UNANNOTATED

CHAPTER 47
Property Law

ARTICLE 1
Conveyances and General Provisions

47-1-1. "Real estate" defined.

The term "real estate", as used in Chapter 47 NMSA 1978, shall be so construed as to be applicable to lands, tenements and hereditaments, including all real movable property and leaseholds. As used in this section "leasehold" means an estate in real estate or real property held under a lease.

History: Laws 1851-1852, p. 372; C.L. 1865, ch. 44, § 2; C.L. 1884, § 2749; C.L. 1897, § 3940; Code 1915, § 4758; C.S. 1929, § 117-102; 1941 Comp., § 75-101; 1953 Comp., § 70-1-1; 1991, ch. 234, § 3.

47-1-2. Monopolies; entailments; primogeniture.

Monopolies are contrary to the genius of a free government and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this state.

History: Laws 1851-1852, p. 154; C.L. 1865, ch. 95, § 17; C.L. 1884, § 2600; C.L. 1897, § 3774; Code 1915, § 4770; C.S. 1929, § 117-114; 1941 Comp., § 75-102; 1953 Comp., § 70-1-2; Laws 1992, ch. 66, § 70.

47-1-3. Repealed.

47-1-4. [Conveyances authorized.]

Any person or persons, or body politic, holding, or who may hold, any right or title to real estate in this state, be it absolute or limited, in possession, remainder or reversion, may convey the same in the manner and subject to the restrictions prescribed in this chapter.

History: Laws 1851-1852, p. 373; C.L. 1865, ch. 44, § 1; C.L. 1884, § 2748; C.L. 1897, § 3939; Code 1915, § 4757; C.S. 1929, § 117-101; 1941 Comp., § 75-103; 1953 Comp., § 70-1-3.

47-1-4.1. Actual authority; representatives of business entities; exception.

A. Except as provided in Subsections B and D of this section, the persons in the following offices or positions shall each have the authority to execute conveyancing instruments and contracts for the transfer or encumbrance of real property owned by a business entity:

(1) for a cooperative association: president and vice president;

(2) for a professional corporation: president and vice president;

(3) for a nonprofit corporation: president and vice president;

(4) for a business corporation: president and vice president;

(5) for a limited liability company: manager, member manager, president and vice president;

(6) for a general partnership: partner;

(7) for a limited liability partnership: general partner; and

(8) for a limited partnership: general partner.

B. A business entity may limit or expand the authority provided for in Subsection A of this section by filing with the county clerk, in the county where the real property is located, a statement reflecting limitations on the persons listed as having authority, requiring multiple persons to exercise such authority or authorizing other officers or positions to have the requisite authority to act to transfer or encumber real property owned by the business entity. The recorded statement shall be binding until the business entity revokes or amends the recorded statement and records the revocation or amendment with the county clerk.

C. A person may rely on the authority of the persons set forth in Subsection A of this section to act on behalf of a business entity, subject to limitations set forth in a previously recorded statement as provided in Subsection B of this section. Nothing in this section shall preclude a business entity from executing a power of attorney and empowering an attorney in fact to also act on its behalf pursuant to the Uniform Power of Attorney Act [45-5B-101 to 45-5B-403 NMSA 1978].

D. An instrument or contract for the transfer or encumbrance of real property by a person without the authority provided in Subsection A or B of this section may be relied upon as binding the business entity if the instrument or contract has been recorded for a period exceeding ten years. That recorded instrument or contract may not be relied upon as binding, however, if:

(1) prior to the execution of that instrument or contract, the business entity recorded another document reflecting that the person who executed the instrument or contract did not have the authority to bind the business entity; or

(2) the authority of the person who executed the instrument or contract has been successfully challenged or is in the process of being challenged in a court having jurisdiction.

E. As used in this section, "business entity" means a:

(1) cooperative association created pursuant to the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978];

(2) professional corporation created pursuant to the Professional Corporation Act [53-6-1 to 53-6-13 NMSA 1978];

(3) nonprofit corporation created pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978];

(4) business corporation created pursuant to the Business Corporation Act [Chapter 53, Articles 11 through 18 NMSA 1978];

(5) limited liability company created pursuant to the Limited Liability Company Act [Chapter 53, Article 19 NMSA 1978];

(6) partnership created pursuant to the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978];

(7) limited liability partnership created pursuant to the Uniform Partnership Act (1994); or

(8) limited partnership created pursuant to the Uniform Revised Limited Partnership Act [Chapter 54, Article 2A NMSA 1978].

History: Laws 2019, ch. 130, § 3

47-1-5. [Signing of conveyances.]

All conveyances of real estate shall be subscribed by the person transferring his title or interest in said real estate, or by his legal agent or attorney.

History: Laws 1851-1852, p. 374; C.L. 1865, ch. 44, § 4; C.L. 1884, § 2751; C.L. 1897, § 3942; Code 1915, § 4760; C.S. 1929, § 117-104; 1941 Comp., § 75-104; 1953 Comp., § 70-1-4.

47-1-6. Seal unnecessary.

No seal or scroll is necessary to the validity of any contract, bond or conveyance, whether respecting real or personal property, or any other instrument of writing, nor does the addition or omission of a seal or scroll in any way affect the force or effect of the same.

History: Laws 1901, ch. 62, § 11; Code 1915, § 4761; C.S. 1929, § 117-105; 1941 Comp., § 75-105; Laws 1967, ch. 87, § 9; 1953 Comp., § 70-1-5.

47-1-7. [Powers of attorney and revocations thereof to be acknowledged and recorded.]

All powers of attorney or other writings containing authority to convey real estate, as agent or attorney of the owner of the same, or to execute, as agent for another, any conveyance of real estate, or by which real estate may be affected in law, or equity, shall be acknowledged, certified, filed and recorded, as other writings conveying or affecting real estate are required to be acknowledged. No such power of attorney, or other writing, filed and recorded in the manner prescribed in this section, shall be considered revoked by any act of the party executing the same, until the instrument of writing revoking the same, duly acknowledged and certified to, shall be filed for record and recorded in the office of the county clerk where said power of attorney or other writing is filed and recorded.

History: Laws 1901, ch. 62, § 21; Code 1915, § 4774; C.S. 1929, § 117-118; 1941 Comp., § 75-106; 1953 Comp., § 70-1-6.

47-1-8. [Conveyances under terminated power of attorney; validation.]

All conveyances or incumbrances of real or personal property heretofore or hereafter made in pursuance of a power of attorney valid when executed, are hereby declared valid notwithstanding the revocation of such power or the death of the donor of such power where the person to whom such conveyance or incumbrance is made or granted is a bona fide purchaser or incumbrancer for value and without notice of such revocation or death.

History: 1941 Comp., § 75-106a, enacted by Laws 1945, ch. 69, § 1; 1953 Comp., § 70-1-7.

47-1-9. [Notice of revocation or death by means of affidavit.]

Notice of such revocation or death may be given so as to affect, with notice, all subsequent purchasers or incumbrancers within the meaning of Section 1 [47-1-8 NMSA 1978] hereof by the filing for record with the county clerk of the county where such real estate is located or where such personal property is usually situated, as the case may be, of the affidavit of any person declaring the facts. Such affidavit may be

made on information and belief and such [shall] be duly acknowledged in the same manner as the instrument conveying real estate.

History: 1941 Comp., § 75-106b, enacted by Laws 1945, ch. 69, § 2; 1953 Comp., § 70-1-8.

47-1-10. [Recordation of affidavit of termination of power of attorney.]

In the absence of the recordation of an affidavit as described in Section 2 [47-1-9 NMSA 1978] hereof, all subsequent bona fide purchasers or incumbrancers [incumbrances] without actual notice of the defects in such power of attorney as referred to in Section 1 [47-1-8 NMSA 1978] hereof, shall be entitled to the same interest and to the same extent as they would have been had such power of attorney not been subject to such defects.

