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HOUSE BILL 9

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Mimi Stewart

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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
ALTERNATIVE DISPUTE RESOLUTION AND ATTORNEY FEES; REQUIRING
DISCLOSURE OF HOMEOWNER ASSOCIATION INFORMATION TO PURCHASERS;
PROHIBITING RESTRICTIONS ON THE INSTALLATION OR USE OF WATER
CONSERVATION MEASURES; REQUIRING REAL ESTATE BROKERS TO
DISCLOSE HOMEOWNER AND CONDOMINIUM INFORMATION TO PROSPECTIVE
PURCHASERS; REQUIRING FILING OF NONPROFIT CORPORATION BYLAWS
WITH THE PUBLIC REGULATION COMMISSION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 22 of this act may be cited as the "Homeowner

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1 Association Act".

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

4 A. "association" means an incorporated association
5 of parcel owners that is organized under Section 4 of the
6 Homeowner Association Act;

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

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

15 D. "community documents" means all documents
16 governing the creation and operation of the association,
17 including the declaration, bylaws, articles of incorporation
18 and rules of the association;

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

25 F. "declaration" means any instrument, however

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1 denominated, that establishes a planned community and any
2 amendment to that instrument;

3 G. "development rights" means any right or
4 combination of rights reserved by a declarant in a declaration
5 to add parcels to a planned community;

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

9 I. "parcel owner" or "member" means the owner of a
10 parcel in the planned community;

11 J. "planned community" means a real estate
12 development that includes real estate owned and operated by an
13 association of owners that is created for the purpose of
14 managing, maintaining or improving the property and in which
15 the owners of separately owned parcels are mandatory members
16 and are required to pay assessments to the association for
17 these purposes; but "planned community" does not include a
18 condominium governed by the Condominium Act; and

19 K. "residential use" means use for dwelling or
20 recreational purposes, or both.

21 **SECTION 3. [NEW MATERIAL] APPLICABILITY--RESIDENTIAL--NEW**
22 **PLANNED COMMUNITIES--EXISTING PLANNED COMMUNITIES--ADOPTION OF**
23 **ACT--SMALL AND LIMITED EXPENSE LIABILITY COMMUNITIES--LOCAL**
24 **ORDINANCES, REGULATIONS AND BUILDING CODES.--**

25 A. Except as otherwise provided in this section,

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1 the Homeowner Association Act applies to all residential use
2 planned communities created in the state after the effective
3 date of that act. Amendments to the Homeowner Association Act
4 apply to all planned communities created after the effective
5 date of that act or made subject to that act by amendment of
6 the declaration of the common interest community under the
7 provisions of Subsection C of this section, regardless of when
8 the amendment to that act becomes effective.

9 B. Except for a planned community described in
10 Subsection D of this section, and only with respect to events
11 and circumstances occurring after the effective date of the
12 Homeowner Association Act, the following sections of that act
13 apply to a planned community created in the state before the
14 effective date of that act:

- 15 (1) Section 3;
- 16 (2) Section 7;
- 17 (3) Section 11;
- 18 (4) Section 12;
- 19 (5) Section 14;
- 20 (6) Section 17;
- 21 (7) Sections 18 through 22; and
- 22 (8) definitions to the extent necessary to
23 construe any of the sections that apply under this subsection.

24 C. The community documents of any planned community
25 created before the effective date of the Homeowner Association

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1 Act may be amended to achieve any result permitted by that act,
2 regardless of what applicable law provided before adoption of
3 that act, provided that:

4 (1) any amendment to the community documents
5 authorized by this subsection shall be adopted in conformity
6 with any procedures and requirements for amending the
7 instruments specified by those instruments or, if there are
8 none, in conformity with the amendment procedures of that act;
9 and

10 (2) if any amendment to the community
11 documents grants to a person a right, power or privilege
12 permitted by that act, any correlative obligation, liability or
13 restriction in that act also applies to that person.

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

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

24 F. Nothing in this section shall be deemed to
25 invalidate existing provisions of the community documents of an

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1 existing planned community.

