AN ACT

RELATING TO REAL PROPERTY; ENACTING THE HOMEOWNER ASSOCIATION ACT; PROVIDING FOR THE FORMATION AND MANAGEMENT OF PLANNED COMMUNITIES; REQUIRING NOTICE AND OPEN MEETINGS; PROVIDING FOR DISCLOSURE OF RECORDS; ALLOWING AUDITS; PROVIDING FOR ATTORNEY FEES; REQUIRING DISCLOSURE OF HOMEOWNER ASSOCIATION INFORMATION TO PURCHASERS; LIMITING RESTRICTIONS ON THE INSTALLATION OR USE OF SOLAR COLLECTORS AND WATER CONSERVATION MEASURES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 21 of this act may be cited as the "Homeowner Association Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Homeowner Association Act:

A. "association" means an incorporated association
of parcel owners that is organized under Section 5 of the 
Homeowner Association Act;

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

C. "common areas" means any real estate within a 
planned community that is owned or leased by the association, 
other than a parcel and any other interests in real estate for 
the benefit of the parcel owners that are subject to the 
declaration;

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

E. "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 signs the 
original declaration or who succeeds to special rights, 
preferences or privileges designated in the declaration as 
belonging to the signator of the declaration;

F. "declaration" means any instrument, however 
denominated, that establishes a planned community and any 
amendment to that instrument;

G. "development rights" means any right or 
combination of rights reserved by a declarant in a declaration
to add parcels to a planned community;

H. "parcel" means a physical portion of a planned community designated for separate ownership or occupancy, the boundaries of which are described in the declaration;

I. "parcel owner" or "member" means a person holding title to a parcel in the planned community;

J. "planned community" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions; but "planned community" does not include a condominium governed by the Condominium Act. Real estate is not a planned community unless the undivided interests in the common areas are vested in the parcel owners; and

K. "residential use" means use for dwelling or recreational purposes, or both.

SECTION 3. [NEW MATERIAL] APPLICABILITY--RESIDENTIAL--NEW PLANNED COMMUNITIES--EXISTING PLANNED COMMUNITIES--ADOPTION OF ACT--SMALL AND LIMITED EXPENSE LIABILITY COMMUNITIES--LOCAL ORDINANCES, REGULATIONS AND BUILDING CODES.--

A. Except as otherwise provided in this section, the Homeowner Association Act applies to all residential use planned communities established in the manner set forth in Section 4 of that act and after July 1, 2011. Amendments to the Homeowner Association Act apply to all planned communities.
established July 1, 2011 or made subject to that act by
amendment of the declaration of the common interest community
under the provisions of Subsection C of this section,
regardless of when the amendment to that act becomes effective.

B. Except for a planned community described in
Subsection D of this section, and only with respect to events
and circumstances occurring after July 1, 2012, the following
sections of that act apply to a planned community organized in
the state before the effective date of that act:

(1) Section 3;
(2) Subsection C of Section 4;
(3) Section 7;
(4) Section 11;
(5) Section 12;
(6) Section 14;
(7) Section 16;
(8) Sections 17 through 21; and
(9) definitions to the extent necessary to
construe any of the sections that apply under this subsection.

C. The community documents of any planned community
organized before July 1, 2012 may be amended to achieve any
result permitted by that act, regardless of what applicable law
provided before adoption of that act, provided that:

(1) any amendment to the community documents
authorized by this subsection shall be adopted in conformity
with any procedures and requirements for amending the
instruments specified by those instruments or, if there are
none, in conformity with the amendment procedures of that act;
and

(2) if any amendment to the community
documents grants to a person a right, power or privilege
permitted by that act, any correlative obligation, liability or
restriction in that act also applies to that person.