History: 1941 Comp., § 75-106c, enacted by Laws 1945, ch. 69, § 3; 1953 Comp., § 70-1-9.

47-1-11. [Instruments by agent authorized.]

All conveyances of real estate, mortgages, trust deeds, sales contracts and other instruments of writing affecting the title to real estate, subscribed and executed by the owner or owners thereof through his or her duly authorized agent under a duly executed and acknowledged power of attorney, shall have the same force and effect as though said conveyance, mortgage, trust deed, sales contract or other instrument affecting the title to real estate had been actually subscribed by the owner or owners thereof.

History: Laws 1937, ch. 147, § 1; 1941 Comp., § 75-107; 1953 Comp., § 70-1-10.

47-1-12. [Conveyance by decree or master.]

In all actions relating to real estate, where it becomes necessary for the conveyance of the same by either party to the action the court may enter a decree, which of itself shall operate as a good and sufficient conveyance of the real estate in question or may appoint any proper person to make such conveyance for and on behalf of the party.

History: Laws 1901, ch. 62, § 10; 1903, ch. 5, § 4; Code 1915, § 4773; C.S. 1929, § 117-117; 1941 Comp., § 75-108; 1953 Comp., § 70-1-11.

47-1-13. [Lineal and collateral securities; contracts binding realty as against heirs and legal claimants.]

Lineal and collateral securities in all cases are hereby forbidden, but the heirs and legal claimants of any person who may have made any written contract or agreement

shall be responsible for said contract or agreement to the extent of the lands limited or bequeathed, in such case, and in the manner prescribed by law.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 27; C.L. 1884, § 1426; C.L. 1897, § 2046; Code 1915, § 4766; C.S. 1929, § 117-110; 1941 Comp., § 75-109; 1953 Comp., § 70-1-12.

47-1-14. [Effect of words "bargained and sold".]

The words, bargained and sold, or words to the same effect, in all conveyances of hereditary real estate, unless restricted in express terms on the part of the person conveying the same, himself and his heirs, to the person to whom the property is conveyed, his heirs and assignees, shall be limited to the following effect:

A. that the grantor, at the time of the execution of said conveyance, is possessed of an irrevocable possession in fee simple to the property so conveyed;

B. that the said real estate, at the time of the execution of said conveyance, is free from all encumbrance made or suffered to be made by the grantor, or by any person claiming the same under him;

C. for the greater security of the person, his heirs and assignees, to whom said real estate is conveyed by the grantor and his heirs, suits may be instituted the same as if the conditions were stipulated in the said conveyance.

History: Laws 1851-1852, p. 374; C.L. 1865, ch. 44, § 3; C.L. 1884, § 2750; C.L. 1897, § 3941; Code 1915, § 4759; C.S. 1929, § 117-103; 1941 Comp., § 75-110; 1953 Comp., § 70-1-13.

47-1-15. [Joint grantees or devisees; tenancy in common.]

All interest in any real estate, either granted or bequeathed to two or more persons other than executors or trustees, shall be held in common, unless it be clearly expressed in said grant or bequest that it shall be held by both parties.

History: Laws 1851-1852, p. 374; C.L. 1865, ch. 44, § 17; C.L. 1884, § 2764; C.L. 1897, § 3961; Code 1915, § 4762; C.S. 1929, § 117-106; 1941 Comp., § 75-111; 1953 Comp., § 70-1-14.

47-1-16. [Instrument of conveyance; prima facie evidence of joint tenancy.]

An instrument conveying or transferring title to real or personal property to two or more persons as joint tenants, to two or more persons and to the survivors of them and the heirs and assigns of the survivor, or to two or more persons with right of

survivorship, shall be prima facie evidence that such property is held in a joint tenancy and shall be conclusive as to purchasers or encumbrancers for value. In any litigation involving the issue of such tenancy a preponderance of the evidence shall be sufficient to establish the same.

History: 1953 Comp., § 70-1-14.1, enacted by Laws 1955, ch. 174, § 1.

47-1-17. [Entailed estates.]

Whenever a conveyance or bequest is made wherein the conveyor or testator shall hold possession of property, be it lands or tenements, in law or equity, as under the English Statute of Edward the First, styled the entail statute, and said property is to be perpetuated in the family, each one of said conveyances or bequests shall only invest the conveyors or testators with possession during their lifetime, who shall possess and hold the right and title to said premises, and no others, the same as a tenant for life is recognized by law; and at the death of said conveyor or testator said lands and tenements shall descend to the children of said conveyor or testator, to be equally divided among them as absolute tenants in common; and if there should be but one child, it shall descend absolutely to it; and if any child should die, the part which he or she should have received shall be given to his or her successor, and if there should be no such successor, then it shall descend to his or her legal heirs.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 24; C.L. 1884, § 1423; C.L. 1897, § 2043; Code 1915, § 4763; C.S. 1929, § 117-107; 1941 Comp., § 75-112; 1953 Comp., § 70-1-15.

47-1-17.1. Repealed.

47-1-18. [Reversion; "heirs" and "successors" defined.]

When a balance or residue, in lands or tenements, goods or property, is limited by writing or otherwise to take effect after the decease of any person without heirs, or bodily heirs, or succession, the words heirs and successors shall be so construed as to mean heirs or successors living, at the time of the decease of the person styled ancestor.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 25; C.L. 1884, § 1424; C.L. 1897, § 2044; Code 1915, § 4764; C.S. 1929, § 117-108; 1941 Comp., § 75-113; 1953 Comp., § 70-1-16.

47-1-19. [Rights of heirs of life tenant when made remaindermen.]

When the remainder of a possession is limited to the heirs or heirs of the body of a person who holds said property as a life estate, in these premises the persons who at the termination of said life estate, are to be heirs or heirs of the body of said life estate,

shall be authorized to purchase the same [take as purchasers] by virtue of the remainder of the possession so limited in them.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 26; C.L. 1884, § 1425; C.L. 1897, § 2045; Code 1915, § 4765; C.S. 1929, § 117-109; 1941 Comp., § 75-114; 1953 Comp., § 70-1-17.

47-1-20. [Remainder to unborn child.]

When any possession has been or shall be conveyed limiting the remainder of the possession to the son or daughter of any person, born after the death of its parent, possession shall be taken the same as if he or she was born during the life of the parent, although no possession should have been conveyed to sustain the remainder of a contingent possession after his death, and after this an absolute possession or bequest may be made, commencing in the future, in writing in the same manner as by will.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 28; C.L. 1884, § 1427; C.L. 1897, § 2047; Code 1915, § 4767; C.S. 1929, § 117-111; 1941 Comp., § 75-115; 1953 Comp., § 70-1-18.

47-1-21. [Future possession dependent on death without heirs; effect of birth of posthumous child.]

A future possession depending upon the contingency of the death of a person without heirs shall be revoked by the birth of a posthumous son or daughter of said person capable of succeeding him.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 29; C.L. 1884, § 1428; C.L. 1897, § 2048; Code 1915, § 4768; C.S. 1929, § 117-112; 1941 Comp., § 75-116; 1953 Comp., § 70-1-19.

47-1-22. [Grants of rents, returns or remainders.]

Grants of rents, returns or remainders of possession shall be valid without the previous ceremonies of the tenants, but no tenant having paid any rent to the grantor before receiving notice of the transfer shall be injured thereby.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 30; C.L. 1884, § 1429; C.L. 1897, § 2049; Code 1915, § 4769; C.S. 1929, § 117-113; 1941 Comp., § 75-117; 1953 Comp., § 70-1-20.

47-1-23. [Transfer of reversion authorized.]

That the possibility or right of reversion for breach or violation of condition or conditions subsequent contained in any deed or other instrument conveying real estate in the state of New Mexico, is hereby made assignable, and the grantor in any such instrument heretofore or hereafter made affecting real estate in the state of New Mexico, is given the right to assign and transfer such future contigent [contingent] right of reentry, forfeiture and reversion for violation or breach of such condition or conditions subsequent.