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

4 A. A planned community may be organized pursuant to
5 the Homeowner Association Act only by recording a declaration
6 executed in the same manner as a deed. The declaration shall
7 be recorded in each county in which any portion of the planned
8 community is located and shall be indexed in the grantee's
9 index in the name of the planned community and the association
10 and in the grantor's index in the name of each person executing
11 the declaration.

12 B. The declaration shall contain:

13 (1) the names of the planned community and the
14 association;

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

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

19 (4) a statement of the maximum number of
20 parcels that the declarant reserves the right to create;

21 (5) a description of the boundaries of each
22 parcel created by the declaration, including the parcel's
23 identifying number;

24 (6) a description of any real estate that is
25 or must become common areas;

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1 (7) a description of any development rights
2 reserved by the declarant, and the period of time those rights
3 shall be exercised, together with a legally sufficient
4 description of the total number of parcels in the planned
5 community, present and anticipated, and the type of development
6 allowed on the parcels;

7 (8) any other conditions or limitations under
8 which the rights described in Paragraph (7) of this subsection
9 may be exercised or will lapse;

10 (9) a statement of the allocation of the
11 association's financial liabilities, expenses, reserves and
12 voting interests for each parcel in the manner described in
13 Section 9 of the Homeowner Association Act; and

14 (10) any restrictions on use, occupancy and
15 alienation of the parcels.

16 C. The declaration may contain any other matters
17 the declarant deems appropriate.

18 SECTION 5. [NEW MATERIAL] ORGANIZATION OF AN
19 ASSOCIATION.--

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

24 B. An association shall be organized no later than
25 the date on which the first parcel in the planned community is

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1 conveyed to a purchaser, and the first meeting of the
2 association shall be convened when five of the total parcels in
3 the planned community have sold.

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

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

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

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

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

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

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

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1 the board unless a greater vote is required by the community
2 documents.

3 SECTION 7. [NEW MATERIAL] BOARD MEMBERS AND OFFICERS--
4 DUTIES--REMOVAL--BUDGET.--

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

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

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

25 D. Within thirty calendar days after adoption of

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

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

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

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

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

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

3 (4) the day the declarant or the declarant's
4 designee, after giving written notice to parcel owners, records
5 an instrument voluntarily surrendering all rights to control
6 activities of the association.

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

15 C. Not later than sixty days after conveyance of
16 twenty-five percent of the parcels that may be created to
17 parcel owners other than a declarant, at least one member and
18 not less than twenty-five percent of the members of the board
19 shall be elected by parcel owners other than the declarant.

20 D. Not later than sixty days after conveyance of
21 fifty percent of the parcels that may be created to parcel
22 owners other than the declarant, no less than thirty-three
23 percent of the members of the board shall be elected by parcel
24 owners other than the declarant.

25 E. Not later than the termination of any period of

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

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

7 A. The declaration shall allocate to each parcel in
8 a planned community a fraction or percentage of the
9 association's expenses, financial liabilities and reserves and
10 a portion of the votes in the association for each parcel.

11 B. The declaration shall state the formulas used to
12 establish the allocations. The allocations shall not
13 discriminate in favor of parcels owned by the declarant or an
14 affiliate of the declarant.

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

20 D. The declaration may provide:

21 (1) that different allocations of votes shall
22 be made to the parcels on particular matters specified in the
23 declaration;

24 (2) for cumulative voting only for the purpose
25 of electing members of the board; and

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1 (3) for class voting on specified issues
2 affecting the class if necessary to protect valid interests of
3 the class.

4 E. A declarant shall not use cumulative or class
5 voting for the purpose of evading any limitation imposed on
6 declarants by the Homeowner Association Act nor may parcels
7 constitute a class because the parcels are owned by the
8 declarant.

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

11 A. The association shall provide for votes to be
12 cast in person, by absentee ballot and by proxy and may provide
13 for voting by some other form of delivery.

