class.

25 E. A declarant shall not use cumulative or class

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1 voting for the purpose of evading any limitation imposed on
2 declarants by the Homeowner Association Act nor may parcels
3 constitute a class because the parcels are owned by the
4 declarant.

5 SECTION 10. [NEW MATERIAL] PROXY AND ABSENTEE VOTING--
6 BALLOT COUNTING.--

7 A. Unless the bylaws provide otherwise, the
8 association shall provide for votes to be cast in person, by
9 absentee ballot and by proxy.

10 B. Vote by directed or undirected proxy is allowed
11 only for the annual parcel-owner meeting. The proxy vote
12 shall:

13 (1) be dated and executed by a parcel owner,
14 but if a parcel is owned by more than one person, each owner of
15 the parcel may vote or register protest to the casting of votes
16 by the other owners of the parcel through a duly executed
17 proxy;

18 (2) allow for revocation if notice of
19 revocation is provided to the person presiding over the annual
20 parcel-owner meeting; and

21 (3) be valid only for the meeting at which it
22 is cast.

23 C. If proxy voting is utilized at the annual
24 parcel-owner meeting:

25 (1) a person shall not cast undirected proxies

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1 representing more than fifteen percent of the votes of the
2 association; and

3 (2) a person shall not pay a company or person
4 to collect proxy votes.

5 D. If absentee ballots are used, the ballot for any
6 action taken at an annual, regular or special meeting of the
7 members shall:

8 (1) set forth each proposed action;

9 (2) provide an opportunity to vote for or
10 against each proposed action;

11 (3) be valid for only one specified election
12 or meeting of the members and expire automatically after the
13 completion of the election or meeting;

14 (4) indicate the number of responses needed to
15 meet the quorum requirements;

16 (5) state the percent of votes necessary to
17 approve each matter, other than for election of directors;

18 (6) specify the time and date by which the
19 ballot shall be delivered to the board in order to be counted,
20 which shall be at least seven calendar days after the date the
21 ballot is delivered to the member; and

22 (7) authorize only the parcel owner to vote.

23 E. Ballots shall be counted by a neutral third
24 party or by a committee of volunteers. The volunteers shall be
25 parcel owners who are selected or appointed at an open meeting,

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1 in a fair manner, by the chair of the board or another person
2 presiding during that portion of the meeting. The volunteers
3 shall not be board members and, in the case of a contested
4 election for a board position, shall not be candidates.

5 SECTION 11. [NEW MATERIAL] BOARD MEETINGS OPEN TO
6 MEMBERS--EXCEPTIONS.--

7 A. A parcel owner may attend any meeting of the
8 board except for meetings of the board held in executive
9 session as described in Subsection B of this section.

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

- 12 (1) pending or contemplated litigation;
13 (2) personnel matters; or
14 (3) personal, health or financial information
15 about a member, unless the member requests that the meeting not
16 be closed for executive session.

17 C. The subject matter discussed in executive
18 session shall be noted in the minutes.

19 SECTION 12. [NEW MATERIAL] MEMBER MEETINGS--BOARD
20 MEETINGS--LOCATION--NOTICE--AGENDAS--SPECIAL MEETING--EMERGENCY
21 MEETING.--

22 A. An association shall hold a meeting of parcel
23 owners annually at a time, date and place stated in or fixed in
24 accordance with the bylaws.

25 B. All meetings of the association and the board

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1 shall be held in the state.

2 C. Not less than ten days nor more than sixty days
3 in advance of any meeting of the association, notice shall be
4 provided to all parcel owners. Notice shall be hand-delivered,
5 sent electronically, if the parcel owner has given the
6 association an electronic address, or sent prepaid by United
7 States mail to the mailing address of each parcel owner or to
8 any other mailing address designated in writing by a parcel
9 owner. The notice shall state the time, date, place and agenda
10 of the meeting.

11 D. The board shall provide notice of all board
12 meetings to parcel owners. During the period of declarant
13 control, a meeting of a quorum of the board members in which
14 only routine business matters are discussed, and in which no
15 vote is taken on action items related to the association, does
16 not constitute a board meeting under the provisions of this
17 subsection. Notice shall be given at least ten days in advance
18 of the meeting by phone, hand-delivery, mail, electronic
19 delivery, posting on the association's web site, newsletter,
20 conspicuous posting or any other reasonable means as determined
21 by the board. Notice to parcel owners of a meeting of the
22 board is not required if emergency circumstances require action
23 by the board before notice can be given. The notice shall
24 state the time, date, place and agenda of the meeting.