History: Laws 1937, ch. 4, § 1; 1941 Comp., § 75-118; 1953 Comp., § 70-1-21.

47-1-24. [Rights of transferee of reversion.]

The assignee of or any successor to the right of reentry, forfeiture and reversion for breach or violation of condition or conditions subsequent, is hereby given upon such assignment, all of the rights and privileges of the original grantor for the enforcement of reentry, forfeiture and reversion when any such condition or conditions subsequent shall have been breached or broken, including all legal and equitable remedies for the judicial enforcement of such right or rights.

History: Laws 1937, ch. 4, § 2; 1941 Comp., § 75-119; 1953 Comp., § 70-1-22.

47-1-25. Repealed.

History: Laws 1863-1864, p. 54; C.L. 1865, ch. 101, § 8; C.L. 1884, § 1493; C.L. 1897, § 2143; Code 1915, § 4771; C.S. 1929, § 117-115; 1941 Comp., § 75-120; 1953 Comp., § 70-1-23; 1978 Comp., § 47-1-25, repealed by Laws 2007, ch. 266, § 1.

47-1-26. [Tax assessment or payment in name of nonowner is not cloud on title.]

That the entry of payment of taxes by any person, partnership, corporation or corporations upon tax rolls of any county opposite the assessment of any real estate on the said tax rolls or the entry upon the said tax rolls or any other official tax records in the office of the county assessor or treasurer that taxes upon real estate and improvements thereon have been paid by any person or persons, partnerships, corporations or associations, shall not in themselves without other record evidence of title be or constitute a cloud upon any real estate or improvements thereon, and no title to real estate or improvements thereon shall be unmarketable solely because of the assessment in the name of or payment of taxes by any person or persons, partnership, corporation or association not having right, title or interest in or to such real estate or improvements as shown by the records of the county clerk in the county wherein such property is situate.

History: Laws 1937, ch. 140, § 1; 1941 Comp., § 75-122; 1953 Comp., § 70-1-25.

47-1-27. ["Statutory forms" of conveyance and mortgage of real property.]

The forms set forth in the appendix to this act [47-1-44 NMSA 1978] may be used and shall be sufficient for their respective purposes. They shall be known as "statutory forms" and may be referred to as such. They may be altered as circumstances require, and the authorization of such forms shall not prevent the use of other forms.

History: 1941 Comp., § 75-126, enacted by Laws 1947, ch. 203, § 1; 1953 Comp., § 70-1-26.

47-1-28. [Applicability from effective date of act.]

For the purpose of avoiding the unnecessary use of words in deeds or other instruments relating to real estate whether said statutory form or other form is used, the rules and definitions contained in this act [47-1-27 to 47-1-44 NMSA 1978] shall apply to all such instruments executed or delivered on or after the effective date of this act.

History: 1941 Comp., § 75-127, enacted by Laws 1947, ch. 203, § 2; 1953 Comp., § 70-1-27.

47-1-29. ["Warranty deed" effective in fee simple.]

A deed in substance following the form entitled "warranty deed" in the appendix to this act [47-1-44 NMSA 1978] shall, when duly executed, have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use, with covenants on the part of the grantor for himself, his heirs, executors, administrators and successors, with the grantee, his heirs, successors and assigns, as specified in the definition of "warranty covenants" in Section 10 [47-1-37 NMSA 1978] of this act.

History: 1941 Comp., § 75-128, enacted by Laws 1947, ch. 203, § 3; 1953 Comp., § 70-1-28.

47-1-30. ["Quitclaim deed" effective in fee simple without warranty.]

A deed in substance following the form entitled "quitclaim deed" shall, when duly executed, have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use of any interest the grantor owns in the premises, without warranty.

History: 1941 Comp., § 75-129, enacted by Laws 1947, ch. 203, § 4; 1953 Comp., § 70-1-29.

47-1-31. ["Special warranty deed"; effect.]

A deed in substance following the form entitled "special warranty deed" shall, when duly executed, have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use, with covenants on the part of the grantor, for himself, his heirs, executors, administrators, and successors, with the grantee, his heirs, successors and assigns as specified in the definition of "special warranty covenants" in Section 11 [47-1-38 NMSA 1978] of this act.

History: 1941 Comp., § 75-130, enacted by Laws 1947, ch. 203, § 5; 1953 Comp., § 70-1-30.

47-1-32. ["Grant" effective as a word of conveyance.]

In a conveyance of real estate the word "grant" shall be a sufficient word of conveyance without the use of the words "give, bargain, sell and convey" and no covenant shall be implied from the use of the word, "grant."

History: 1941 Comp., § 75-131, enacted by Laws 1947, ch. 203, § 6; 1953 Comp., § 70-1-31.

47-1-33. [Unnecessary terms; construction of deeds or reservations.]

In a conveyance or reservation of real estate the terms, "heirs," "assigns" or other technical words of inheritance shall not be necessary to convey or reserve an estate in fee. A deed or reservation of real estate shall be construed to convey or reserve an estate in fee simple, unless a different intention clearly appears in the deed.

History: 1941 Comp., § 75-132, enacted by Laws 1947, ch. 203, § 7; 1953 Comp., § 70-1-32.

47-1-34. [Rights included without enumeration.]

In a conveyance or mortgage of real estate all rights, easements, privileges and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary shall be stated in the deed, and it shall be unnecessary to enumerate or mention them generally or specifically.

History: 1941 Comp., § 75-133, enacted by Laws 1947, ch. 203, § 8; 1953 Comp., § 70-1-33.

47-1-35. [Conveyance or mortgage to joint tenants.]

In a conveyance or mortgage of real estate, the designation of two or more grantees "as joint tenants" shall be construed to mean that the conveyance is to the grantees as

joint tenants, and not as tenants in common, and to the survivor of them and the heirs and assigns of the survivor.

History: 1941 Comp., § 75-134, enacted by Laws 1947, ch. 203, § 9; 1953 Comp., § 70-1-34.

47-1-36. Joint tenancies defined; creation.

A joint tenancy in real property is one owned by two or more persons, each owning the whole and an equal undivided share, by a title created by a single devise or conveyance, when expressly declared in the will or conveyance to be a joint tenancy, or by conveyance from a sole owner to himself and others, or from tenants in common to themselves, or to themselves and others, or from husband and wife when holding as community property or otherwise to themselves or to themselves and others, when expressly declared in the conveyance to be a joint tenancy, or when granted or devised to executors or trustees.

History: 1953 Comp., § 70-1-34.1, enacted by Laws 1971, ch. 220, § 1.

47-1-37. [Effect of warranty covenants in conveyances.]

In a conveyance of real estate the words, "warranty covenants" shall have the full force, meaning and effect of the following words: "the grantor for himself, his heirs, executors, administrators and successors, covenants with the grantee, his heirs, successors and assigns, that he is lawfully seized in fee simple of the granted premises; that they are free from all former and other grants, bargains, sales, taxes, assessments and encumbrances of what kind and nature soever; that he has good right to sell and convey the same; and that he will, and his heirs, executors, administrators and successors shall warrant and defend the same to the grantee and his heirs, successors and assigns forever against the lawful claims and demands of all persons."

History: 1941 Comp., § 75-135, enacted by Laws 1947, ch. 203, § 10; 1953 Comp., § 70-1-35.

47-1-38. [Effect of special warranty covenants in conveyances.]

In a conveyance of real estate the words "special warranty covenants" shall have the full force, meaning and effect of the following words: "the grantor for himself, his heirs, executors, administrators and successors, covenants with the grantee, his heirs, successors and assigns that the granted premises are free from all enucumbrances [encumbrances] made by the grantor, and that he will, and his heirs, executors, administrators and successors shall warrant and defend the same to the grantee and his heirs, successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under the grantor, but against none other."

History: 1941 Comp., § 75-136, enacted by Laws 1947, ch. 203, § 11; 1953 Comp., § 70-1-36.

