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SENATE BILL 183

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

INTRODUCED BY

Cisco McSorley

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO REAL PROPERTY; AMENDING THE CONDOMINIUM ACT;  
INCREASING THE DEGREE OF CARE REQUIRED OF APPOINTED CONDOMINIUM  
BOARD MEMBERS; DECREASING THE AMOUNT OF TIME A DECLARANT MAY  
CONTROL A CONDOMINIUM ASSOCIATION; REQUIRING NOTICE AND OPEN  
MEETINGS; PROVIDING FOR DISCLOSURE OF RECORDS; ALLOWING AUDITS;  
PROVIDING FOR ALTERNATIVE DISPUTE RESOLUTION AND ATTORNEY FEES;  
REQUIRING EARLIER DISCLOSURE OF CONDOMINIUM INFORMATION TO  
PURCHASERS.

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

**SECTION 1.** Section 47-7C-3 NMSA 1978 (being Laws 1982,  
Chapter 27, Section 36) is amended to read:

"47-7C-3. EXECUTIVE BOARD MEMBERS AND OFFICERS--DUTIES--  
REMOVAL--BUDGET--DECLARANT CONTROL.--

A. Except as provided in the declaration, the

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1 bylaws or other provisions of the Condominium Act, the  
2 executive board may act in all instances on behalf of the  
3 association. In the performance of their duties, the officers  
4 and members of the executive board [~~are required to~~] shall  
5 exercise, if appointed by the declarant, the degree of care and  
6 loyalty required of [~~fiduciaries~~] a trustee of the unit owners  
7 and, if elected by the unit owners, ordinary and reasonable  
8 care.

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

16 C. Within thirty days after adoption of any  
17 proposed budget for the condominium, the executive board shall  
18 provide a summary of the budget to all the unit owners and  
19 shall set a date for a meeting of the unit owners to consider  
20 ratification of the budget not less than fourteen nor more than  
21 thirty days after mailing of the summary. Unless at that  
22 meeting a majority of all the unit owners or any larger vote  
23 specified in the declaration reject the budget, the budget is  
24 ratified, whether or not a quorum is present. In the event the  
25 proposed budget is rejected, the periodic budget last ratified

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1 by the unit owners shall be continued until such time as the  
2 unit owners ratify a subsequent budget proposed by the  
3 executive board.

4 D. Subject to [~~Subsection E~~] the provisions of this  
5 section, the declaration may provide for a period of declarant  
6 control of the association, during which period a declarant, or  
7 persons designated by [~~him~~] the declarant, may appoint and  
8 remove the officers and members of the executive board.

9 Regardless of the period provided in the declaration, a period  
10 of declarant control terminates no later than the earlier of:

11 (1) [~~one hundred eighty~~] sixty days after  
12 conveyance of [~~ninety~~] seventy-five percent of the units  
13 [~~which~~] that may be created to unit owners other than a  
14 declarant;

15 (2) two years after all declarants have ceased  
16 to offer units for sale in the ordinary course of business;  
17 [~~or~~]

18 (3) [~~five~~] two years after [~~any~~] a development  
19 right to add new units was last exercised; or

20 (4) the day that the declarant, after giving  
21 written notice to the unit owners, records an instrument  
22 voluntarily surrendering all rights to control activities of  
23 the association.

24 E. A declarant may voluntarily surrender the right  
25 to appoint and remove officers and members of the executive

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1 board before termination of ~~[that]~~ the period of declarant  
2 control, but in that event, ~~[he]~~ the declarant may require, for  
3 the duration of the period of declarant control, that specified  
4 actions of the association or executive board, as described in  
5 a recorded instrument executed by the declarant, be approved by  
6 the declarant before they become effective.

7 ~~[E.]~~ F. Not later than sixty days after conveyance  
8 of ~~[fifty]~~ twenty-five percent of the units ~~[which]~~ that may be  
9 created to unit owners other than a declarant, at least one  
10 member and not less than twenty-five percent of the members of  
11 the executive board shall be ~~[appointed by the declarant from~~  
12 ~~among the]~~ elected by unit owners. No member so ~~[appointed]~~  
13 elected shall be an affiliate of the declarant if ~~[such]~~  
14 persons other than the declarant are available.

