

HOUSE LOCAL GOVERNMENT, ELECTIONS, LAND GRANTS AND CULTURAL
AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 374

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO PROPERTY; AMENDING THE HOMEOWNER ASSOCIATION ACT;
PROVIDING A CAP ON TRANSFER CHARGES.

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

SECTION 1. Section 47-16-2 NMSA 1978 (being Laws 2013,
Chapter 122, Section 2) is amended to read:

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

A. "articles of incorporation" means the articles
of incorporation, and all amendments thereto, of an association
on record in the office of the county clerk in the county or
counties in which the association is located;

B. "association" means a homeowner association;

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

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1 association;

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

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

10 F. "common expenses" means expenditures made by, or
11 the financial liabilities of, the association, together with
12 any allocations to reserves;

13 G. "community documents" means all documents
14 governing the use of the lots and the creation and operation of
15 the association, including the declaration, bylaws, articles of
16 incorporation and rules of the association;

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

22 I. "declaration" means an instrument, however
23 denominated, including amendments or supplements to the
24 instrument, that:

25 (1) imposes on the association maintenance or

1 operational responsibilities for common areas, easements or
2 portions of rights of way; and

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

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

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

18 L. "disclosure certificate" or "disclosure
19 statement" means:

20 (1) a statement disclosing the existence and
21 terms of any right of first refusal or other restraint on the
22 free alienability of the lot;

23 (2) a statement setting forth the amount of
24 the monthly common expense assessment and any unpaid common
25 expense or special assessment currently due and payable from

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1 the selling lot owner;

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

4 (4) a statement of any capital expenditures
5 anticipated by the association and approved by the board for
6 the current fiscal year and the two next succeeding fiscal
7 years;

8 (5) a statement of the amount of any reserves
9 for capital expenditures and of any portions of those reserves
10 designated by the association for any approved projects;

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

14 (7) the current operating budget of the
15 association;

16 (8) a statement of any unsatisfied judgments
17 or pending suits against the association and the status of any
18 pending suits material to the association of which the
19 association has actual knowledge;

20 (9) a statement describing any insurance
21 coverage provided for the benefit of lot owners and the board
22 of the association;

23 (10) a statement of the remaining term of any
24 leasehold estate affecting the association and the provisions
25 governing any extension or renewal thereof; and

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1 (ll) the contact person and contact
2 information for the association;

3 M. "homeowner association" means an incorporated or
4 unincorporated entity upon which maintenance and operational
5 responsibilities are imposed and to which authority is granted
6 in the declaration;

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

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

15 P. "master planned community" means a large-scale
16 residential development that allows for a phasing of
17 development that will take place over a long period of time,
18 following comprehensive and coordinated planning review by a
19 local government and approval of design and development
20 standards beyond conventionally platted subdivisions; provided
21 that additional design and development standards approved by
22 the local government shall be included in a site plan, area
23 plan or master plan as required by the local government
24 approving the development; ~~and~~

25 Q. "proxy" means a person authorized to act for

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1 another; and

2 R. "transfer charge" means the total of all fees,
3 charges and assessments, by whatever name, associated with or
4 in any way related to the sale, transfer or other conveyance of
5 a lot within the association, including any charges to a lot
6 owner or the transferee or their representatives, any fee
7 charged for the preparation and production of a disclosure
8 certificate issued pursuant to Section 47-16-12 NMSA 1978 and
9 any fees associated with the preparation and production of any
10 document required by a lender, title company or other entity
11 involved in the sale, transfer or conveyance."

12 SECTION 2. Section 47-16-12 NMSA 1978 (being Laws 2013,
13 Chapter 122, Section 12) is amended to read:

14 "47-16-12. SALE OF LOTS--DISCLOSURE CERTIFICATE--TRANSFER
15 CHARGE.--

16 A. Unless exempt pursuant to Subsection F of this
17 section, prior to closing, a lot owner shall furnish to a
18 purchaser copies of:

- 19 (1) the declaration of the association, other
20 than the plats and plans;
21 (2) the bylaws of the association;
22 (3) any covenants, conditions and restrictions
23 applicable to the lot;
24 (4) the rules of the association; and
25 (5) a disclosure certificate from the

1 association.

2 B. Within ten business days after receipt of a
3 written request from a lot owner, the association shall furnish
4 a disclosure certificate containing the information necessary
5 to enable the lot owner to comply with the provisions of this
6 section. A lot owner providing a disclosure certificate
7 pursuant to Subsection A of this section shall not be liable to
8 the purchaser for any erroneous information provided by the
9 association and included in the disclosure certificate.

10 C. A purchaser shall not be liable for any unpaid
11 assessment or fee greater than the amount, prorated to the date
12 of closing, set forth in the disclosure certificate prepared by
13 the association.

14 D. A lot owner shall not be liable to a purchaser
15 for the failure or delay of the association to provide the
16 disclosure certificate in a timely manner.

17 E. The information contained in the disclosure
18 certificate shall be current as of the date on which the
19 disclosure certificate is furnished to the lot owner by the
20 association.

21 F. A disclosure certificate shall not be required
22 in the case of a disposition:

- 23 (1) pursuant to court order;
24 (2) by a government or governmental agency;
25 (3) by foreclosure or deed in lieu of

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1 foreclosure; or

2 (4) that may be canceled at any time and for
3 any reason by the purchaser without penalty.

4 G. ~~[An association may impose reasonable charges~~
5 ~~for preparation of a disclosure certificate as required by the~~
6 ~~Homeowner Association Act.] Upon the sale, transfer or other~~
7 ~~conveyance of a lot within the association, the association or~~
8 ~~its representatives, including any management company retained~~
9 ~~by the association, may impose a reasonable transfer charge not~~
10 ~~to exceed two hundred dollars (\$200)."~~

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2017.