47-1-39. [Mortgage or deed of trust provisions; effect.]

A deed in substance following the forms entitled "mortgage" or "deed of trust" shall when duly executed have the force and effect of a mortgage or deed of trust by way of mortgage to the use of the mortgagee and his heirs and assigns with mortgage covenants and upon statutory mortgage condition as defined in the following two sections to secure the payment of the money or the performance of any obligation therein specified. The parties may insert in such mortgage any other lawful agreement or condition.

History: 1941 Comp., § 75-137, enacted by Laws 1947, ch. 203, § 12; 1953 Comp., § 70-1-37.

47-1-40. [Construction of "mortgage covenants".]

In a mortgage or deed of trust by way of mortgage of real estate "mortgage covenants" shall have the full force and meaning and effect of the following words and shall be applied and construed accordingly: "the mortgagor for himself, his heirs, executors, administrators and successors, covenants with the mortgagee and his heirs, successors and assigns that he is lawfully seized in fee simple of the granted premises; that they are free from all encumbrances; that the mortgagor has good right to sell and convey the same; and that he will, and his heirs, executors, administrators and successors shall, warrant and defend the same to the mortgagee and his heirs, successors and assigns forever against the lawful claims and demands of all persons."

History: 1941 Comp., § 75-138, enacted by Laws 1947, ch. 203, § 13; 1953 Comp., § 70-1-38.

47-1-41. Construction of "statutory mortgage condition".

In a mortgage or deed of trust by way of mortgage of real estate the words, "statutory mortgage condition" shall have the full force, meaning and effect of the following words and shall be applied and construed accordingly: "in the event any of the following terms, conditions or obligations are broken by the mortgagor, this mortgage (or deed of trust) shall thereupon at the option of the mortgagee, be subject to foreclosure and the premises may be sold in the manner and form provided by law, and the proceeds arising from the sale thereof shall be applied to the payment of all indebtedness of every kind owing to the mortgagee by virtue of the terms of this mortgage or by virtue of the terms of the obligation or obligations secured hereby:

A. mortgagor shall pay or perform to mortgagee or his executors, administrators, successors or assigns all amounts and obligations as provided in the obligation secured

hereby and in the manner, form, and at the time or times provided in the obligation or in any extension thereof;

B. mortgagor shall perform the conditions of any prior mortgage, encumbrance, condition or covenant;

C. mortgagor shall pay when due and payable all taxes, charges, and assessments to whomsoever and whenever laid or assessed upon the mortgaged premises or on any interest therein;

D. mortgagor shall, during the continuance of the indebtedness secured hereby keep all buildings on the mortgaged premises in good repair and shall not commit or suffer any strip or waste of the mortgaged premises;

E. mortgagor shall pay when due all state and federal grazing lease fees; and

F. mortgagor shall keep the buildings on the mortgaged premises insured in the sum specified and against the hazards specified in the mortgage for the benefit of the mortgagee and his executors, administrators, successors and assigns. The insurance shall be in such form and in such insurance companies as the mortgagee shall approve. Mortgagor shall deliver the policy or policies to the mortgagee and at least two days prior to the expiration of any policy on the premises shall deliver to mortgagee a new and sufficient policy to take the place of the one so expiring. In the event of the failure or refusal of the mortgagor to keep in repair the buildings on the mortgaged premises; or to keep the premises insured, or to deliver the policies of insurance, as provided; or to pay taxes and assessments, or to perform the conditions of any prior mortgage, encumbrance, covenant or condition, or to pay state and federal grazing lease fees, the mortgagee and its executors, administrators, successors or assigns may, at his option, make such repairs, or procure such insurance, or pay such taxes or assessments, or pay such state and federal grazing lease fees, or perform such conditions and all monies thus paid or expenses thus incurred shall be payable by the mortgagor on demand and shall be so much additional indebtedness secured by the mortgage."

History: 1941 Comp., § 75-139, enacted by Laws 1947, ch. 203, § 14; 1953 Comp., § 70-1-39; Laws 1969, ch. 108, § 1.

47-1-42. [Sheriff designated as successor trustee.]

It shall be unnecessary to recite in any deed of trust given by way of mortgage that in the case of the resignation, refusal, failure or inability of the trustee named therein at any time to act, the then acting sheriff of the county in which said real estate is situate shall be successor trustee with like powers to those of the named trustee; but the same shall be implied in any such deed of trust unless a contrary intention appears therefrom.

History: 1941 Comp., § 75-140, enacted by Laws 1947, ch. 203, § 15; 1953 Comp., § 70-1-40.

47-1-43. [Verb "assign" sufficient to transfer interest.]

In an assignment of a mortgage or deed of trust by way of mortgage of real estate the word "assign" shall be a sufficient word to transfer the mortgage or the beneficial interest under deed of trust, without the words, "transfer and set over."

History: 1941 Comp., § 75-141, enacted by Laws 1947, ch. 203, § 16; 1953 Comp., § 70-1-41.

47-1-44. Conveyancing forms.

(1) WARRANTY DEED

....., for consideration paid, grant ..... to ....., whose address is ....., the following described real estate in ..... county, New Mexico:

(description)

with warranty covenants.

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(2) WARRANTY DEED (JOINT TENANTS)

....., for consideration paid, grant ..... to ....., whose address is ....., and ....., whose address is ....., as joint tenants the following [described] real estate in ..... county, New Mexico:

(description)

with warranty covenants.

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(3) QUITCLAIM DEED

....., for consideration paid, quitclaim ..... to ....., whose address is ....., the following described real estate in ..... county, New Mexico:

(description)

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(4) QUITCLAIM DEED (JOINT TENANTS)

....., for consideration paid quitclaim ..... to ....., whose address is ....., and ....., whose address is ....., as joint tenants the following described real estate in ..... county, New Mexico:

(description)

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(5) SPECIAL WARRANTY DEED

....., for consideration paid, grant ..... to ....., whose address is ....., the following described real estate in ..... county, New Mexico:

(description)

with special warranty covenants.

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(6) MORTGAGE

....., for consideration paid, grant ..... to ....., whose address is ....., the following described real estate in ..... county, New Mexico:

(description)

with mortgage covenants.

This mortgage secures the performance of the following obligation:

(Here attach copy of or summarize note or other obligation)

and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law. The amount specified for insurance as provided in the statutory mortgage condition is $ ... and the hazard ..... to be insured against ..... fire ...

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(7) DEED OF TRUST

....., for consideration paid, grant ..... to ....., whose address is ....., as trustee for ....., whose address is ....., beneficiary, the following described real estate in ..... county, New Mexico:

(description)

with mortgage covenants.

This deed of trust secures the performance of the following obligation:

(Here attach copy of or summarize note or other obligation)

and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law. The amount specified for insurance as provided in the statutory mortgage condition is $ ..., and the hazard ..... to be insured against ..... fire .....

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(8) RELEASE OF MORTGAGE

....., mortgagee ..... under a certain mortgage executed by ....., on the ..... day of ....., 19 ..., and recorded in Book ... page ... of the records of ..... county, New Mexico, do ..... hereby discharge all of the real estate mentioned in said mortgage from the lien and operation thereof.

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(9) PARTIAL RELEASE OF MORTGAGE

....., mortgagee ..... under a certain mortgage executed by ..... on the ..... day of ....., 19 ..., and recorded in Book ..., page ... of the records of ..... county, New Mexico, do ..... hereby discharge the following portion only of the real estate described in said mortgage:

(description)

from the lien and operation thereof.

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(10) RELEASE OF DEED OF TRUST

....., trustee under a certain deed of trust executed by ..... on the ..... day of ....., 19 ..., and recorded in Book ... , page ... of the records of ..... county, New Mexico, does hereby, at the written request of the beneficiary of said deed of trust, discharge all of the real estate mentioned in said deed of trust from the lien and operation thereof.