D. The Homeowner Association Act does not apply to
a planned community that contains five or fewer parcels.

E. The provisions of the Homeowner Association Act
do not invalidate or modify any provision of any building code,
zoning, subdivision or other real estate use law, ordinance,
rule or regulation governing the use of real estate. The
planned community's association or board shall not act contrary
to or in violation of any provision of any building code,
zoning, subdivision or other real estate use law, ordinance,
rule or regulation governing the use of real estate or the
planned community. A building code shall not impose any
requirement upon any structure in a planned community that it
would not impose upon a physically identical development under
a different form of ownership.

F. Except for those changes required pursuant to
Subsection B of this section, nothing in this section shall be
deemed to invalidate existing provisions of the community
documents of an existing planned community.

SECTION 4. [NEW MATERIAL] ESTABLISHMENT OF A PLANNED COMMUNITY--CONTENTS OF DECLARATION--NOTICE BY EXISTING COMMUNITIES.--

A. A planned community may be established pursuant to the Homeowner Association Act only by recording a declaration executed in the same manner as a deed. The declaration shall be recorded in each county in which any portion of the planned community is located.

B. The declaration shall contain:

(1) the names of the planned community and the association;

(2) the name of every county in which any part of the planned community is situated;

(3) a legally sufficient description of the real estate included in the planned community;

(4) a description of any development rights reserved by the declarant, and the period of time those rights shall be exercised, together with a legally sufficient description of the total number of parcels in the planned community, present and anticipated, and the type of development allowed on the parcels;

(5) any other conditions or limitations under which the rights described in Paragraph (4) of this subsection may be exercised or will lapse;
(6) a statement of the allocation of the association's financial liabilities, expenses, reserves and voting interests for each parcel in the manner described in Section 9 of the Homeowner Association Act; and

(7) any restrictions on use, occupancy and alienation of the parcels.

C. A planned community organized in New Mexico prior to July 1, 2012 shall record notice of the association in the same manner as a deed in each county in which any portion of the planned community is located. The notice shall, at a minimum, include:

(1) the name of the planned community and the name of the association; and

(2) a legally sufficient description of the real estate included in the planned community.

SECTION 5. [NEW MATERIAL] ORGANIZATION OF AN ASSOCIATION.--

A. An association shall be organized as a nonprofit corporation in accordance with the laws of the state of New Mexico. The membership of the association shall consist exclusively of all parcel owners in the planned community.

B. An association shall be organized no later than the date on which the first parcel in the planned community is conveyed to a purchaser, and the first meeting of the association shall be convened when five of the total parcels in
the planned community have sold.

C. For associations formed by parcel owners creating a planned community in an existing neighborhood, the association shall be organized after the community documents have been created and the declaration recorded.

SECTION 6. [NEW MATERIAL] QUORUMS.--

A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the parcel owners if persons entitled to cast twenty percent of the votes in the association:

(1) are present in person or by proxy at the beginning of the meeting;

(2) have cast absentee ballots pursuant to Section 10 of the Homeowner Association Act; or

(3) are present by any combination of Paragraphs (1) and (2) of this subsection.

B. Unless the bylaws specify a larger percentage, a quorum of the board is present to determine the validity of any action taken at a meeting of the board only if individuals entitled to cast a majority of the votes on the board are present at the time a vote regarding that action is taken. If a quorum is present when the vote is taken, the affirmative vote of a majority of the board members present is the act of the board unless a greater vote is required by the community documents.

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SECTION 7. [NEW MATERIAL] BOARD MEMBERS AND OFFICERS--
DUTIES--REMOVAL--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 trustee of the parcel owners and, if elected by the parcel owners, ordinary and reasonable care.

B. The board shall not act on behalf of the association to amend the declaration, to terminate the planned community or to elect members of the board or determine the qualifications, powers and duties or terms of office of board members, but the board shall fill vacancies in its membership for the unexpired portion of any term.

C. Notwithstanding any provision of the community documents to the contrary, the parcel owners, by a two-thirds' vote of all persons present and entitled to vote at any meeting of the parcel owners at which a quorum is present, may remove any member of the board with or without cause other than a member appointed by the declarant.