14 B. Vote by directed or undirected proxy is allowed
15 only for the annual parcel-owner meeting. The proxy vote
16 shall:

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

22 (2) allow for revocation if notice of
23 revocation is provided to the person presiding over the annual
24 parcel-owner meeting; and

25 (3) be valid only for the meeting at which it

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1 is cast.

2 C. If proxy voting is utilized at the annual
3 parcel-owner meeting:

4 (1) a person shall not cast undirected proxies
5 representing more than fifteen percent of the votes of the
6 association; and

7 (2) a person shall not pay a company or person
8 to collect proxy votes.

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

12 (1) set forth each proposed action;

13 (2) provide an opportunity to vote for or
14 against each proposed action;

15 (3) be valid for only one specified election
16 or meeting of the members and expire automatically after the
17 completion of the election or meeting;

18 (4) indicate the number of responses needed to
19 meet the quorum requirements;

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

22 (6) specify the time and date by which the
23 ballot shall be delivered to the board in order to be counted,
24 which shall be at least seven calendar days after the date the
25 ballot is delivered to the member; and

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

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

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

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

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

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

18 (1) pending or contemplated litigation; or

19 (2) personnel matters.

20 C. The subject matter discussed in executive
21 session shall be noted in the minutes.

22 SECTION 12. [NEW MATERIAL] MEMBER MEETINGS--BOARD
23 MEETINGS--LOCATION--NOTICE--AGENDAS--SPECIAL MEETING--EMERGENCY
24 MEETING.--

25 A. An association shall hold a meeting of parcel

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1 owners annually at a time, date and place stated in or fixed in
2 accordance with the bylaws.

3 B. All meetings of the association and the board
4 shall be held in the state.

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

14 D. The board shall provide notice of all board
15 meetings to parcel owners. Notice shall be given at least ten
16 days in advance of the meeting by phone, hand-delivery, mail,
17 electronic delivery, posting on the association's web site,
18 newsletter, conspicuous posting or any other reasonable means
19 as determined by the board. Notice to parcel owners of a
20 meeting of the board is not required if emergency circumstances
21 require action by the board before notice can be given. The
22 notice shall state the time, date, place and agenda of the
23 meeting.

24 E. The agenda for all board meetings, unless an
25 emergency meeting called pursuant to Subsection H of this

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

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

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

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

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

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1 or an officer.

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

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

17 SECTION 13. [NEW MATERIAL] REMOVAL OF PROPERTY MANAGEMENT
18 COMPANY OR CONTRACTORS.--Notwithstanding any provision of the
19 community documents to the contrary, the parcel owners, by a
20 two-thirds' vote of all persons present and entitled to vote at
21 any meeting of the parcel owners at which a quorum is present,
22 may require the board to terminate immediately any contract
23 with a property management company or other contractor doing
24 business with the association.

25 SECTION 14. [NEW MATERIAL] RECORD DISCLOSURE TO MEMBERS--

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1 UPDATED INFORMATION.--

2 A. All financial and other records of the
3 association shall be made available for examination by a parcel
4 owner at any reasonable time.

5 B. The association shall not charge a fee for
6 making financial and other records available for review. The
7 association may charge a reasonable fee for copies.

8 C. As used in this section, "financial and other
9 records" includes:

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

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- 1 (8) financial statements and accounts,
- 2 including amounts held in reserve;
- 3 (9) the most recent financial audit or review,
- 4 if any;
- 5 (10) all contracts entered into by the
- 6 association or the board on behalf of the association;
- 7 (11) insurance policies, including company
- 8 names, policy limits, deductibles, additional named insured and
- 9 expiration dates for property, general liability and
- 10 association director and officer professional liability, and
- 11 fidelity policies; and
- 12 (12) other financial information of the
- 13 association.

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] ALTERNATIVE DISPUTE
21 RESOLUTION.--

22 A. Prior to the filing of a court action, a dispute
23 between the association and a parcel owner shall be submitted
24 for alternative dispute resolution. The cost of the
25 alternative dispute resolution services shall be divided

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1 equally among the disputing parties, unless otherwise
2 determined.

