

ARTICLE 7E
Homeowner Association

Section

47-7E-1	Short title.
47-7E-2	Definitions.
47-7E-3	Creation of homeowner association.
47-7E-4	Recording or filing of homeowner association notice and declaration.
47-7E-5	Record disclosure to members; updated information.
47-7E-6	Duties of homeowner association.
47-7E-7	Board members and officers; duties; budget.
47-7E-8	Declarant control of board.
47-7E-9	Proxy and absentee voting; ballot count.
47-7E-10	Financial audit.
47-7E-11	Contract disclosure statement or disclosure certificate; right of cancellation of purchase contract.
47-7E-12	Sale of lots; disclosure certificate.
47-7E-13	Purchaser's cancellation of a purchase contract.
47-7E-14	Attorney fees and costs.

47-7E-1. Short title.

This act [47-7E-1 through 47-7E-14 NMSA 1978] may be cited as the "Homeowner Association Act".

History: Laws 2013, ch. 122, § 1.

Applicability. — Laws 2013, ch. 122, § 15 provided that:

- A. Except as provided in Subsections B and C of this section, the Homeowner Association Act shall apply to all homeowner associations created and existing within this state.
- B. Sections 9, 10 and 14 of the Homeowner Association Act do not apply to homeowner associations created before July 1, 2013; provided that any amendment to the community documents of an association created before July 1, 2013 shall comply with the Homeowner Association Act.
- C. Except as provided in Sections 4 and 8 of the Homeowner Association Act, that act does not invalidate existing provisions of the article of incorporation, declaration, bylaws or rules of a homeowner association created before July 1, 2013.
- D. The Homeowner Association Act does not apply to a condominium governed by the Condominium Act.

47-7E-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 association;

NMSA 1978, Chapter 47, Article 7E: Homeowner Association Act

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

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

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

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

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

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

(1) imposes on the association maintenance or operational responsibilities for common areas, easements or portions of rights of way; and

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

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

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

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

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

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

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

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

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

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

NMSA 1978, Chapter 47, Article 7E: Homeowner Association Act

(7) the current operating budget of the association;

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

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

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

(11) the contact person and contact information for the association;

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

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

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

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

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

47-7E-3. Creation of homeowner association.

An association pursuant to the Homeowner Association Act shall be organized in accordance with the laws of the state and be identified in a recorded declaration. The membership of the association shall consist exclusively of all lot owners in the development.

47-7E-4. Recording or filing of homeowner association notice and declaration.

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

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

C. A notice of homeowner association pursuant to Subsection A or B of this section shall fully and accurately disclose the name and address of the association and any management

NMSA 1978, Chapter 47, Article 7E: Homeowner Association Act

company charged with preparation of a disclosure certificate and shall contain the recording data for the subdivision plat and the declaration governing the lots within the development. A notice of homeowner association pursuant to Subsection A of this section shall also include the public regulation commission number, if any, of the association.

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

47-7E-5. Record disclosure to members; updated information.

A. All financial and other records of the association shall be made available for examination by a lot owner within ten business days of the request.

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

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

- (1) the declaration of the association;
- (2) the name, address and telephone number of the association's designated agent;
- (3) the bylaws of the association;
- (4) the names of all association members;
- (5) minutes of all meetings of the association's lot owners and board for the previous five years, other than executive sessions, and records of all actions taken by a committee in place of the board or on behalf of the association for the previous five years;
- (6) the operating budget for the current fiscal year;
- (7) current assessments, including both regular and special assessments;
- (8) financial statements and accounts, including amounts held in reserve;
- (9) the most recent financial audit or review, if any;
- (10) all current contracts entered into by the association or the board on behalf of the association; and
- (11) current insurance policies, including company names, policy limits, deductibles, additional named insureds and expiration dates for property, general liability and association director and officer professional liability, and fidelity policies.

47-7E-6. Duties of homeowner association.

A. The association shall exercise any powers conferred to the association in the community documents.

B. The association shall have a lien on a lot for any assessment levied against that lot or for fines imposed against that lot's owner from the time the assessment or fine becomes due. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate.

NMSA 1978, Chapter 47, Article 7E: Homeowner Association Act

C. Recording the declaration constitutes notice recorded in the office of the county clerk in the county or counties in which any part of the real property is located and perfection of the lien.