D. 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 parcel owners and shall set a date for a meeting of the parcel owners to consider
ratification of the budget not less than fourteen nor more than thirty calendar days after mailing of the summary. Unless at that meeting a majority of all the parcel owners or any larger vote specified in the declaration rejects the budget, the budget shall be ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget last ratified by the parcel owners shall be continued until such time as the parcel owners ratify a subsequent budget proposed by the board.

SECTION 8. [NEW MATERIAL] DECLARANT CONTROL OF BOARD.--

A. Subject to the provisions of this section, the declaration may 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. Regardless of the period provided in the declaration, the period of declarant control shall be terminated no later than the earlier of:

(1) sixty days after conveyance of seventy-five percent of the parcels that may be created to parcel owners other than a declarant;

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

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

(4) the day the declarant or the declarant's
designee, after giving written notice to parcel owners, records
an instrument voluntarily surrendering all rights to control
activities of the association.

B. Subsection A of this section does not apply to a
master planned community. As used in this subsection, "master
planned community" means a planned community that receives,
through a local government public hearing process, local
government review and approval of design and development
standards beyond those required for standard state or local
zoning and subdivision platting; 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
community.

C. A declarant may voluntarily surrender 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.

D. Not later than sixty days after conveyance of
twenty-five percent of the parcels that may be created to
parcel 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 parcel owners other than the declarant.

E. Not later than sixty days after conveyance of fifty percent of the parcels that may be created to parcel owners other than the declarant, no less than thirty-three percent of the members of the board shall be elected by parcel owners other than the declarant.

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

G. The board, during the period of declarant control and after termination of the period of declarant control, shall not act contrary to or in violation of any provision of any building code, zoning, subdivision or other real estate use law, ordinance, rule or regulation governing the use of real estate or the planned community in accordance with the provisions of Subsection E of Section 3 of the Homeowner Association Act.

SECTION 9. [NEW MATERIAL] ALLOCATION OF ASSOCIATION FINANCIAL LIABILITIES, EXPENSES, RESERVES AND VOTING.--

A. The declaration shall allocate to each parcel in a planned community a fraction or percentage of the association's expenses, financial liabilities and reserves and
a portion of the votes in the association for each parcel.

B. The declaration shall state the formulas used to establish the allocations. The allocations shall not discriminate in favor of parcels owned by an affiliate of the declarant. The allocations may allow for a twenty-five percent reduction in the percentage of association expenses and financial liabilities allocated to parcels owned by the declarant; provided that any financial shortfall of the association shall be the responsibility of the declarant based on a pro rata share of declarant-owned parcels.

C. If parcels may be added to or withdrawn from the planned community, the declaration shall state the formulas to be used to reallocate the allocations and votes among all parcels included in the planned community after the addition or withdrawal.

D. The declaration may provide:

   (1) that different allocations of votes shall be made to the parcels on particular matters specified in the declaration;

   (2) for cumulative voting only for the purpose of electing members of the board; and

   (3) for class voting on specified issues affecting the class if necessary to protect valid interests of the class.

E. A declarant shall not use cumulative or class
voting for the purpose of evading any limitation imposed on declarants by the Homeowner Association Act nor may parcels constitute a class because the parcels are owned by the declarant.

SECTION 10. [NEW MATERIAL] PROXY AND ABSENTEE VOTING--BALLOT COUNTING.--

A. Unless the bylaws provide otherwise, the association shall provide for votes to be cast in person, by absentee ballot and by proxy.

B. Vote by directed or undirected proxy is allowed only for the annual parcel-owner meeting. The proxy vote shall:

(1) be dated and executed by a parcel owner, but if a parcel is owned by more than one person, each owner of the parcel may vote or register protest to the casting of votes by the other owners of the parcel through a duly executed proxy;

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

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

C. If proxy voting is utilized at the annual parcel-owner meeting:

(1) a person shall not cast undirected proxies
representing more than fifteen percent of the votes of the association; and

(2) a person shall not pay a company or person to collect proxy votes.