3 B. The parties shall agree upon a neutral party to
4 preside over the alternative dispute resolution process. The
5 form of alternative dispute resolution chosen pursuant to this
6 section may be binding or nonbinding, with the voluntary
7 consent of the parties.

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

14 D. Unless otherwise agreed, either party to the
15 alternative dispute resolution process may terminate the
16 process at any time without prejudice.

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

21 SECTION 17. [NEW MATERIAL] ATTORNEY FEES AND COSTS.--In a
22 civil action between a parcel owner and the parcel owner's
23 association, the prevailing party may, in the discretion of the
24 court, be awarded reasonable attorney fees and costs.

25 SECTION 18. [NEW MATERIAL] SALE OF UNITS--REQUIREMENT FOR
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1 DISCLOSURE STATEMENT OR RESALE CERTIFICATE--EXCEPTIONS.--

2 A. A disclosure statement or resale certificate as
3 provided in Sections 19 through 22 of the Homeowner Association
4 Act is required for all parcels restricted to residential use
5 that are offered for sale.

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

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

21 SECTION 19. [NEW MATERIAL] DISCLOSURE STATEMENT--
22 PREPARATION--LIABILITY.--

23 A. Except as provided in Subsection E of this
24 section, a declarant offering any interest in a parcel to the
25 public shall prepare a disclosure statement conforming to the

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1 requirements of Section 20 of the Homeowner Association Act.

2 B. A declarant may transfer responsibility for
3 preparation of all or part of the disclosure statement to a
4 successor declarant or to a person in the business of selling
5 real estate who intends to offer parcels in the planned
6 community. In the event of any such transfer, the transferor
7 shall provide the transferee with any information necessary to
8 enable the transferee to fulfill the requirements of Subsection
9 A of this section.

10 C. Any declarant or other person in the business of
11 selling real estate who offers a parcel to a purchaser shall
12 deliver a disclosure statement in the manner prescribed in
13 Subsection A of Section 21 of the Homeowner Association Act.
14 The declarant or any other person specified in Subsection B of
15 this section who prepared all or part of the disclosure
16 statement is liable for any false or misleading statement or
17 for any omission of material fact with respect to that portion
18 of the disclosure statement that the person prepared.

19 D. If a parcel is part of a planned community and
20 is part of any other real estate regime requiring the delivery
21 of a disclosure statement, a single disclosure statement
22 conforming to the requirements of Section 20 of the Homeowner
23 Association Act and to any other requirements imposed by law
24 may be prepared and delivered in lieu of providing two or more
25 disclosure statements.

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1 E. This section does not apply to a declarant who
2 is the owner of no more than one parcel in a planned community
3 and who is offering that parcel for sale. Section 22 of the
4 Homeowner Association Act shall govern such a sale.

5 **SECTION 20. [NEW MATERIAL] DISCLOSURE STATEMENT--REQUIRED**
6 **PROVISIONS.--**

7 A. A disclosure statement shall fully and
8 accurately disclose:

9 (1) the name and principal address of the
10 declarant and of the planned community;

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

16 (3) the number of parcels in the planned
17 community;

18 (4) copies of the declaration, other than the
19 plats and plans, and any other recorded covenants, conditions,
20 restrictions and reservations affecting the planned community;
21 the bylaws and rules or regulations of the association; copies
22 of contracts and leases to be signed by purchasers at closing;
23 and a brief narrative description of contracts or leases that
24 will or may be subject to cancellation by the association;

25 (5) a current balance sheet and a projected

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1 budget for the association for one year after the date of the
2 first conveyance to a purchaser and, thereafter, the current
3 budget of the association, a statement of who prepared the
4 budget and a statement of the budget's assumptions concerning
5 occupancy and inflation factors. The budget shall include
6 without limitation:

7 (a) a statement of the amount or a
8 statement that there is no amount included in the budget as a
9 reserve for repairs and replacement;

10 (b) a statement of any other reserves;