15 G. Not later than sixty days after conveyance of  
16 fifty percent of the units that may be created to unit owners  
17 other than the declarant, no less than thirty-three percent of  
18 the members of the board shall be elected by unit owners other  
19 than the declarant.

20 ~~[F.]~~ H. Not later than the termination of any  
21 period of declarant control, the unit owners shall elect an  
22 executive board of at least three members, at least a majority  
23 of whom shall be unit owners. The executive board shall elect  
24 the officers. The executive board members and officers shall  
25 take office upon election.

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1           [~~G-~~] I. Notwithstanding any provision of the  
2 declaration or bylaws to the contrary, the unit owners, by a  
3 two-thirds' vote of all persons present and entitled to vote at  
4 [~~any~~] a meeting of the unit owners at which a quorum is  
5 present, may remove any member of the executive board with or  
6 without cause, other than a member appointed by the declarant."

7           **SECTION 2.** A new section of the Condominium Act is  
8 enacted to read:

9           "[NEW MATERIAL] EXECUTIVE BOARD MEETINGS OPEN TO MEMBERS--  
10 EXCEPTIONS.--

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

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

- 17                   (1) pending or contemplated litigation; or
- 18                   (2) personnel matters.

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

21           **SECTION 3.** Section 47-7C-8 NMSA 1978 (being Laws 1982,  
22 Chapter 27, Section 41) is amended to read:

23           "47-7C-8. [~~MEETINGS.--~~A meeting of the association shall  
24 be held at least once each year. Special meetings of the  
25 association may be called by the president, a majority of the

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1 ~~executive board or by unit owners having twenty percent, or any~~  
2 ~~lower percentage specified in the bylaws, of the votes in the~~  
3 ~~association. Not less than ten days nor more than sixty days in~~  
4 ~~advance of any meeting, the secretary or other officer specified~~  
5 ~~in the bylaws shall cause notice to be hand-delivered or sent~~  
6 ~~prepaid by United States mail to the mailing address of each~~  
7 ~~unit or to any other mailing address designated in writing by~~  
8 ~~the unit owner. The notice of any meeting shall state the time~~  
9 ~~and place of the meeting and the items on the agenda, including~~  
10 ~~the general nature of any proposed amendment to the declaration~~  
11 ~~or bylaws, any budget changes and any proposal to remove a~~  
12 ~~director or officer.] MEMBER MEETINGS--BOARD MEETINGS--~~

13 LOCATION--NOTICE--AGENDAS--SPECIAL MEETINGS--EMERGENCY MEETING--  
14 UNANIMOUS CONSENT.--

15 A. An association shall hold a meeting of the unit  
16 owners annually at a time, date and place stated or fixed in  
17 accordance with the bylaws.

18 B. All meetings of the association and the  
19 executive board shall be held in the state.

20 C. Not less than ten days nor more than sixty days  
21 in advance of any meeting of the association, notice shall be  
22 provided to all unit owners. Notice shall be hand-delivered,  
23 sent electronically, if the unit owner has given the  
24 association an electronic address, or sent prepaid by United  
25 States mail to the mailing address of each unit owner or to any

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1 other mailing address designated in writing by a unit owner.  
2 The notice shall state the time, date, place and agenda of the  
3 meeting.

4 D. The executive board shall provide notice to unit  
5 owners of all board meetings. Notice shall be given at least  
6 ten days in advance of the meeting by phone, hand-delivery,  
7 mail, electronic delivery, posting on the association's web  
8 site, newsletter, conspicuous posting or any other reasonable  
9 means as determined by the executive board. Notice to unit  
10 owners of a meeting of the executive board is not required if  
11 emergency circumstances require action by the board before  
12 notice can be given. The notice shall state the time, date,  
13 place and agenda of the meeting.

14 E. The agenda for all executive board meetings,  
15 unless it is an emergency meeting called pursuant to Subsection  
16 H of this section, and any special meetings of the unit owners  
17 shall not change once notice of the meeting has been provided  
18 to unit owners. The agenda for the annual meeting of the unit  
19 owners may be modified by request of any unit owner present at  
20 the meeting.

