



NEW MEXICO ASSOCIATION OF REALTORS® — 2024 INFORMATION SHEET - HOMEOWNERS' ASSOCIATION

This form is NOT a disclosure and does NOT provide property-specific information. The general information contained herein is not an exhaustive analysis of the subject matter. Brokers are not experts in the subject matter. If you have additional questions or concerns, you are encouraged to conduct further research and to contact a subject-matter expert.

DESCRIPTION AND PURPOSE OF A HOMEOWNERS' ASSOCIATION

A homeowners' association (HOA) is an organization of homeowners of a neighborhood, subdivision or planned unit development. Generally, HOAs provide services for, regulate the activities of, levy assessments against, and/or impose fines on owners of property located within the HOA. Assessments or dues are typically used to pay for expenses that arise from having and maintaining common property within the development. An HOA may (or may not) be incorporated.

Under the Homeowners' Association Act ("Act"), which took effect July 1, 2013, an HOA must be identified in a recorded declaration. The HOA declaration is an instrument that imposes certain responsibilities on the HOA and gives certain authority to the HOA. Other specific rights and obligations of the HOA are set forth in other HOA documents which are commonly referred to as the HOA's "Community Documents". Except as provided for in the Community Documents, the HOA's board of directors ("Board") acts on behalf of the HOA. Generally, the Act does not apply to a condominium governed by the Condominium Act. Further, some provisions of the Act do not apply to HOAs organized prior to July 1, 2013 that have fewer than 30 lots (such as the voting and financial audit requirements); however, any amendment to the Community Documents of such an HOA must comply with the Act.

NOTICE THAT PROPERTY IS LOCATED IN AN HOA

Under the Act, HOAs organized after July 1, 2013 must record a notice of HOA in the office of the county clerk of the county or counties in which the real property affected is situated no later than 30 days after the date on which the HOA's declaration is recorded. The Act sets forth the specific content requirements of the notice of HOA. **If the HOA fails to record the notice of HOA pursuant to the Act, the HOA is prohibited from charging any assessment, fining for late payments of an assessment or enforcing a lien for non-payment of assessments until such time as the HOA records the notice of HOA.**

HOA ASSESSMENTS AND LIENS

The Community Documents set forth the HOA's right to assess homeowners and the amounts of such assessments. The Act provides that HOAs shall have a lien on a property for any assessment levied against that property or for fines imposed against that property'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. Within 10 business days of a written request by a property owner, the HOA must furnish the property owner with a recordable statement setting forth the amount of unpaid assessments against the property owner's property.

PROPERTY OWNERS' RIGHT TO REVIEW HOA RECORDS

Within 10 business days of a written request by a property owner, and during regular business hours, an HOA must make all financial and other records of the HOA available for examination by the property owner. An HOA cannot charge a fee for making financial and other records available for review; however, it may charge a fee of no more than 10 cents per page for copies. Under the Act, "financial and other records" include: 1) the declaration; 2) the name, address and telephone number of the designated agent of the HOA; 3) the bylaws; 4) the names and addresses of all HOA members;

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5) minutes of all meetings of the HOA (property 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 HOA 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, including bank account statements, transaction registers, association-provided service or utility records and amounts held in reserve; 9) the most recent financial audit or review, if any; 10) all current contracts entered into by the HOA or the Board; 11) current insurance policies, including company names, policy limits, deductibles, additional named insured's and expiration dates for property, general liability and HOA director and officer professional liability, and fidelity policies; and 12) any electronic record of action taken by the Board. The failure of an HOA to provide access to the financial and other records within 10 business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with the request. A lot owner that is denied access to financial and other records is entitled to the greater of actual damages incurred or \$50.00 per calendar day, starting on the 11th business day after the HOA's receipt of the written request.

ANNUAL BUDGET AND AUDIT

The Act provides that the HOA must adopt an annual budget and provide the same to the property owners within 30 calendar days from adoption. At least every 3 years, the Board shall provide for a financial audit, review or compilation of the HOA's records in accordance with generally accepted accounting principles by an independent certified public accountant 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 30 calendar days of its completion.

HOA BOARD RESPONSIBILITIES

The HOA Board's responsibilities include, but are not limited to, providing to all lot owners a statement with the annual budget listing ALL fees and fines that may be charged to a lot owner by the HOA or any management company retained by the HOA to act on behalf of the HOA, including charges for a disclosure certificate (discussed below). The Board is also responsible for confirming that any management contract negotiated between the Board and a management company retained by the HOA includes a disclosure to the Board of any existing relationships the management company has with any vendor or contractor for the HOA from which a conflict of interest (as defined in the Act) may arise; and a list of ALL fees to be charged to the HOA or lot owners by the management company during the term of the contract.

SELLERS DISCLOSURES AND HOA DISCLOSURE CERTIFICATE

The Act provides that a seller of property located in an HOA **MUST** provide the potential buyer with the following documents prior to the closing date: 1) the declaration of the HOA; 2) the bylaws of the HOA; 3) the covenants, condition and restrictions applicable to the property; and 4) the rules of the HOA. In addition, the seller must provide the buyer with a disclosure certificate ("DC") from the HOA. The DC must include the following: 1) a statement disclosing the existence and terms of any right of first refusal or other restraint on the free alienability of the property; 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 property owner; 3) a statement of any other fees payable by property owners; 4) a statement of any capital expenditure anticipated 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 for any approved projects; 6) the most recent regularly prepared balance sheet and income and expense statement, if any; 7) the current operating budget; 8) a statement of any unsatisfied judgments or pending suits against the HOA and the status of any pending suits material to the HOA of which the HOA has actual knowledge; 9) a statement describing any insurance coverage provided for the benefit of property owners and the Board; 10) a statement that the records of the HOA reflect alterations or improvements to the lot that violate the declaration; 11) a statement of the remaining term of any leasehold estate affecting the HOA and the provisions governing any extension or renewal thereof; and 12) the contact person and contact information for the HOA.

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Upon written request by a lot owner or lot owner's representative, the HOA must provide the DC within **10** business days. The HOA may charge a maximum of **\$300** for this DC, and may **ONLY** charge for the DC **at** closing and **in the event** there is a closing; if there is **NO CLOSING, then NO DC FEE** may be charged. The information in items 2 and 3 of the DC as noted in the previous paragraph (bolded/italicized above) is valid for only 60 days. After 60 days, the lot owner may request that the HOA update any changes to this information. Upon request, the HOA must provide the updated information within three (3) business days of the lot owner's request and may impose a reasonable fee not to exceed \$50.00. The updated information is valid for 60 days from the update. A property owner is not liable to a buyer for failure or delay of the HOA to provide the DC or for any erroneous information provided by the HOA. Upon receiving the DC, a purchaser has seven (7) days to terminate the purchase agreement. Upon termination, the seller must refund any money paid by the buyer within 15 days of termination.

A DC is not required in the case of a disposition: 1) pursuant to court order; 2) by a government or governmental agency (Freddie Mac and Fannie Mae are ***not*** government entities); 3) by foreclosure (this refers to the court-ordered foreclosure sale; it does not apply to the sale of bank-owned property, even if purchased from a foreclosure sale); 4) by deed given to a lender in lieu of foreclosure; or 5) that may be canceled at any time and for any reason by the purchaser without penalty.

OTHER PROVISIONS OF THE ACT

The Act also includes provisions regarding the following: declarant control; proxy and absentee voting; dispute resolution as it pertains to covenant violations; meetings of the HOA; certifications of the HOA Board members; and attorney fees and costs to any party who prevails in a civil action between a property owner and the HOA or declarant.

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