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

13 (d) the projected monthly common expense
14 assessment for each parcel;

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

21 (7) an initial or special fee due from the
22 purchaser at closing, together with a description of the
23 purpose and method of calculating the fee;

24 (8) a description of liens, defects or
25 encumbrances on or affecting the title to the planned

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1 community;

2 (9) a description of financing offered or
3 arranged by the declarant;

4 (10) the terms and significant limitations of
5 warranties provided by the declarant and limitations on the
6 enforcement of them or on damages;

7 (11) a statement that:

8 (a) within ten days after receipt of a
9 disclosure statement, a purchaser, before conveyance, may
10 cancel a contract for purchase of a parcel from a declarant;

11 (b) if a declarant fails to provide a
12 disclosure statement to a purchaser before conveying a parcel,
13 that purchaser may rescind the purchase within six months from
14 the date of conveyance;

15 (c) shall set forth the procedures set
16 forth in Subsection C of Section 21 of the Homeowner
17 Association Act; and

18 (d) if a purchaser receives the
19 disclosure statement more than twenty days before signing a
20 contract to purchase a parcel, the purchaser cannot cancel the
21 contract;

22 (12) a statement of unsatisfied judgments or
23 pending suits against the association and the status of pending
24 suits material to the planned community of which a declarant
25 has actual knowledge;

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1 (13) a statement that a deposit made in
2 connection with the purchase of a parcel shall be held in an
3 escrow account until closing and shall be returned to the
4 purchaser if the purchaser cancels the contract pursuant to
5 Section 21 of the Homeowner Association Act, together with the
6 name and address of the escrow agent;

7 (14) restraints on alienation of a portion of
8 the planned community;

9 (15) a description of the insurance coverage
10 provided for the benefit of parcel owners;

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

14 (17) the extent to which financial
15 arrangements have been provided for completion of all
16 improvements in the planned community that have not yet been
17 completed.

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

21 SECTION 21. [NEW MATERIAL] DELIVERY OF DISCLOSURE
22 STATEMENT--PURCHASER'S RIGHT TO CANCEL.--

23 A. A person required to deliver a disclosure
24 statement pursuant to Section 19 of the Homeowner Association
25 Act shall provide a purchaser of a parcel with a copy of the

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1 disclosure statement before conveyance of the parcel and no
2 later than the date of any contract for sale. Unless a
3 purchaser is given a disclosure statement that complies with
4 the Homeowner Association Act more than ten days before
5 execution of a contract for the purchase of a parcel, the
6 purchaser, before conveyance, may cancel the contract within
7 ten days after first receiving the disclosure statement.

8 B. If a purchaser elects to cancel a contract
9 pursuant to Subsection A of this section, the purchaser may do
10 so by hand-delivering a notice of cancellation to the offerer
11 or by mailing the notice by prepaid United States mail to the
12 offerer or to the offerer's agent. Cancellation is without
13 penalty, and all payments made by the purchaser before
14 cancellation shall be refunded promptly.

15 C. If a person required to deliver a disclosure
16 statement pursuant to Section 19 of the Homeowner Association
17 Act fails to provide a purchaser to whom a parcel is conveyed
18 with that disclosure statement, the purchaser is entitled to
19 rescind the purchase within six months from the date of
20 conveyance upon delivery to the seller of a deed subject to no
21 encumbrance attaching to the property caused by the purchaser.

22 SECTION 22. [NEW MATERIAL] RESALE OF PARCELS--RESALE
23 CERTIFICATE REQUIRED.--

24 A. Unless exempt under Subsection B of Section 18
25 of the Homeowner Association Act or in the case of a sale where

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1 delivery of a disclosure statement is required, prior to
2 conveyance, a parcel owner shall furnish to a purchaser a copy
3 of the declaration, other than the plats and plans; the bylaws
4 and the rules or regulations of the association; and a resale
5 certificate from the association containing:

6 (1) a statement disclosing the existence and
7 terms of any right of first refusal or other restraint on the
8 free alienability of the parcel;