21 F. Unless the bylaws or declaration otherwise  
22 provides, the executive board may meet by telephonic, video,  
23 webcast or other conferencing process if:

24 (1) the meeting notice states the conferencing  
25 process to be used and provides information explaining how unit

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1 owners may participate in the conference directly or by meeting  
2 at a central location or conference connection; and

3 (2) the process provides all lot owners the  
4 opportunity to hear the discussion so as to comply with Section  
5 2 of this 2011 act.

6 G. Special meetings of the executive board or  
7 association may be called by the president, by a majority of  
8 the board or by members having at least twenty percent, or a  
9 lower percentage specified by the articles or bylaws, of votes  
10 in the association. The notice of a special meeting shall meet  
11 all requirements set forth in Subsection B of this section and  
12 shall also state the purpose for which the meeting is called,  
13 including the general nature of any proposed amendment to the  
14 community documents, any changes in assessments that require  
15 approval of the members and any proposal to remove a director  
16 or an officer.

17 H. An emergency meeting of the executive board may  
18 be called by the president of the association's board, or by  
19 any two members of the executive board other than the  
20 president, if there are circumstances that could not have been  
21 reasonably foreseen that require immediate attention and  
22 possible action by the executive board and that of necessity  
23 make it impracticable to provide notice as required by this  
24 section.

25 I. Instead of meeting, the executive board may act

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1 by unanimous consent as documented in a record authenticated by  
2 all of the executive board members. The executive board  
3 secretary shall promptly give notice to all unit owners of any  
4 action taken by unanimous consent. After termination of the  
5 period of declarant control, the executive board may act by  
6 unanimous consent only to undertake ministerial actions or to  
7 implement actions previously taken at a meeting of the  
8 executive board."

9 SECTION 4. A new section of the Condominium Act is  
10 enacted to read:

11 "[NEW MATERIAL] RECORD DISCLOSURE TO MEMBERS--UPDATED  
12 INFORMATION.--

13 A. All financial and other records of the  
14 association shall be made available for examination by a unit  
15 owner at any reasonable time.

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

19 C. As used in this section, "financial and other  
20 records" includes:

- 21 (1) the declaration;  
22 (2) the name, address and telephone number of  
23 the association's designated agent;  
24 (3) the association bylaws;  
25 (4) the names and addresses of all association

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1 members;

2 (5) minutes of all meetings of the  
3 association's unit owners and board, other than executive  
4 sessions; a record of all actions taken by the unit owners or  
5 board without a meeting; and a record of all actions taken by a  
6 committee in place of the board on behalf of the association;

7 (6) the operating budget for the current  
8 fiscal year;

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

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

13 (9) the most recent financial audit or review,  
14 if any;

15 (10) all contracts entered into by the  
16 association or the board on behalf of the association;

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

22 (12) other financial information of the  
23 association."

24 SECTION 5. A new section of the Condominium Act is  
25 enacted to read:

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1           "[NEW MATERIAL] FINANCIAL AUDIT.--The association, upon a  
2 majority vote of all the unit owners, may request that the  
3 executive board provide for a financial audit or review of the  
4 association's records. The audit or review shall be made  
5 available to unit owners within thirty calendar days of its  
6 completion."

7           **SECTION 6.** A new section of the Condominium Act is  
8 enacted to read:

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

10           A. Prior to the filing of a court action, a dispute  
11 between the association and a unit owner shall be submitted for  
12 alternative dispute resolution. The cost of the alternative  
13 dispute resolution services shall be divided equally between  
14 the disputing parties, unless otherwise determined.

15           B. The parties shall agree upon a neutral party to  
16 preside over the alternative dispute resolution process. The  
17 form of alternative dispute resolution chosen pursuant to this  
18 section may be binding or nonbinding, with the voluntary  
19 consent of the parties.

20           C. If an agreement is reached, it shall be  
21 presented to a court of competent jurisdiction as a  
22 stipulation. The court may enter the stipulation as an order  
23 of the court. Thereafter, if either party violates the  
24 stipulation, the other party may apply immediately to the court  
25 for relief.

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1           D. Unless otherwise agreed, either party to the  
2 alternative dispute resolution process may terminate the  
3 process at any time without prejudice.