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(11) PARTIAL RELEASE OF DEED OF TRUST

....., trustee under a certain deed of trust executed by ..... on the ..... day of ....., 19 ..., and recorded in Book ... page ... of the records of ..... county, New Mexico does hereby, at the written request of the beneficiary of said deed of trust discharge the following portion only of the real estate described in said deed of trust.

(description)

from the lien and operation thereof.

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(12) ASSIGNMENT OF MORTGAGE

....., holder ..... of a mortgage from ..... to ..... dated ..... and recorded in Book ... page ... of the records of ..... county, New Mexico, hereby assign ..... said mortgage and the obligation secured thereby to [.....], whose address is .....

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

(13) ASSIGNMENT OF DEED OF TRUST

....., beneficiary ..... of a deed of trust from ..... to ....., trustee for the undersigned dated ..... and recorded in Book ... page ... of the records of ..... county, New Mexico, hereby assign ..... the beneficial interest under said deed of trust and the obligation secured thereby to ....., whose address is .....

Witness ..... hand ..... and seal ..... this ..... day of ....., 19 ...

..... (Seal)

(Here add acknowledgment(s))

History: 1941 Comp., § 75-142, enacted by Laws 1947, ch. 203, Appx.; 1953 Comp., § 70-1-42; Laws 1975, ch. 135, § 1.

47-1-45. [Real estate brokerage agreements required to be in writing.]

Any agreement entered into subsequent to the first day of July, 1949, authorizing or employing an agent or broker to purchase or sell lands, tenements or hereditaments or any interest in or concerning them, for a commission or other compensation, shall be void unless the agreement, or some memorandum or note thereof shall be in writing and signed by the person to be charged therewith, or some other person thereunto by him lawfully authorized. No such agreement or employment shall be considered exclusive unless specifically so stated therein.

History: 1941 Comp., § 75-143, enacted by Laws 1949, ch. 19, § 1; 1953 Comp., § 70-1-43.

47-1-46. [Real estate descriptions by reference to recorded instruments.]

Any deed, mortgage, pleading in court or other instrument affecting real estate may describe such real estate by reference to the description thereof contained in or shown by one or more maps, plats, descriptions, deeds, mortgages or other instruments of record in the office of the county clerk of the county in which the affected real estate is located, and such instrument containing such description or descriptions by reference shall be legally sufficient for all purposes to the same extent as if the description or descriptions referred to therein had been fully set forth therein; provided, that the instrument containing any such description by reference must show the time and place of filing or recordation of the instrument containing the description referred to, or other similar information, so that said instrument containing the description referred to can be located and identified.

History: 1941 Comp., § 75-123, enacted by Laws 1943, ch. 90, § 1; 1953 Comp., § 70-1-44.

47-1-47. [Recovery of realty donated to state or municipality for specific purposes.]

Whenever real estate has been deeded to the state of New Mexico or any municipality thereof as a gift or donation, and without payment by the state or municipality of any money consideration, said real estate to be used for a specific purpose, and said real estate has not been used for the specific purpose for which it was conveyed, for a period of five years from the date of the original deed, or for a period of five years next preceding the time of the filing of the action herein provided for, it shall be lawful for the donor or donors, or their successors in interest, to institute an action in state district court of the county in which said real estate is situate, against the state of New Mexico or said municipality, for the recovery of said real estate by said donors or their successors in interest, or for the cancellation of said deed or deeds whereby the state or municipality took title, and if the court shall determine that said real estate has not been used for the specific purpose for which it was donated as hereinbefore provided, it shall render judgment decreeing ownership of said real estate in the donors or their successors in interest, or for cancellation of the deeds to said state or municipality.

History: 1941 Comp., § 75-124, enacted by Laws 1947, ch. 123, § 1; 1953 Comp., § 70-1-45.

47-1-48. [Rules applicable; service of process.]

Such an action as provided for in Section 1 [47-1-47 NMSA 1978] hereof shall be governed by the rules of pleading, practice and procedure applying to civil actions. Service of process therein shall be made upon the attorney general of the state of New Mexico for the state of New Mexico, and upon the mayor of the municipality for the municipality, as the case may be.

History: 1941 Comp., § 75-125, enacted by Laws 1947, ch. 123, § 2; 1953 Comp., § 70-1-46.

47-1-49. New Mexico coordinate system; zones.

The system of plane coordinates which has been established by the national ocean survey and national geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of New Mexico shall be known and designated as the "New Mexico coordinate system". As used in Section 47-1-49 through 47-1-56 NMSA 1978, the term "New Mexico coordinate system" includes both the New Mexico coordinate system of 1927 and the New Mexico coordinate system of 1983.

For the purpose of the use of this system, the state is divided into an "east zone", "central zone" and a "west zone".

The area now included in the following counties shall constitute the east zone: Chaves, Colfax, Curry, DeBaca, Eddy, Guadalupe, Harding, Lea, Mora, Quay, Roosevelt, San Miguel and Union.

The area now included in the following counties shall constitute the central zone: Bernalillo, Dona Ana, Lincoln, Otero, Rio Arriba, Sandoval, Santa Fe, Los Alamos, Socorro, Taos, Torrance and Valencia.

The area now included in the following counties shall constitute the west zone: Catron, Cibola, Grant, Hidalgo, Luna, McKinley, San Juan and Sierra.

History: 1953 Comp., § 70-1-47, enacted by Laws 1957, ch. 147, § 1; 1989, ch. 104, § 1.

47-1-50. Zone designations.

As established for use in the east zone, the New Mexico coordinate system shall be named and in any land description in which it is used it shall be designated the "New Mexico coordinate system of 1927, east zone" or the "New Mexico coordinate system of 1983, east zone".

As established for use in the central zone, the New Mexico coordinate system shall be named and in any land description in which it is used it shall be designated the "New Mexico coordinate system of 1927, central zone" or the "New Mexico coordinate system of 1983, central zone".

As established for use in the west zone, the New Mexico coordinate system shall be named and in any land description in which it is used it shall be designated the "New Mexico coordinate system of 1927, west zone [zone"] or the "New Mexico coordinate system of 1983, west zone".

History: 1953 Comp., § 70-1-48, enacted by Laws 1957, ch. 147, § 2; 1989, ch. 104, § 2.

47-1-51. Plane coordinates, x and y; definition.

The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of the point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of a foot when using the New Mexico coordinate system of 1927 and expressed in meters and decimals of a meter when using the New Mexico coordinate system of 1983. One of these distances, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinates, on the New Mexico coordinate system, of the horizontal control stations of the national ocean survey and national geodetic survey within the state, as those coordinates have been determined by the survey. The length of one foot expressed in meters is equal to 1200 divided by 3937 exactly.

History: 1953 Comp., § 70-1-49, enacted by Laws 1957, ch. 147, § 3; 1989, ch. 104, § 3.

47-1-52. Description of land located in more than one zone.

When any tract of land to be defined by a single description extends from one into another of the coordinate zones as provided in Section 47-1-49 NMSA 1978, the positions of all points on its boundaries may be referred to either of the zones; the zone which is used shall be specifically named in the description.

History: 1953 Comp., § 70-1-50, enacted by Laws 1957, ch. 147, § 4; 1989, ch. 104, § 4.

47-1-53. Definition of coordinate system according to U.S. coast and geodetic survey [national ocean survey and national geodetic survey].