D. If absentee ballots are used, the ballot for any action taken at an annual, regular or special meeting of the members shall:

(1) set forth each proposed action;

(2) provide an opportunity to vote for or against each proposed action;

(3) be valid for only one specified election or meeting of the members and expire automatically after the completion of the election or meeting;

(4) indicate the number of responses needed to meet the quorum requirements;

(5) state the percent of votes necessary to approve each matter, other than for election of directors;

(6) specify the time and date by which the ballot shall be delivered to the board in order to be counted, which shall be at least seven calendar days after the date the ballot is delivered to the member; and

(7) authorize only the parcel owner to vote.

E. Ballots shall be counted by a neutral third party or by a committee of volunteers. The volunteers shall be parcel owners who are 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.

SECTION 11. [NEW MATERIAL] BOARD MEETINGS OPEN TO
MEMBERS--EXCEPTIONS.--

A. A parcel owner may attend any meeting of the
board except for meetings of the board held in executive
session as described in Subsection B of this section.

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

(1) pending or contemplated litigation;
(2) personnel matters; or
(3) personal, health or financial information
about a member, unless the member requests that the meeting not
be closed for executive session.

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

SECTION 12. [NEW MATERIAL] MEMBER MEETINGS--BOARD
MEETINGS--LOCATION--NOTICE--AGENDAS--SPECIAL MEETING--EMERGENCY
MEETING.--

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

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

C. Not less than ten days nor more than sixty days in advance of any meeting of the association, notice shall be provided to all parcel owners. Notice shall be hand-delivered, sent electronically, if the parcel owner has given the association an electronic address, or sent prepaid by United States mail to the mailing address of each parcel owner or to any other mailing address designated in writing by a parcel owner. The notice shall state the time, date, place and agenda of the meeting.

D. The board shall provide notice of all board meetings to parcel owners. During the period of declarant control, a meeting of a quorum of the board members in which only routine business matters are discussed, and in which no vote is taken on action items related to the association, does not constitute a board meeting under the provisions of this subsection. Notice shall be given at least ten days in advance of the meeting by phone, hand-delivery, mail, electronic delivery, posting on the association's web site, newsletter, conspicuous posting or any other reasonable means as determined by the board. Notice to parcel owners of a meeting of the board is not required if emergency circumstances require action by the board before notice can be given. The notice shall state the time, date, place and agenda of the meeting.

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

F. Unless the community documents otherwise provide, the board may meet by telephonic, video, webcast or other conferencing process if:

   (1) the meeting notice states the conferencing process to be used and provides information explaining how parcel owners may participate in the conference directly or by meeting at a central location or conference connection; and

   (2) the process provides all parcel owners the opportunity to hear the discussion so as to comply with Section 11 of the Homeowner Association Act.

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

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

I. The board may take action by unanimous consent as documented in a record authenticated by all the board members without meeting. The board secretary shall promptly give notice to all parcel owners of any action taken by unanimous consent. After termination of the period of declarant control, the board may act by unanimous consent only when an emergency exists, to undertake ministerial actions or to implement actions previously taken at a meeting of the board.

SECTION 13. [NEW MATERIAL] REMOVAL OF PROPERTY MANAGEMENT COMPANY OR CONTRACTORS.--Notwithstanding any provision of the community documents to the contrary, the parcel owners, by a two-thirds' vote of all persons present and entitled to vote at any meeting of the parcel owners at which a quorum is present, may require that the board refuse to renew, or as soon as permitted by the existing contract, to terminate any contract.

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with a property management company or other contractor doing
business with the association.

SECTION 14. [NEW MATERIAL] RECORD DISCLOSURE TO MEMBERS--
UPDATED INFORMATION.--

A. All financial and other records of the
association shall be made available for examination by a parcel
owner within five business days of the date of 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;
(2) the name, address and telephone number of
the association's designated agent;
(3) the association bylaws;
(4) the names of all association members;
(5) minutes of all meetings of the
association's parcel owners and board, other than executive
sessions, records of all actions taken by the parcel owners or
board without a meeting and records of all actions taken by a
committee in place of the board or on behalf of the
association;
(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 contracts entered into by the
association or the board on behalf of the association; and

(11) insurance policies, including company
names, policy limits, deductibles, additional named insured and
expiration dates for property, general liability and
association director and officer professional liability, and
fidelity policies.