9 (2) a statement setting forth the amount of
10 the monthly common expense assessment and any unpaid common
11 expense or special assessment currently due and payable from
12 the selling parcel owner;

13 (3) a statement of any other fees payable by
14 parcel owners;

15 (4) a statement of any capital expenditures
16 anticipated by the association for the current fiscal year and
17 the two next succeeding fiscal years;

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

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

24 (7) the current operating budget of the
25 association;

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1 (8) a statement of any unsatisfied judgments
2 or pending suits against the association and the status of any
3 pending suits material to the planned community of which an
4 association has actual knowledge;

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

7 (10) a statement of the remaining term of any
8 leasehold estate affecting the planned community and the
9 provisions governing any extension or renewal thereof.

10 B. The association, within ten days after receipt
11 of a request by a parcel owner, shall furnish a certificate
12 containing the information necessary to enable the parcel owner
13 to comply with this section. A parcel owner providing a
14 certificate pursuant to Subsection A of this section shall not
15 be liable to the purchaser for any erroneous information
16 provided by the association and included in the certificate.

17 C. A purchaser shall not be liable for any unpaid
18 assessment or fee greater than the amount set forth in the
19 certificate prepared by the association. A parcel owner shall
20 not be liable to a purchaser for the failure or delay of the
21 association to provide the certificate in a timely manner, but
22 the purchase contract is voidable by the purchaser until the
23 certificate has been provided and for ten days thereafter or
24 until conveyance, whichever occurs first.

25 SECTION 23. Section 3-18-32 NMSA 1978 (being Laws 2007,

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1 Chapter 232, Section 1) is amended to read:

2 "3-18-32. LIMITATION OF ~~[COUNTY AND]~~ MUNICIPAL
3 RESTRICTIONS ON SOLAR COLLECTORS AND WATER CONSERVATION
4 MEASURES.--

5 A. A ~~[county or]~~ municipality shall not restrict
6 the installation of a solar collector as defined pursuant to
7 the Solar Rights Act, except that placement of solar collectors
8 in historic districts may be regulated or restricted by a
9 ~~[county or]~~ municipality.

10 B. A ~~[covenant, restriction or condition contained~~
11 ~~in a deed, contract, security agreement or other instrument,~~
12 ~~effective after July 1, 1978, affecting the transfer, sale or~~
13 ~~use of, or an interest in, real property that effectively~~
14 ~~prohibits the installation or use of a solar collector is void~~
15 ~~and unenforceable]~~ municipality shall not restrict the
16 installation of water conservation measures, including the use
17 of rain barrels, rainwater harvesting systems, efficient
18 irrigation systems or low-water-use plants and landscape
19 design, except that water conservation measures in historic
20 districts may be regulated or restricted by a municipality. A
21 municipality may regulate any water conservation measure deemed
22 to be a threat to public health and safety."

23 SECTION 24. A new section of Chapter 4 NMSA 1978 is
24 enacted to read:

25 "[NEW MATERIAL] LIMITATION OF COUNTY RESTRICTIONS ON SOLAR

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1 COLLECTORS AND WATER CONSERVATION MEASURES.--

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

6 B. A county shall not restrict the installation of
7 water conservation measures, including the use of rain barrels,
8 rainwater harvesting systems, efficient irrigation systems or
9 low-water-use plants and landscape design, except that water
10 conservation measures in historic districts may be regulated or
11 restricted by a county. A county may regulate any water
12 conservation measure deemed to be a threat to public health and
13 safety."

14 SECTION 25. A new section of Chapter 47 NMSA 1978 is
15 enacted to read:

16 "[NEW MATERIAL] RESTRICTIONS ON SOLAR COLLECTORS AND WATER
17 CONSERVATION MEASURES--FINDINGS AND PUBLIC POLICY.--

18 A. The legislature finds that:

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

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

25 (3) New Mexico residents benefit from and have

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1 used solar technology and water conservation measures on their
2 private property; and

3 (4) it is in the state's best interest that
4 its residents not be limited in how solar technology and water
5 conservation measures are used on private property.