25 E. The agenda for all board meetings, unless the

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1 meeting is an emergency meeting called pursuant to Subsection H
2 of this section, and any special meetings of the parcel owners
3 shall not change once notice of the meeting has been provided
4 to parcel owners. The agenda for the annual meeting of the
5 parcel owners may be modified by request of any parcel owner
6 present at the meeting.

7 F. Unless the community documents otherwise
8 provide, the board may meet by telephonic, video, webcast or
9 other conferencing process if:

10 (1) the meeting notice states the conferencing
11 process to be used and provides information explaining how
12 parcel owners may participate in the conference directly or by
13 meeting at a central location or conference connection; and

14 (2) the process provides all parcel owners the
15 opportunity to hear the discussion so as to comply with Section
16 11 of the Homeowner Association Act.

17 G. Special meetings of the board or association may
18 be called by the president, by a majority of the board or by
19 members having at least twenty percent, or a lower percentage
20 specified by the articles or bylaws, of votes in the
21 association. The notice of a special meeting shall meet all
22 requirements set forth in Subsection C of this section and
23 shall also state the purpose for which the meeting is called,
24 including the general nature of any proposed amendment to the
25 community documents, changes in assessments that require

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1 approval of the members and any proposal to remove a director
2 or an officer.

3 H. An emergency meeting of the board may be called
4 by the president of the association's board, or by any two
5 members of the board other than the president, if there are
6 circumstances that could not have been reasonably foreseen that
7 require immediate attention and possible action by the board
8 and that of necessity make it impracticable to provide notice
9 as required by this section.

10 I. The board may take action by unanimous consent
11 as documented in a record authenticated by all the board
12 members without meeting. The board secretary shall promptly
13 give notice to all parcel owners of any action taken by
14 unanimous consent. After termination of the period of
15 declarant control, the board may act by unanimous consent only
16 when an emergency exists, to undertake ministerial actions or
17 to implement actions previously taken at a meeting of the
18 board.

19 SECTION 13. [NEW MATERIAL] REMOVAL OF PROPERTY MANAGEMENT
20 COMPANY OR CONTRACTORS.--Notwithstanding any provision of the
21 community documents to the contrary, the parcel owners, by a
22 two-thirds' vote of all persons present and entitled to vote at
23 any meeting of the parcel owners at which a quorum is present,
24 may require that the board refuse to renew, or as soon as
25 permitted by the existing contract, to terminate any contract

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1 with a property management company or other contractor doing
2 business with the association.

3 SECTION 14. [NEW MATERIAL] RECORD DISCLOSURE TO MEMBERS--
4 UPDATED INFORMATION.--

5 A. All financial and other records of the
6 association shall be made available for examination by a parcel
7 owner within five business days of the date of request.

8 B. The association shall not charge a fee for
9 making financial and other records available for review. The
10 association may charge a reasonable fee for copies.

11 C. As used in this section, "financial and other
12 records" includes:

- 13 (1) the declaration;
- 14 (2) the name, address and telephone number of
15 the association's designated agent;
- 16 (3) the association bylaws;
- 17 (4) the names of all association members;
- 18 (5) minutes of all meetings of the
19 association's parcel owners and board, other than executive
20 sessions, records of all actions taken by the parcel owners or
21 board without a meeting and records of all actions taken by a
22 committee in place of the board or on behalf of the
23 association;
- 24 (6) the operating budget for the current
25 fiscal year;

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

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

5 (9) the most recent financial audit or review,
6 if any;

7 (10) all contracts entered into by the
8 association or the board on behalf of the association; and

9 (11) insurance policies, including company
10 names, policy limits, deductibles, additional named insured and
11 expiration dates for property, general liability and
12 association director and officer professional liability, and
13 fidelity policies.

14 SECTION 15. [NEW MATERIAL] FINANCIAL AUDIT.--The
15 association, upon a majority vote of all of the parcel owners,
16 may request that the board provide for a financial audit or
17 review of the association's records. The audit or review shall
18 be made available to parcel owners within thirty calendar days
19 of its completion.

20 SECTION 16. [NEW MATERIAL] ATTORNEY FEES AND COSTS.--A
21 court may award costs and attorney fees to any party that
22 prevails in a civil action between a parcel owner and the
23 association or declarant based upon any provision of the
24 declaration or bylaws, provided that the declaration or bylaws
25 allow at least one party to recover costs or attorney fees.

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1 SECTION 17. ~~[NEW MATERIAL]~~ SALE OF PARCELS--REQUIREMENT
2 FOR DISCLOSURE STATEMENT OR RESALE CERTIFICATE--EXCEPTIONS.--

3 A. A disclosure statement or resale certificate as
4 provided in Sections 18 through 21 of the Homeowner Association
5 Act is required for all parcels restricted to residential use
6 that are offered for sale.