SECTION 15. [NEW MATERIAL] FINANCIAL AUDIT.--The
association, upon a majority vote of all of the parcel owners,
may request that the board provide for a financial audit or
review of the association's records. The audit or review shall
be made available to parcel owners within thirty calendar days
of its completion.

SECTION 16. [NEW MATERIAL] ATTORNEY FEES AND COSTS.--A
court may award costs and attorney fees to any party that
prevails in a civil action between a parcel 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 costs or attorney fees.
SECTION 17. [NEW MATERIAL] SALE OF PARCELS--REQUIREMENT FOR DISCLOSURE STATEMENT OR RESALE CERTIFICATE--EXCEPTIONS.--

A. A disclosure statement or resale certificate as provided in Sections 18 through 21 of the Homeowner Association Act is required for all parcels restricted to residential use that are offered for sale.

B. Neither a disclosure statement nor a resale certificate need be prepared or delivered in the case of:

(1) a gratuitous disposition of a parcel;
(2) a disposition pursuant to court order;
(3) a disposition by a government or governmental agency;
(4) a disposition by foreclosure or deed in lieu of foreclosure;
(5) a disposition to a person in the business of selling real estate who intends to offer those parcels to purchasers;
(6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty; or
(7) a disposition of a parcel restricted to nonresidential use.

SECTION 18. [NEW MATERIAL] DISCLOSURE STATEMENT--PREPARATION--LIABILITY.--

A. Except as provided in Subsection E of this section, a declarant offering any interest in a parcel to the
public shall prepare a disclosure statement conforming to the
requirements of Section 19 of the Homeowner Association Act.

B. A declarant may transfer responsibility for
preparation of all or part of the disclosure statement to a
successor declarant. In the event of any such transfer, the
transferor shall provide the transferee with any information
necessary to enable the transferee to fulfill the requirements
of Subsection A of this section. The declarant or any other
person specified in this section who prepared all or part of
the disclosure statement is liable for any false or misleading
statement or for any omission of material fact with respect to
that portion of the disclosure statement that the person
prepared.

C. Any declarant shall deliver a disclosure
statement in the manner prescribed in Subsection A of Section
20 of the Homeowner Association Act. The declarant may
transfer responsibility for delivery of the disclosure
statement to a person in the business of selling real estate,
provided that the declarant provides the person with the
disclosure statement and the person agrees in writing to accept
responsibility for delivery of the disclosure statement.

D. If a parcel is part of a planned community and
is part of any other real estate regime requiring the delivery
of a disclosure statement, a single disclosure statement
conforming to the requirements of Section 19 of the Homeowner
Association Act and to any other requirements imposed by law may be prepared and delivered in lieu of providing two or more disclosure statements.

E. This section does not apply to a declarant who is the owner of no more than one parcel in a planned community and who is offering that parcel for sale. Section 21 of the Homeowner Association Act shall govern such a sale.

SECTION 19. [NEW MATERIAL] DISCLOSURE STATEMENT--REQUIRED PROVISIONS.--

A. A disclosure statement shall fully and accurately disclose:

(1) the name and principal address of the declarant and of the planned community;

(2) a general description of the planned community, including, to the extent possible, the types, number and declarant's schedule of commencement and completion of construction of buildings and amenities that the declarant anticipates including in the planned community;

(3) the number of parcels in the planned community;

(4) copies of the declaration, other than the plats and plans, and any other recorded covenants, conditions, restrictions and reservations affecting the planned community; the bylaws and rules or regulations of the association; copies of contracts and leases to be signed by purchasers at closing;
and a brief narrative description of contracts or leases that 
will or may be subject to cancellation by the association;