6 B. A covenant, restriction or condition contained
7 in a deed, contract, security agreement or other instrument,
8 effective after July 1, 1978, affecting the transfer, sale, use
9 of or interest in real property is void and unenforceable if it
10 prohibits the installation, restricts the use, impairs the
11 functioning or adversely affects the cost or efficiency of a
12 solar collector as defined in the Solar Rights Act.

13 C. A covenant, restriction or condition contained
14 in a deed, contract, security agreement or other instrument,
15 affecting the transfer, sale, use of or interest in real
16 property is void and unenforceable if it prohibits the
17 installation, restricts the use, impairs the functioning or
18 adversely affects the cost or efficiency of water conservation
19 measures, including the use of rain barrels, rainwater
20 harvesting systems, efficient irrigation systems, low-water-use
21 plants and turf or water conserving landscape design."

22 SECTION 26. A new section of the Real Estate Disclosure
23 Act is enacted to read:

24 "[NEW MATERIAL] DISCLOSURE OF INFORMATION RELATED TO
25 HOMEOWNER ASSOCIATIONS AND CONDOMINIUM ASSOCIATIONS.--

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1 A. For all real estate transactions involving real
2 property in a condominium, as defined in the Condominium Act,
3 or a planned community, as defined in the Homeowner Association
4 Act, prior to conveyance, the property seller or the seller's
5 broker shall provide a copy of the association's declaration,
6 other than the plats and plans; the association's bylaws; and a
7 disclosure statement or resale certificate, as applicable, to
8 the prospective buyer or the buyer's broker.

9 B. A buyer's broker shall provide to the
10 prospective buyer the association's declaration, other than the
11 plats and plans, the association's bylaws and a resale
12 certificate or disclosure statement, as applicable, immediately
13 upon receiving them from the property seller or the seller's
14 broker. The prospective buyer shall acknowledge in writing the
15 receipt of the material.

16 C. The New Mexico real estate commission shall
17 biannually inform all New Mexico real estate licensees of the
18 requirements for disclosure set forth in this section.

19 D. As used in this section:

20 (1) "association" means "association" as
21 defined in the Condominium Act or the Homeowner Association
22 Act;

23 (2) "declaration" means "declaration" as
24 defined in the Condominium Act or Homeowner Association Act;

25 (3) "disclosure statement" means the

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1 disclosure statement required by Section 19 of the Homeowner
2 Association Act or Section 47-7D-3 NMSA 1978; and

3 (4) "resale certificate" means the resale
4 certificate required by Section 22 of the Homeowner Association
5 Act or Section 47-7D-9 NMSA 1978."

6 SECTION 27. Section 53-8-12 NMSA 1978 (being Laws 1975,
7 Chapter 217, Section 12, as amended) is amended to read:

8 "53-8-12. BYLAWS.--

9 A. The initial bylaws of a corporation shall be
10 adopted by its board of directors. The power to alter, amend
11 or repeal the bylaws or adopt new bylaws shall be vested in the
12 board of directors unless otherwise provided in the articles of
13 incorporation or the bylaws. The bylaws may contain any
14 provisions for the regulation and management of the affairs of
15 a corporation not inconsistent with law or the articles of
16 incorporation.

17 B. The initial bylaws and any subsequent bylaws,
18 whether by amendment, repeal or new adoption, shall be executed
19 by two authorized officers of the corporation and filed with
20 the commission. Such bylaws shall be void until filed with the
21 commission. The bylaws in effect for the corporation shall be
22 maintained at the corporation's principal office in New Mexico
23 and shall be subject to inspection and copying by the public.
24 [~~If the most recently adopted bylaws are so maintained, they~~
25 ~~shall not be void, notwithstanding any requirements of prior~~

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1 ~~law.]~~ The corporation may charge a reasonable fee for copying
2 its bylaws, not to exceed one dollar (\$1.00) per page."

3 SECTION 28. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2011.