7 B. Neither a disclosure statement nor a resale
8 certificate need be prepared or delivered in the case of:

- 9 (1) a gratuitous disposition of a parcel;
- 10 (2) a disposition pursuant to court order;
- 11 (3) a disposition by a government or
12 governmental agency;
- 13 (4) a disposition by foreclosure or deed in
14 lieu of foreclosure;
- 15 (5) a disposition to a person in the business
16 of selling real estate who intends to offer those parcels to
17 purchasers;
- 18 (6) a disposition that may be canceled at any
19 time and for any reason by the purchaser without penalty; or
- 20 (7) a disposition of a parcel restricted to
21 nonresidential use.

22 SECTION 18. ~~[NEW MATERIAL]~~ DISCLOSURE STATEMENT--
23 PREPARATION--LIABILITY.--

24 A. Except as provided in Subsection E of this
25 section, a declarant offering any interest in a parcel to the

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1 public shall prepare a disclosure statement conforming to the
2 requirements of Section 19 of the Homeowner Association Act.

3 B. A declarant may transfer responsibility for
4 preparation of all or part of the disclosure statement to a
5 successor declarant. In the event of any such transfer, the
6 transferor shall provide the transferee with any information
7 necessary to enable the transferee to fulfill the requirements
8 of Subsection A of this section. The declarant or any other
9 person specified in this section who prepared all or part of
10 the disclosure statement is liable for any false or misleading
11 statement or for any omission of material fact with respect to
12 that portion of the disclosure statement that the person
13 prepared.

14 C. Any declarant shall deliver a disclosure
15 statement in the manner prescribed in Subsection A of Section
16 20 of the Homeowner Association Act. The declarant may
17 transfer responsibility for delivery of the disclosure
18 statement to a person in the business of selling real estate,
19 provided that the declarant provides the person with the
20 disclosure statement and the person agrees in writing to accept
21 responsibility for delivery of the disclosure statement.

22 D. If a parcel is part of a planned community and
23 is part of any other real estate regime requiring the delivery
24 of a disclosure statement, a single disclosure statement
25 conforming to the requirements of Section 19 of the Homeowner

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1 Association Act and to any other requirements imposed by law
2 may be prepared and delivered in lieu of providing two or more
3 disclosure statements.

4 E. This section does not apply to a declarant who
5 is the owner of no more than one parcel in a planned community
6 and who is offering that parcel for sale. Section 21 of the
7 Homeowner Association Act shall govern such a sale.

8 SECTION 19. [NEW MATERIAL] DISCLOSURE STATEMENT--REQUIRED
9 PROVISIONS.--

10 A. A disclosure statement shall fully and
11 accurately disclose:

12 (1) the name and principal address of the
13 declarant and of the planned community;

14 (2) a general description of the planned
15 community, including, to the extent possible, the types, number
16 and declarant's schedule of commencement and completion of
17 construction of buildings and amenities that the declarant
18 anticipates including in the planned community;

19 (3) the number of parcels in the planned
20 community;

21 (4) copies of the declaration, other than the
22 plats and plans, and any other recorded covenants, conditions,
23 restrictions and reservations affecting the planned community;
24 the bylaws and rules or regulations of the association; copies
25 of contracts and leases to be signed by purchasers at closing;

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1 and a brief narrative description of contracts or leases that
2 will or may be subject to cancellation by the association;

3 (5) a current balance sheet and a projected
4 budget for the association for one year after the date of the
5 first conveyance to a purchaser and, thereafter, the current
6 budget of the association, a statement of who prepared the
7 budget and a statement of the budget's assumptions concerning
8 occupancy and inflation factors. The budget shall include
9 without limitation:

10 (a) a statement of the amount or a
11 statement that there is no amount included in the budget as a
12 reserve for repairs and replacement;

13 (b) a statement of any other reserves;

14 (c) the projected common expense
15 assessment by category of expenditures for the association; and

16 (d) the projected monthly common expense
17 assessment for each parcel;

18 (6) services not reflected in the budget that
19 the declarant provides, or expenses that the declarant pays,
20 and that the declarant expects may become at a subsequent time
21 a common expense of the association and the projected common
22 expense assessment attributable to each of those services or
23 expenses for the association and for each parcel;

24 (7) an initial or special fee due from the
25 purchaser at closing, together with a description of the

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1 purpose and method of calculating the fee;

2 (8) a description of liens, defects or
3 encumbrances on or affecting the title to the planned
4 community;

5 (9) a description of financing offered or
6 arranged by the declarant;