D. Upon written request by a lot owner, the association shall furnish a recordable statement setting forth the amount of unpaid assessments against the lot owner's lot. The statement shall be furnished within ten business days after receipt of the request and is binding on the association and the board.

47-7E-7. Board members and officers; duties; budget.

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

B. The board or the lot owners, as provided for in the community documents, shall adopt a budget annually. Within thirty calendar days after adoption of any proposed budget for the association, the board shall provide a summary of the budget to all the lot owners.

47-7E-8. Declarant control of board.

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

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

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

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

(3) two years after a development right to add new lots was last exercised; or

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

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

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

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

F. Not later than sixty days after conveyance of fifty percent of the lots that are part of the

NMSA 1978, Chapter 47, Article 7E: Homeowner Association Act

development, and any additional lot that may be added to the development, to lot owners other than the declarant, no less than thirty-three percent of the members of the board shall be elected by lot owners other than the declarant.

G. Not later than the termination of a period of declarant control, the lot owners shall elect a board of at least three members, at least a majority of whom shall be lot owners. The board shall elect the officers. The board members and officers shall take office upon election.

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

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

47-7E-9. Proxy and absentee voting; ballot count.

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

B. Vote by proxy is allowed for lot owner meetings. The proxy vote shall:

(1) be dated and executed by a lot owner, but if a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy, but in no case shall the total vote cast be more than that allocated to the lot under the declaration;

(2) allow for revocation if notice of revocation is provided to the person presiding over a lot owner meeting; and

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

C. If proxy voting is utilized at a lot owner meeting, a person shall not pay a company or person to collect proxy votes.

D. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

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

F. Ballots, if used, shall be counted by a neutral third party or by a committee of volunteers. The volunteers shall be selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting. The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates.

47-7E-10. Financial audit.

A. Unless any provision in the community documents requires an annual audit by a certified public accountant, the board of directors of an association managing a master planned community or a development consisting of one hundred or more lots shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available upon request to the members within thirty days after its completion.

NMSA 1978, Chapter 47, Article 7E: Homeowner Association Act

B. Unless otherwise provided in the community documents, in an association managing a development consisting of fewer than one hundred lots, upon a majority vote of all of the lot owners, the board shall provide for a financial audit, review or compilation of the association's records and shall provide that the cost thereof be assessed as a common expense. The audit, review or compilation shall be made available to lot owners within thirty calendar days of its completion.

47-7E-11. Contract disclosure statement or disclosure certificate; right of cancellation of purchase contract.

Except as provided in Section 12 of the Homeowner Association Act, a person selling a lot that is subject to an association shall provide in writing a disclosure certificate that states that the lot is located within a development that is subject to an association. If the lot is located within a development that is subject to an association and the association is subject to the Homeowner Association Act:

A. A seller or the seller's agent shall obtain a disclosure certificate from the association and provide it to the purchaser no later than seven days before closing; and

B. A purchaser or the purchaser's agent has the right to cancel the purchase contract within seven days after receiving the disclosure certificate.

47-7E-12. Sale of lots; disclosure certificate.

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

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

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

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

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

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

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

- (1) pursuant to court order;
- (2) by a government or governmental agency;

NMSA 1978, Chapter 47, Article 7E: Homeowner Association Act

- (3) by foreclosure or deed in lieu of foreclosure; or
- (4) that may be canceled at any time and for any reason by the purchaser without penalty.

G. An association may impose reasonable charges for preparation of a disclosure certificate as required by the Homeowner Association Act.

47-7E-13. Purchaser's cancellation of a purchase contract.

If a purchaser elects to cancel a purchase pursuant to Section 11 of the Homeowner Association Act, the purchaser may do so by hand delivering notice of the cancellation to the lot owner or by mailing notice of cancellation, by prepaid United States mail, to the lot owner, or to the lot owner's agent for service of process. Cancellation shall be without penalty, and all payments made by the purchaser before cancellation shall be refunded within fifteen days.

47-7E-14. Attorney fees and costs.

A court may award attorney fees and costs to any party that prevails in a civil action between a lot owner and the association or declarant based upon any provision of the declaration or bylaws; provided that the declaration or bylaws allow at least one party to recover attorney fees or costs.