(5) a current balance sheet and a projected 
budget for the association for one year after the date of the 
first conveyance to a purchaser and, thereafter, the current 
budget of the association, a statement of who prepared the 
budget and a statement of the budget's assumptions concerning 
occupancy and inflation factors. The budget shall include 
without limitation:

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

(b) a statement of any other reserves;

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

(d) the projected monthly common expense 
assessment for each parcel;

(6) services not reflected in the budget that 
the declarant provides, or expenses that the declarant pays, 
and that the declarant expects may become at a subsequent time 
a common expense of the association and the projected common 
expense assessment attributable to each of those services or 
expenses for the association and for each parcel;

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

   (8) a description of liens, defects or
encumbrances on or affecting the title to the planned
community;

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

   (10) the terms and significant limitations of
warranties provided by the declarant and limitations on the
enforcement of them or on damages;

   (11) a statement that:

       (a) no less than seven days after
receipt of a disclosure statement, a purchaser, before
conveyance, may cancel a contract for purchase of a parcel from
a declarant;

       (b) if a declarant fails to provide a
disclosure statement to a purchaser before conveying a parcel,
that purchaser may rescind the purchase within forty-five days
from the date of conveyance;

       (c) shall set forth the procedures set
forth in Subsection C of Section 20 of the Homeowner
Association Act;

       (d) if a purchaser receives the
disclosure statement more than seven days before signing a
contract to purchase a parcel, the purchaser cannot cancel the
contract; and
(e) if a purchaser receives the disclosure statement less than seven days before signing a contract to purchase a parcel, the purchaser, before conveyance, shall have no less than seven days from the date of the contract to cancel the contract;

(12) a statement of unsatisfied judgments or pending suits against the association and the status of pending suits material to the planned community of which a declarant has actual knowledge;

(13) a statement that a deposit made in connection with the purchase of a parcel shall be held in an escrow account until closing and shall be returned to the purchaser if the purchaser cancels the contract pursuant to Section 20 of the Homeowner Association Act, together with the name and address of the escrow agent;

(14) restraints on alienation of a portion of the planned community;

(15) a description of the insurance coverage provided for the benefit of parcel owners;

(16) current or expected fees or charges to be paid by parcel owners for the use of the common areas and other facilities related to the planned community; and

(17) the extent to which financial arrangements have been provided for completion of all improvements in the planned community that have not yet been
completed.

B. A declarant or the declarant's designee shall promptly amend the disclosure statement to report a material change in the information required by this section.

SECTION 20. [NEW MATERIAL] DELIVERY OF DISCLOSURE STATEMENT--PURCHASER'S RIGHT TO CANCEL.--

A. A person required to deliver a disclosure statement pursuant to Section 18 of the Homeowner Association Act shall provide a purchaser of a parcel with a copy of the disclosure statement before conveyance of the parcel. Unless a purchaser is given a disclosure statement that complies with the Homeowner Association Act more than seven days before execution of a contract for the purchase of a parcel, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the disclosure statement or, if after signing a contract to purchase a parcel, but prior to conveyance, within seven days of the date of the contract.

B. If a purchaser elects to cancel a contract pursuant to Subsection A of this section, the purchaser may do so by hand-delivering a notice of cancellation to the offerer or by mailing the notice by prepaid United States mail to the offerer or to the offerer's agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

C. If a person required to deliver a disclosure
statement pursuant to Section 18 of the Homeowner Association Act fails to provide a purchaser to whom a parcel is conveyed with that disclosure statement, the purchaser is entitled to rescind the purchase within forty-five days from the date of conveyance upon delivery to the seller of a deed subject to no encumbrance attaching to the property caused by the purchaser.