A. For purposes of more precisely defining the New Mexico coordinate system, the following definition by the national ocean survey and national geodetic survey is adopted:

(1) the New Mexico coordinate system, east zone, is a transverse mercator projection having a central meridian 104° 20' west of Greenwich, on which meridian the scale is set at one part in 11,000 too small. The origin of coordinates is at the intersection of the meridian 104° 20' west of Greenwich and the parallel 31° 00' north latitude;

(2) the New Mexico coordinate system, central zone, is a transverse mercator projection having a central meridian 106° 15' west of Greenwich, on which meridian the scale is set at one part in 10,000 too small. The origin of coordinates is at the intersection of the meridian 106° 15' west of Greenwich and the parallel 31° 00' north latitude;

(3) the New Mexico coordinate system, west zone, is a transverse mercator projection having a central meridian 107° 50' west of Greenwich, on which meridian the scale is set at one part in 12,000 too small. The origin of coordinates is at the intersection of the meridian 107° 50' west of Greenwich and the parallel 31° 00' north latitude; and

(4) the origin for each zone is assigned the coordinates: x = 500,000 feet and y = 0 feet for the New Mexico coordinate system of 1927. The origin for the east zone is assigned to the coordinates: x = 165,000 meters and y = 0 meters, for the central zone x = 500,000 meters and y = 0 meters and for the west zone x = 830,000 meters and y = 0 meters for the New Mexico coordinate system of 1983.

B. The position of the New Mexico coordinate system shall be as marked on the ground by horizontal control stations established in conformity with standards adopted by the national ocean survey and national geodetic survey for first-order, second-order and third-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927 or of 1983, and whose coordinates have been computed on the system defined in this section. Any such station may be used for establishing a survey connection with the New Mexico coordinate system.

History: 1953 Comp., § 70-1-51, enacted by Laws 1957, ch. 147, § 5; 1989, ch. 104, § 5.

47-1-54. Recordation of land description based on coordinate system; limitation.

No coordinates based on the New Mexico coordinate system, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within eight kilometers of a monumented horizontal control station established by and for and for which coordinate data has been published by an agency of the state of New Mexico or a political subdivision of the state or established in conformity with the standards of accuracy and specifications for first-, second- or third- order geodetic surveying as prepared and published by the federal geodetic control committee of the United States department of

commerce. Standards and specifications of the federal geodetic control committee or its successor in force on the date of the geodetic survey shall apply. The publication of the existing control stations, or the acceptance with intent to publish the newly established control stations by the national ocean survey and national geodetic survey, shall constitute evidence of adherence to the federal geodetic control committee's specifications. The limitations of this section may be further modified by the secretary of highway and transportation.

History: 1953 Comp., § 70-1-52, enacted by Laws 1957, ch. 147, § 6; 1970, ch. 36, § 1; 1977, ch. 247, § 180; 1989, ch. 104, § 6.

47-1-55. [Use on maps, reports of survey or other documents.]

The use of the term "New Mexico coordinate system" on any map, report of survey or other document, shall be limited to coordinates based on the New Mexico coordinate system as defined.

History: 1953 Comp., § 70-1-53, enacted by Laws 1957, ch. 147, § 7.

47-1-56. Use of coordinate system.

For the purpose of describing the location of any survey station or land boundary corner in the state of New Mexico, it shall be considered a complete, legal and satisfactory description of such location to give the position of said survey state or land boundary corner on the system of coordinates defined in Sections 47-1-49 through 47-1-56 NMSA 1978.

Nothing contained in those sections shall require a purchaser or mortgagee of real property to rely wholly on a land description, any part of which depends exclusively upon the New Mexico coordinate system.

Where conflicts arise in the location of a corner or other boundary element when such corner or element's location is described in both the conventional system and the New Mexico coordinate system, the description providing the most certain location shall be used.

History: 1978 Comp., § 47-1-56, enacted by Laws 1989, ch. 104, § 7.

47-1-57. Use of scrivener's-error affidavits.

A. As used in this section, "scrivener's-error affidavit" means an affidavit to correct a minor drafting or clerical error or omission in a recorded instrument, including:

(1) a legal description, such as the omission of one or more words;

(2) the name of a subdivision;

(3) the recording information for a plat;

(4) a metes and bounds description or sectionalized legal description; provided that the description shall reference a recorded instrument reflecting the correct description, if available;

(5) the spelling of a name;

(6) a middle initial, if incorrect or missing;

(7) a grantor's or grantee's address, if omitted in a recorded instrument;

(8) a party's marital status;

(9) a missing exhibit or addendum; or

(10) the legal type or state of domicile of a corporation or other legal entity.

B. A scrivener's-error affidavit shall be executed by only the following:

(1) for an error or omission on a recorded instrument involving real property:

(a) the licensed attorney who prepared the original instrument;

(b) the employee of the title insurer or title insurance agent who completed the form of the original instrument;

(c) an employee of a title insurer or title insurance agent licensed pursuant to the New Mexico Title Insurance Law [Chapter 59A, Article 30 NMSA 1978];

(d) a land professional who is certified or registered by a nationally recognized land professional organization and who filled in the form or provided the description for the original instrument; or

(e) a licensed attorney who has examined title to the property and discovered discrepancies in the description in a chain of title that are reasonably apparent to the attorney to be a minor drafting or clerical error or omission; and

(2) for an error on a power of attorney:

(a) a licensed attorney who represents the principal or grantor of the original instrument; or

(b) the principal or grantor of the original instrument.

C. A scrivener's-error affidavit shall:

(1) state that the affiant has actual knowledge of and is competent to testify to the facts in the affidavit and contain an acknowledgment that the affiant is testifying under the penalty of perjury;

(2) be sworn to and acknowledged by the affiant before a person authorized to administer an oath under New Mexico law;

(3) conspicuously identify in its title that it is a "scrivener's affidavit" or "scrivener's-error affidavit"; and

(4) contain the following information concerning the original instrument being corrected:

(a) the name of the person who or entity that prepared, completed or was associated with the original instrument;

(b) the names and capacities of all parties to the original instrument;

(c) the recording information, including the recording date and document, instrument or reception number, if available, of the original instrument;

(d) a brief description of each error in the original instrument that the affidavit is designed to correct; and

(e) the correct information to be inserted or reflected in or the information to be removed from the original instrument.

D. A scrivener's-error affidavit that substantially complies with this section as to form and execution shall be:

(1) recorded by the county clerk in the land records of the county in which the real property is located;

(2) indexed by the county clerk in the general index under the names of the original parties to the instrument as they are identified in the affidavit;

(3) admissible as evidence to the same extent as a deed or other recorded instrument in an action involving the original instrument to which it relates or the title to the real property affected by the original instrument; and

(4) effective as of the date of the original instrument being corrected.

E. Nothing contained in this section shall be deemed to:

(1) prohibit any other manner of correcting errors in any writings affecting title to real estate by any other lawful means such as corrective deeds, additional deeds to correct errors or modifications to mortgages or deeds of trust; or

(2) require a change to the records of the county assessor or the county treasurer.

F. A scrivener's-error affidavit shall be prepared in substantially the following form:

"SCRIVENER'S-ERROR AFFIDAVIT

I, _____ ("Affiant"), being first duly sworn, state under oath:

1. I am duly authorized to execute this Affidavit, have actual knowledge of the matters set forth within this Affidavit and am competent to testify in a court of law about the facts stated in this Affidavit.

2. I am eligible and qualified under New Mexico law to be the Affiant of this Scrivener's-Error Affidavit because of the following facts:

[Explain qualifications for eligibility]

3. The instrument containing the error that this Affidavit intends to correct is as follows:

"Original Instrument" [Describe the instrument containing the error]

4. The purpose of this Affidavit is to provide notice of the scrivener's error described in this Affidavit and to correct the Original Instrument.

5. The Original Instrument was prepared by, completed by or associated with: _____.

6. The names and capacities of the parties to the Original Instrument are:
_____
_____

7. The recording information, including the recording date and document, instrument or reception number for the Original Instrument, is as follows: Date of Recording _____

Recording information

_____, in the real property records of _____ County, New Mexico.

8. A brief description of each error in the Original Instrument that this Affidavit is designed to correct:

_____
_____

9. The correct information to be inserted or reflected in or the information to be removed from the Original Instrument is as follows:

_____
_____

10. This Affidavit is made under penalty of perjury.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this _____ day of _____, 20___.

_____

Name: _____

Company Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

This instrument was subscribed, sworn to and acknowledged on this _____ day of _____, 20___ by _____, as _____ of _____.