4           E. As used in this section, "alternative dispute  
5 resolution" means mediation, arbitration, conciliation or other  
6 nonjudicial procedure that involves a neutral party in the  
7 decision-making process."

8           SECTION 7. A new section of the Condominium Act is  
9 enacted to read:

10           "[NEW MATERIAL] ATTORNEY FEES AND COSTS.--In a civil  
11 action between a unit owner and the unit owner's association,  
12 the prevailing party may, in the discretion of the court, be  
13 awarded reasonable attorney fees and costs."

14           SECTION 8. Section 47-7D-3 NMSA 1978 (being Laws 1982,  
15 Chapter 27, Section 55) is amended to read:

16           "47-7D-3. DISCLOSURE STATEMENT--GENERAL PROVISIONS.--

17           A. Except as provided in Subsection B of this  
18 section, a disclosure statement must contain or fully and  
19 accurately disclose:

20                   (1) the name and principal address of the  
21 declarant and of the condominium;

22                   (2) a general description of the condominium,  
23 including, to the extent possible, the types, number and  
24 declarant's schedule of commencement and completion of  
25 construction of buildings and amenities that the declarant

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1 anticipates including in the condominium;

2 (3) the number of units in the condominium;

3 (4) copies of the declaration, other than the  
4 plats and plans, and any other recorded covenants, conditions,  
5 restrictions and reservations affecting the condominium; the  
6 bylaws and any rules or regulations of the association; copies  
7 of any contracts and leases to be signed by purchasers at  
8 closing; and a brief narrative description of any contracts or  
9 leases that will or may be subject to cancellation by the  
10 association under Section [~~38 of the Condominium Act~~] 47-7C-5  
11 NMSA 1978;

12 (5) any current balance sheet and a projected  
13 budget for the association, either within or as an exhibit to  
14 the disclosure statement, for one year after the date of the  
15 first conveyance to a purchaser and, thereafter, the current  
16 budget of the association, a statement of who prepared the  
17 budget and a statement of the budget's assumptions concerning  
18 occupancy and inflation factors. The budget shall include  
19 without limitation:

20 (a) a statement of the amount or a  
21 statement that there is no amount included in the budget as a  
22 reserve for repairs and replacement;

23 (b) a statement of any other reserves;

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

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1 (d) the projected monthly common expense  
2 assessment for each type of unit;

3 (6) [~~any~~] services not reflected in the budget  
4 that the declarant provides, or expenses that [~~he~~] the  
5 declarant pays, and that [~~he~~] the declarant expects may become  
6 at [~~any~~] a subsequent time a common expense of the association  
7 and the projected common expense assessment attributable to  
8 each of those services or expenses for the association and for  
9 each type of unit;

10 (7) any initial or special fee due from the  
11 purchaser at closing, together with a description of the  
12 purpose and method of calculating the fee;

13 (8) a description of any liens, defects or  
14 encumbrances on or affecting the title to the condominium;

15 (9) a description of any financing offered or  
16 arranged by the declarant;

17 (10) the terms and significant limitations of  
18 any warranties provided by the declarant and limitations on the  
19 enforcement thereof or on damages;

20 (11) a statement that:

21 (a) within [~~seven~~] ten days after  
22 receipt of a disclosure statement a purchaser, before  
23 conveyance, may cancel any contract for purchase of a unit from  
24 a declarant;

25 (b) if a declarant fails to provide a

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1 disclosure statement to a purchaser before conveying a unit,  
2 that purchaser may rescind the purchase within six months from  
3 the date of conveyance;

4 (c) shall set forth the procedures set  
5 forth in Subsection C of Section [~~60 of the Condominium Act~~]  
6 47-7D-8 NMSA 1978; and

7 (d) if a purchaser receives the  
8 disclosure statement more than [~~seven~~] ten days before signing  
9 a contract to purchase a unit, [~~he~~] the purchaser cannot cancel  
10 the contract;

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

15 (13) a statement that any deposit made in  
16 connection with the purchase of a unit shall be held in an  
17 escrow account until closing and shall be returned to the  
18 purchaser if the purchaser cancels the contract pursuant to  
19 Section [~~60 of the Condominium Act~~] 47-7D-8 NMSA 1978, together  
20 with the name and address of the escrow agent;