SECTION 21. [NEW MATERIAL] RESALE OF PARCELS--RESALE CERTIFICATE REQUIRED.--

A. Unless exempt under Subsection B of Section 17 of the Homeowner Association Act or in the case of a sale where delivery of a disclosure statement is required, prior to conveyance, a parcel owner shall furnish to a purchaser a copy of the declaration, other than the plats and plans; the bylaws and the rules or regulations of the association; and a resale certificate from the association containing:

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

(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 parcel owner;

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

(4) a statement of any capital expenditures
anticipated by the association 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 specified projects;

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

(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 planned community of which an
association has actual knowledge;

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

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

B. The association, within ten days after receipt
of a request by a parcel owner, shall furnish a certificate
containing the information necessary to enable the parcel owner
to comply with this section. A parcel owner providing a
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 certificate.

C. A purchaser shall not be liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A parcel owner shall not be liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract may be canceled by the purchaser at least seven days from the date of receipt of the certificate or until conveyance, whichever occurs first.

SECTION 22. Section 3-18-32 NMSA 1978 (being Laws 2007, Chapter 232, Section 1) is amended to read:

"3-18-32. LIMITATION OF [COUNTRY AND] MUNICIPAL RESTRICTIONS ON SOLAR COLLECTORS AND WATER CONSERVATION MEASURES.--

A. A [county or] municipality shall not restrict the installation of a solar collector as defined pursuant to the Solar Rights Act, except that placement of solar collectors in historic districts may be regulated or restricted by a [county or] municipality.

B. A [covenant, restriction or condition contained in a deed, contract, security agreement or other instrument, effective after July 1, 1978, affecting the transfer, sale or use of, or an interest in, real property that effectively prohibits the installation or use of a solar collector is void and unenforceable] municipality shall not restrict the
installation of water conservation measures, including the use
of rain barrels, efficient irrigation systems or low-water-use
plants and landscape design, except that water conservation
measures in historic districts may be regulated or restricted
by a municipality. A municipality may regulate any water
conservation measure deemed to be a threat to public health and
safety."

SECTION 23. A new section of Chapter 4 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] LIMITATION OF COUNTY RESTRICTIONS ON SOLAR
COLLECTORS AND WATER CONSERVATION MEASURES.--

A. A county shall not restrict the installation of
a solar collector as defined pursuant to the Solar Rights Act,
except that placement of solar collectors in historic districts
may be regulated or restricted by a county.

B. A county shall not restrict the installation of
water conservation measures, including the use of rain barrels,
efficient irrigation systems or low-water-use plants and
landscape design, except that water conservation measures in
historic districts may be regulated or restricted by a county.
A county may regulate any water conservation measure deemed to
be a threat to public health and safety."

SECTION 24. A new section of Chapter 47 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] RESTRICTIONS ON SOLAR COLLECTORS AND WATER
CONSERVATION MEASURES--FINDINGS AND PUBLIC POLICY.--

A. The legislature finds that:

   (1) New Mexico often faces water shortages due to the state's arid climate and water conservation measures can be used to save water, especially during times of drought;

   (2) the state's climate makes it an ideal location for and the legislature has encouraged the use of solar technology to produce energy;

   (3) New Mexico residents benefit from and have used solar technology and water conservation measures on their private property; and

   (4) it is in the state's best interest that its residents not be effectively prohibited in how solar technology and water conservation measures are used on private property.

B. A covenant, restriction or condition contained in a deed, contract, security agreement or other instrument, effective after July 1, 1978, affecting the transfer, sale, use of or interest in real property is void and unenforceable if it effectively prohibits the installation or use of a solar collector as defined in the Solar Rights Act, which includes consideration of any adverse effect on the cost or efficiency or impairment to the functioning of the collector.

C. A covenant, restriction or condition contained in a deed, contract, security agreement or other instrument,
affecting the transfer, sale, use of or interest in real
property is void and unenforceable if it effectively prohibits
the installation or use of water conservation measures, which
includes consideration of any adverse effect on the cost or
efficiency or impairment to the functioning of the measures,
including the use of rain barrels, efficient irrigation
systems, low-water-use plants and turf or water conserving
landscape design."

SECTION 25. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2012.