

1 HOUSE BILL 482

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO REAL PROPERTY; AMENDING THE HOMEOWNER ASSOCIATION
12 ACT TO REQUIRE AMENDMENTS TO GOVERNING DOCUMENTS AND LIMIT THE
13 TIME OF DECLARANT CONTROL.

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

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

18 "47-16-4. RECORDING OR FILING OF HOMEOWNER ASSOCIATION
19 NOTICE AND DECLARATION.--

20 A. An association organized after July 1, 2013
21 shall record a notice of homeowner association in the office of
22 the county clerk of the county or counties in which the real
23 property affected thereby is situated no later than thirty days
24 after the date on which the association's declaration is
25 recorded as provided in Section [~~3 of the Homeowner Association~~

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1 ~~Act]~~ 47-16-3 NMSA 1978.

2 B. An association organized prior to July 1, 2013
3 shall, before June 30, 2014, record a notice of homeowner
4 association in the office of the county clerk of the county or
5 counties in which the development is situated.

6 C. A notice of homeowner association pursuant to
7 Subsection A or B of this section shall fully and accurately
8 disclose the name and address of the association and any
9 management company charged with preparation of a disclosure
10 certificate and shall contain the recording data for the
11 subdivision plat and the declaration governing the lots within
12 the development. A notice of homeowner association pursuant to
13 Subsection A of this section shall also include the public
14 regulation commission number, if any, of the association.

15 D. If an association fails to record a notice of
16 homeowner association pursuant to this section, the
17 association's authority to charge an assessment, levy a fine
18 for late payment of an assessment or enforce a lien for
19 nonpayment of an assessment shall be suspended until the notice
20 of homeowner association is recorded.

21 E. Whenever ownership of a major planning area
22 within a master planned community is transferred to a new
23 owner, the community documents shall, within sixty days of the
24 transfer of ownership, be amended and filed with the office of
25 the county clerk of the county or counties in which the major

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1 planning area is situated."

2 SECTION 2. Section 47-16-8 NMSA 1978 (being Laws 2013,
3 Chapter 122, Section 8) is amended to read:

4 "47-16-8. DECLARANT CONTROL OF BOARD.--

5 A. Subject to the provisions of this section, the
6 declaration shall provide for a period of declarant control of
7 the association, during which period a declarant, or persons
8 designated by the declarant, may appoint and remove the
9 officers and members of the board.

10 B. Regardless of the period provided in the
11 declaration, the period of declarant control shall terminate no
12 later than the earlier of:

13 (1) sixty days after conveyance of seventy-
14 five percent of the lots that are part of the development and
15 any additional lots that may be added to the development to lot
16 owners other than a declarant;

17 (2) two years after all declarants have ceased
18 to offer lots for sale in the ordinary course of business;

19 (3) two years after a development right to add
20 new lots was last exercised; ~~[or]~~

21 (4) the day that the declarant or the
22 declarant's designee, after giving written notice to the
23 association, records an instrument voluntarily terminating all
24 rights to declarant control; or

25 (5) twenty years after the initial filing of a

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1 homeowner association notice pursuant to Section 47-16-4 NMSA
2 1978.

3 C. Subsection B of this section does not apply to a
4 master planned community.

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

13 E. Not later than sixty days after conveyance of
14 twenty-five percent of the lots that are part of the
15 development, and any additional lots that may be added to the
16 development, to lot owners other than a declarant, at least one
17 member and not less than twenty-five percent of the members of
18 the board shall be elected by lot owners.

19 F. Not later than sixty days after conveyance of
20 fifty percent of the lots that are part of the development, and
21 any additional lot that may be added to the development, to lot
22 owners other than the declarant, no less than thirty-three
23 percent of the members of the board shall be elected by lot
24 owners other than the declarant.

25 G. Not later than the termination of a period of

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

5 H. No amendment to the declaration that would
6 limit, prohibit or eliminate the exercise of a development
7 right shall be effective without the concurrence of the
8 declarant.

9 I. A declarant shall not utilize cumulative or
10 class voting for the purpose of evading any limitation imposed
11 on declarants by the Homeowner Association Act, nor shall lots
12 constitute a class because they are owned by a declarant."