_____

Notary Public

(Seal)

My commission number: _____

My commission expires: _____".

History: Laws 2016, ch. 67, § 1; 2023, ch. 153, § 1.

ARTICLE 1A
Uniform Vendor and Purchaser Risk Act

47-1A-1. Short title.

This act [47-1A-1 to 47-1A-2 NMSA 1978] may be cited as the "Uniform Vendor and Purchaser Risk Act".

History: Laws 1997, ch. 36, § 1.

47-1A-2. Risk of loss.

A contract made after the effective date of the Uniform Vendor and Purchaser Risk Act for the purchase and sale of real estate shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

A. if, when neither the legal title nor the possession of the subject matter of the contract have been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that has been paid; or

B. if, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that has been paid.

History: Laws 1997, ch. 36, § 2.

ARTICLE 2
Real Estate Trusts

47-2-1. Short title.

Sections 1 through 6 [47-2-1 to 47-2-6 NMSA 1978] of this act may be cited as the "Real Estate Trust Act".

History: 1953 Comp., § 70-6-1, enacted by Laws 1973, ch. 390, § 1.

47-2-2. Definitions.

As used in the Real Estate Trust Act:

A. "real estate trust" means an unincorporated business trust organized and operated in conformity with the Real Estate Trust Act;

B. "declaration" means the written document establishing the real estate trust and all subsequent amendments to that document;

C. "trustees" means those natural persons designated as trustees in the declaration, and their successors in office;

D. "beneficial owners" means those persons who hold the beneficial interest in the real estate trust;

E. "real estate assets" means real property, real estate mortgages, real estate contracts, leasehold interests in real property and shares of beneficial interests in other real estate trusts, foreign or domestic, whether or not organized under the Real Estate Trust Act;

F. "real estate mortgages" includes all forms of liens on real property and all transfers of real property for security purposes, including deeds of trust;

G. "real estate contracts" means any contractual obligation for the sale and conveyance, or purchase and receipt of conveyance, of real property, subject to the terms and conditions of the contract; and

H. "trust estate" means the money, property and assets of a real estate trust.

History: 1953 Comp., § 70-6-2, enacted by Laws 1973, ch. 390, § 2.

47-2-3. Organization of real estate trusts.

A real estate trust is established by filing for record with the clerk of the county in which its principal office in this state is located a declaration signed by all of its trustees, which must be at least three in number, and acknowledged before a notary public, which states:

A. that the real estate trust is organized and will be operated in conformity with the Real Estate Trust Act;

B. that the real estate trust has been established to invest in real estate assets and to pay over the net income and profits of the trust estate to the beneficial owners;

C. the location of the principal office of the real estate trust in this state and its mailing address;

D. the name, business address and the residential address of each trustee;

E. the period during which trustees shall hold office and the manner in which they shall be succeeded in office;

F. the number of units into which the beneficial ownership of the trust estate is to be divided and a description of the rights and privileges inuring to the holder of each unit;

G. that the real estate trust will not invest in any asset or take any other investment action unless its beneficial owners number more than one hundred persons, nor while any five of its beneficial owners own, directly or indirectly, an aggregate of more than fifty percent of the real estate trust; and

H. any other provisions for the regulation of the affairs of the real estate trust that the trustees elect to set forth in the declaration.

History: 1953 Comp., § 70-6-3, enacted by Laws 1973, ch. 390, § 3.

47-2-4. Operation of real estate trusts.

A. Except as limited or reserved to the beneficial owners by the declaration, the trustees are vested with the authority for the control, operation, disposition, investment, reinvestment and management of the trust estate.

B. The action of a majority of the trustees is the action of the real estate trust except as otherwise provided by the declaration.

C. Trustees shall hold office and be succeeded in office as provided by the declaration, but no successor may act as trustee until he has filed for record with the clerk of the county in which the principal office of the real estate trust is located a document, signed by him and acknowledged before a notary public, by which he assumes the obligations of trustee as provided in the declaration.

D. Any legal process, notice or demand required or permitted by law to be served upon a real estate trust may be served upon any trustee currently in office, or upon the person in charge of the principal office of the trust in this state.

E. The trustees shall cause the real estate trust to maintain complete books of account, records, and memoranda reflecting the financial and other activities of the real estate trust, the decisions of the trustees, the name and address of persons who are beneficial owners of the trust, and the number of units held by each. These documents shall be open for inspection and copying by any beneficial owner at any reasonable time for any good faith purpose related to the interest of the beneficial owner. The trustees shall cause current financial statements of the real estate trust to be transmitted annually to the beneficial owners. These statements shall reflect the assets, liabilities and operations of the real estate trust and be prepared in accordance with generally accepted accounting principles.

History: 1953 Comp., § 70-6-4, enacted by Laws 1973, ch. 390, § 4.

47-2-5. Powers of real estate trusts.

Unless specifically limited by the declaration, a real estate trust has the power, exercisable in the trust name to:

A. have perpetual succession;

B. sue, be sued, complain and defend;

C. purchase, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with any real or personal property or any interest therein, wherever situated;

D. sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the trust estate;

E. purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with securities, shares, or other interests in, or obligations of, individuals, domestic or foreign corporations, associations, partnerships, other real estate trusts, direct or indirect obligations of the United States or of any other government, state, territory, government district or municipality, or of any instrumentality thereof;

F. issue units of beneficial ownership in the real estate trust in exchange for money, property or services; evidence the units by certificates; and to purchase, redeem or otherwise reacquire the units;

G. make contracts and incur liabilities, borrow money, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of the trust estate;

H. conduct its business, carry on its operations, and have offices and exercise the powers granted by the Real Estate Trust Act in any state, territory, district or possession of the United States, or in any foreign country;

I. make and amend bylaws, not inconsistent with its declaration or with the laws of this state, for the administration and regulation of the affairs of the real estate trust;

J. amend or restate its declaration in conformity with the Real Estate Trust Act by having the amendment or restatement signed by all of the trustees and acknowledged before a notary public, and by filing it for record with the clerk of the county in which the principal office of the real estate trust in this state is located;

K. appoint officers, agents and employees to administer the trust estate; and

L. take any action necessary or appropriate to exercise the powers granted to a real estate trust.

History: 1953 Comp., § 70-6-5, enacted by Laws 1973, ch. 390, § 5.

47-2-6. Real estate trusts; general provisions.

A. A real estate trust is a separate legal entity and solely responsible for its debts and obligations. No trustee or beneficial owner, solely because of that status, shall be individually liable for the acts, omissions, debts or obligations of the real estate trust, except for his own bad faith, willful misfeasance, gross negligence, or reckless disregard of his duties.

B. Certificates evidencing units of beneficial ownership in a real estate trust are investment securities within the meaning of the Uniform Commercial Code [Chapter 55 NMSA 1978] and within the meaning of state and federal securities laws.

C. The conduct of the trustees in relation to the real estate trust, to the trust estate, and to the beneficial owners, shall be judged by the fiduciary responsibilities of trustees of a business trust.

D. Any existing trust and a real estate trust having its principal place of business in another state may, but need not, adopt the provisions of the Real Estate Trust Act by filing for record a document conforming to the act with the clerk of the county in which the principal office of the real estate trust in this state is located.

History: 1953 Comp., § 70-6-6, enacted by Laws 1973, ch. 390, § 6.

ARTICLE 3
Solar Rights

47-3-1. Short title.

Sections 47-3-1 through 47-3-5 NMSA 1978 may be cited as the "Solar Rights Act".

History: 1953 Comp., § 70-8-1, enacted by Laws 1977, ch. 169, § 1; 2007, ch. 232, § 2.

47-3-2. Declaration and findings.