7 (10) the terms and significant limitations of
8 warranties provided by the declarant and limitations on the
9 enforcement of them or on damages;

10 (11) a statement that:

11 (a) no less than seven days after
12 receipt of a disclosure statement, a purchaser, before
13 conveyance, may cancel a contract for purchase of a parcel from
14 a declarant;

15 (b) if a declarant fails to provide a
16 disclosure statement to a purchaser before conveying a parcel,
17 that purchaser may rescind the purchase within forty-five days
18 from the date of conveyance;

19 (c) shall set forth the procedures set
20 forth in Subsection C of Section 20 of the Homeowner
21 Association Act;

22 (d) if a purchaser receives the
23 disclosure statement more than seven days before signing a
24 contract to purchase a parcel, the purchaser cannot cancel the
25 contract; and

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1 (e) if a purchaser receives the
2 disclosure statement less than seven days before signing a
3 contract to purchase a parcel, the purchaser, before
4 conveyance, shall have no less than seven days from the date of
5 the contract to cancel the contract;

6 (12) a statement of unsatisfied judgments or
7 pending suits against the association and the status of pending
8 suits material to the planned community of which a declarant
9 has actual knowledge;

10 (13) a statement that a deposit made in
11 connection with the purchase of a parcel shall be held in an
12 escrow account until closing and shall be returned to the
13 purchaser if the purchaser cancels the contract pursuant to
14 Section 20 of the Homeowner Association Act, together with the
15 name and address of the escrow agent;

16 (14) restraints on alienation of a portion of
17 the planned community;

18 (15) a description of the insurance coverage
19 provided for the benefit of parcel owners;

20 (16) current or expected fees or charges to be
21 paid by parcel owners for the use of the common areas and other
22 facilities related to the planned community; and

23 (17) the extent to which financial
24 arrangements have been provided for completion of all
25 improvements in the planned community that have not yet been

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1 completed.

2 B. A declarant or the declarant's designee shall
3 promptly amend the disclosure statement to report a material
4 change in the information required by this section.

5 SECTION 20. [NEW MATERIAL] DELIVERY OF DISCLOSURE
6 STATEMENT--PURCHASER'S RIGHT TO CANCEL.--

7 A. A person required to deliver a disclosure
8 statement pursuant to Section 18 of the Homeowner Association
9 Act shall provide a purchaser of a parcel with a copy of the
10 disclosure statement before conveyance of the parcel. Unless a
11 purchaser is given a disclosure statement that complies with
12 the Homeowner Association Act more than seven days before
13 execution of a contract for the purchase of a parcel, the
14 purchaser, before conveyance, may cancel the contract within
15 seven days after first receiving the disclosure statement or,
16 if after signing a contract to purchase a parcel, but prior to
17 conveyance, within seven days of the date of the contract.

18 B. If a purchaser elects to cancel a contract
19 pursuant to Subsection A of this section, the purchaser may do
20 so by hand-delivering a notice of cancellation to the offerer
21 or by mailing the notice by prepaid United States mail to the
22 offerer or to the offerer's agent. Cancellation is without
23 penalty, and all payments made by the purchaser before
24 cancellation shall be refunded promptly.

25 C. If a person required to deliver a disclosure

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1 statement pursuant to Section 18 of the Homeowner Association
2 Act fails to provide a purchaser to whom a parcel is conveyed
3 with that disclosure statement, the purchaser is entitled to
4 rescind the purchase within forty-five days from the date of
5 conveyance upon delivery to the seller of a deed subject to no
6 encumbrance attaching to the property caused by the purchaser.

7 SECTION 21. [NEW MATERIAL] RESALE OF PARCELS--RESALE
8 CERTIFICATE REQUIRED.--

9 A. Unless exempt under Subsection B of Section 17
10 of the Homeowner Association Act or in the case of a sale where
11 delivery of a disclosure statement is required, prior to
12 conveyance, a parcel owner shall furnish to a purchaser a copy
13 of the declaration, other than the plats and plans; the bylaws
14 and the rules or regulations of the association; and a resale
15 certificate from the association containing:

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 parcel;

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 parcel owner;

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

25 (4) a statement of any capital expenditures

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

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

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

9 (7) the current operating budget of the
10 association;

11 (8) a statement of any unsatisfied judgments
12 or pending suits against the association and the status of any
13 pending suits material to the planned community of which an
14 association has actual knowledge;

15 (9) a statement describing any insurance
16 coverage provided for the benefit of parcel owners; and

17 (10) a statement of the remaining term of any
18 leasehold estate affecting the planned community and the
19 provisions governing any extension or renewal thereof.