21 (14) any restraints on alienation of [~~any~~] a  
22 portion of the condominium;

23 (15) a description of the insurance coverage  
24 provided for the benefit of unit owners;

25 (16) any current or expected fees or charges

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1 to be paid by unit owners for the use of the common elements  
2 and other facilities related to the condominium; and

3 (17) the extent to which financial  
4 arrangements have been provided for completion of all  
5 improvements labeled "MUST BE BUILT" pursuant to Section [21 of  
6 ~~the Condominium Act~~] 47-7B-9 NMSA 1978.

7 B. If a condominium composed of not more than  
8 twenty-five units is not subject to [~~any~~] development rights  
9 and no power is reserved to a declarant to make the condominium  
10 part of a larger condominium, group of condominiums or other  
11 real estate, a public offering statement may but need not  
12 include the information otherwise required by Paragraphs (9),  
13 (10) and (15) through (17) of Subsection A of this section.

14 C. A declarant promptly shall amend the disclosure  
15 statement to report [~~any~~] a material change in the information  
16 required by this section."

17 **SECTION 9.** Section 47-7D-8 NMSA 1978 (being Laws 1982,  
18 Chapter 27, Section 60) is amended to read:

19 "47-7D-8. PURCHASER'S RIGHT TO CANCEL.--

20 A. A person required to deliver a disclosure  
21 statement pursuant to Subsection C of Section [54 of the  
22 ~~Condominium Act~~] 47-7D-2 NMSA 1978 shall provide a purchaser of  
23 a unit with a copy of the disclosure statement and all  
24 amendments thereto before conveyance of that unit and not later  
25 than the date of [~~any~~] a contract of sale. Unless a purchaser

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1 is given the disclosure statement more than [~~seven~~] ten days  
2 before execution of a contract for the purchase of a unit, the  
3 purchaser, before conveyance, may cancel the contract within  
4 [~~seven~~] ten days after first receiving the disclosure  
5 statement.

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

14 C. If a person required to deliver a disclosure  
15 statement pursuant to Subsection C of Section [~~54 of the~~  
16 ~~Condominium Act~~] 47-7D-2 NMSA 1978 fails to provide a purchaser  
17 to whom a unit is conveyed with that disclosure statement and  
18 all amendments thereto as required by Subsection A of this  
19 section, the purchaser is entitled to rescind the purchase  
20 within six months from the date of conveyance upon delivery to  
21 the seller of a deed subject to no encumbrance attaching to the  
22 property suffered or caused by the purchaser."

23 SECTION 10. Section 47-7D-9 NMSA 1978 (being Laws 1982,  
24 Chapter 27, Section 61) is amended to read:

25 "47-7D-9. RESALES OF UNITS--RESALE CERTIFICATE REQUIRED.--

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1                   A. ~~[Except]~~ Unless exempt under Subsection B of  
2 Section 47-7D-1 NMSA 1978 or in the case of a sale where  
3 delivery of a disclosure statement is required, ~~[or unless~~  
4 ~~exempt under Subsection B of Section 53 of the Condominium Act]~~  
5 a unit owner shall furnish to a purchaser before conveyance a  
6 copy of the declaration, other than the plats and plans; the  
7 bylaws and the rules or regulations of the association; and a  
8 resale certificate from the association containing:

9                   (1) a statement disclosing the existence and  
10 terms of any right of first refusal or other restraint on the  
11 free alienability of the unit;

12                   (2) a statement setting forth the amount of  
13 the monthly common expense assessment and any unpaid common  
14 expense or special assessment currently due and payable from  
15 the selling unit owner;

16                   (3) a statement of any other fees payable by  
17 unit owners;

18                   (4) a statement of any capital expenditures  
19 anticipated by the association for the current and two next  
20 succeeding fiscal years;

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

24                   (6) the most recent regularly prepared balance  
25 sheet and income and expense statement, if any, of the

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1 association;

2 (7) the current operating budget of the  
3 association;

4 (8) a statement of any unsatisfied judgments  
5 against the association;

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

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

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

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

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SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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