20 B. The association, within ten days after receipt
21 of a request by a parcel owner, shall furnish a certificate
22 containing the information necessary to enable the parcel owner
23 to comply with this section. A parcel owner providing a
24 certificate pursuant to Subsection A of this section shall not
25 be liable to the purchaser for any erroneous information

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1 provided by the association and included in the certificate.

2 C. A purchaser shall not be liable for any unpaid
3 assessment or fee greater than the amount set forth in the
4 certificate prepared by the association. A parcel owner shall
5 not be liable to a purchaser for the failure or delay of the
6 association to provide the certificate in a timely manner, but
7 the purchase contract may be canceled by the purchaser at least
8 seven days from the date of receipt of the certificate or until
9 conveyance, whichever occurs first.

10 SECTION 22. Section 3-18-32 NMSA 1978 (being Laws 2007,
11 Chapter 232, Section 1) is amended to read:

12 "3-18-32. LIMITATION OF ~~[COUNTY AND]~~ MUNICIPAL
13 RESTRICTIONS ON SOLAR COLLECTORS AND WATER CONSERVATION
14 MEASURES.--

15 A. A ~~[county or]~~ municipality shall not restrict
16 the installation of a solar collector as defined pursuant to
17 the Solar Rights Act, except that placement of solar collectors
18 in historic districts may be regulated or restricted by a
19 ~~[county or]~~ municipality.

20 B. A ~~[covenant, restriction or condition contained~~
21 ~~in a deed, contract, security agreement or other instrument,~~
22 ~~effective after July 1, 1978, affecting the transfer, sale or~~
23 ~~use of, or an interest in, real property that effectively~~
24 ~~prohibits the installation or use of a solar collector is void~~
25 ~~and unenforceable]~~ municipality shall not restrict the

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1 installation of water conservation measures, including the use
2 of rain barrels, efficient irrigation systems or low-water-use
3 plants and landscape design, except that water conservation
4 measures in historic districts may be regulated or restricted
5 by a municipality. A municipality may regulate any water
6 conservation measure deemed to be a threat to public health and
7 safety."

8 SECTION 23. A new section of Chapter 4 NMSA 1978 is
9 enacted to read:

10 "[NEW MATERIAL] LIMITATION OF COUNTY RESTRICTIONS ON SOLAR
11 COLLECTORS AND WATER CONSERVATION MEASURES.--

12 A. A county shall not restrict the installation of
13 a solar collector as defined pursuant to the Solar Rights Act,
14 except that placement of solar collectors in historic districts
15 may be regulated or restricted by a county.

16 B. A county shall not restrict the installation of
17 water conservation measures, including the use of rain barrels,
18 efficient irrigation systems or low-water-use plants and
19 landscape design, except that water conservation measures in
20 historic districts may be regulated or restricted by a county.
21 A county may regulate any water conservation measure deemed to
22 be a threat to public health and safety."

23 SECTION 24. A new section of Chapter 47 NMSA 1978 is
24 enacted to read:

25 "[NEW MATERIAL] RESTRICTIONS ON SOLAR COLLECTORS AND WATER

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1 CONSERVATION MEASURES--FINDINGS AND PUBLIC POLICY.--

2 A. The legislature finds that:

3 (1) New Mexico often faces water shortages due
4 to the state's arid climate and water conservation measures can
5 be used to save water, especially during times of drought;

6 (2) the state's climate makes it an ideal
7 location for and the legislature has encouraged the use of
8 solar technology to produce energy;

9 (3) New Mexico residents benefit from and have
10 used solar technology and water conservation measures on their
11 private property; and

12 (4) it is in the state's best interest that
13 its residents not be effectively prohibited in how solar
14 technology and water conservation measures are used on private
15 property.

16 B. A covenant, restriction or condition contained
17 in a deed, contract, security agreement or other instrument,
18 effective after July 1, 1978, affecting the transfer, sale, use
19 of or interest in real property is void and unenforceable if it
20 effectively prohibits the installation or use of a solar
21 collector as defined in the Solar Rights Act, which includes
22 consideration of any adverse effect on the cost or efficiency
23 or impairment to the functioning of the collector.

24 C. A covenant, restriction or condition contained
25 in a deed, contract, security agreement or other instrument,

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1 affecting the transfer, sale, use of or interest in real
2 property is void and unenforceable if it effectively prohibits
3 the installation or use of water conservation measures, which
4 includes consideration of any adverse effect on the cost or
5 efficiency or impairment to the functioning of the measures,
6 including the use of rain barrels, efficient irrigation
7 systems, low-water-use plants and turf or water conserving
8 landscape design."

9 SECTION 25. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2012.

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