The legislature declares that the state of New Mexico recognizes that economic benefits can be derived for the people of the state from the use of solar energy. Operations, research, experimentation and development in the field of solar energy use shall therefore be encouraged. While recognizing the value of research and development of solar energy use techniques and devices by governmental agencies, the legislature finds and declares that the actual construction and use of solar devices,

whether at public or private expense, is properly a commercial activity which the law should encourage to be carried out, whenever practicable, by private enterprise.

History: 1953 Comp., § 70-8-2, enacted by Laws 1977, ch. 169, § 2.

47-3-3. Definitions.

As used in the Solar Rights Act:

A. "solar collector" means a device, substance or element, or a combination of devices, substances or elements, that relies upon sunshine as an energy source and that is capable of collecting not less than twenty-five thousand British thermal units on a clear winter solstice day or that is used for the conveyance of light to the interior of a building. The term also includes any device, substance or element that collects solar energy for use in:

(1) the heating or cooling of a structure or building;

(2) the heating or pumping of water;

(3) industrial, commercial or agricultural processes; or

(4) the generation of electricity. A solar collector may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

B. "solar right" means a right to an unobstructed line-of-sight path from a solar collector to the sun, which permits radiation from the sun to impinge directly on the solar collector.

History: 1953 Comp., § 70-8-3, enacted by Laws 1977, ch. 169, § 3; 2007, ch. 232, § 3.

47-3-4. Declaration of solar rights.

A. The legislature declares that the right to use the natural resource of solar energy is a property right, the exercise of which is to be encouraged and regulated by the laws of this state. Such property right shall be known as a solar right.

B. The following concepts shall be applicable to the regulation of disputes over the use of solar energy where practicable:

(1) "beneficial use." Beneficial use shall be the basis, the measure and the limit of the solar right, except as otherwise provided by written contract. If the amount of solar energy which a solar collector user can beneficially use varies with the season of the year, then the extent of the solar right shall vary likewise;

(2) "prior appropriation." In disputes involving solar rights, priority in time shall have the better right except that the state and its political subdivisions may legislate, or ordain that a solar collector user has a solar right even though a structure or building located on neighborhood property blocks the sunshine from the proposed solar collector site. Nothing in this paragraph shall be construed to diminish in any way the right of eminent domain of the state or any of its political subdivisions or any other entity that currently has such a right; and

(3) "transferability." Solar rights shall be freely transferable within the bounds of such regulation as the legislature may impose. The transfer of a solar right shall be recorded in accordance with Chapter 14, Article 9 NMSA 1978.

C. Unless a singular overriding state concerns occur which significantly affect the health and welfare of the citizens of this state, permit systems for the use and application of solar energy shall reside with county and municipal zoning authorities.

History: 1953 Comp., § 70-8-4, enacted by Laws 1977, ch. 169, § 4.

47-3-5. Prior rights unaffected.

Nothing in the Solar Rights Act shall be construed to alter, amend, deny, impair or modify any solar right, lease, easement or contract right which has vested prior to the effective date of the Solar Rights Act.

History: 1953 Comp., § 70-8-5, enacted by Laws 1977, ch. 169, § 5.

47-3-6. Short title.

This act [47-3-6 to 47-3-12 NMSA 1978] may be cited as the "Solar Recordation Act".

History: Laws 1983, ch. 233, § 1.

47-3-7. Legislative findings and declaration.

The legislature finds that in view of the present energy crisis, all renewable energy sources must be encouraged for the benefit of the state as a whole. The legislature further finds that solar energy is a viable energy source in New Mexico, and as such, its development should be encouraged. Since solar energy may be used in small-scale installations and one of the ways to accomplish such encouragement is by protection of rights necessary for small-scale installations, the legislature declares such protection to be the purpose of the Solar Recordation Act and necessary to the public interest.

History: Laws 1983, ch. 233, § 2.

47-3-8. Method of claiming; effect; limitations.

A solar right may be claimed by an owner of real property upon which a solar collector, as defined in Subsection A of Section 47-3-3 NMSA 1978, has been placed. Once vested, the right shall be enforceable against any person who constructs or plans to construct any structure, in violation of the terms of the Solar Rights Act [47-3-1 to 47-3-5 NMSA 1978] or the Solar Recordation Act [47-3-6 to 47-3-12 NMSA 1978]. A solar right shall be considered an easement appurtenant, and a suit to enforce a solar right may be brought at law or in equity. The solar right shall be subject to the provisions of the Solar Recordation Act and the Solar Rights Act.

History: Laws 1983, ch. 233, § 3.

47-3-9. Recordation; effect of failure to record; contest.

A. Any person claiming a solar right shall record that right by filing a declaration in substantially the following form with the county clerk of each county in which is located any portion of the properties burdened by a solar right or any portion of the properties on which a solar right is claimed:

SOLAR RIGHT DECLARATION

..., owner of the real property described below, claims a solar right in favor of the following described real estate in ..... county, New Mexico:

(Description either by metes and bounds, if in a platted subdivision, by lot and block subdivision name, by middle Rio Grande conservancy district tract number or other adequate legal description.)

The following named persons have each received notification by certified mail evidenced by a return receipt signed by the named person, or if the address of any person was not known and could not be ascertained by reasonable diligence, or if a return receipt signed by the named person could not be obtained, then notification to that person shall be made by publication of a copy of this declaration, with the intended date of filing, at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the property for which the solar right is being claimed is located, the last publication of which was no less than ten days prior to the filing of this declaration:

(A listing of the names of the holders as shown in the records of the county clerk of any interest in property burdened by a claimed solar right, including owners, mortgagors, mortgagees, lessors, lessees, contract purchasers and contract owners or sellers, and a description, either by metes and bounds if in a platted subdivision, by lot and block and subdivision name, by middle Rio Grande conservancy district tract number or other adequate legal description, of that burdened property.)

The claimant has placed improvements on the land in the form of a solar collector, as shown by the attached survey or plot plan setting forth distances from lot lines and height from ground level of all solar collectors entitled to be recorded under the provisions of the Solar Recordation Act, Chapter ..., Article .. NMSA 1978 and setting forth the maximum height of a theoretical fence located at the property lines of the property on which the solar collector is located which will not interfere with the solar easement.

Notice is hereby given that by virtue of the Solar Recordation Act, Chapter ..., Article ... NMSA 1978, the holders of any interest in property described above as having been mailed notice must record a declaration, with the county clerk in each county in which solar right recordation has been filed, contesting the claimed solar right within sixty days, or the solar right shall be fully vested. Witness ..... hand and seal this ... day of ....., 19 ...

.....

(here add acknowledgment).

B. Any person desiring to claim a solar right must record that right and give notice to affected property owners as provided in the Solar Recordation Act as a necessary condition precedent to enforcing a solar right. Failure to so record and give notice shall constitute a jurisdictional defect and deprive any court of subject matter jurisdiction to enforce the solar right. However, nothing in this subsection shall apply to any solar right, lease, easement or contract right which has vested prior to the effective date of this subsection.

C. Any person who receives notice of the recordation may, within sixty days after receiving notice, file a declaration contesting the right, in the same manner and at the same place as the recordation was filed. If a declaration is filed contesting the claimed solar right, then the solar right shall not be enforceable against the property covered by the declaration unless agreed to by contract or ordered by a court of competent jurisdiction, and any claim of a solar right shall expire one year from the date of declaration unless the parties agree by contract to settle the solar rights dispute or unless court action has commenced by that date to establish the claim of the solar right.

History: Laws 1983, ch. 233, § 4.

47-3-10. Transfer.

Unless the document of conveyance otherwise specifies, upon the transfer of any realty on which a solar right exists or upon the transfer of any realty benefited by a filed declaration contesting a solar right, that solar right or declaration contesting the solar right shall be transferred with the realty and shall be enforceable by the vendee in the same manner and to the same extent to which it was enforceable by the vendor. A solar right is appurtenant to the real property upon which the solar collector is situated. Nothing in this section shall be construed to prevent a person from agreeing to

relinquish a solar right or a potential solar right. Nothing in this section shall affect any transfer of solar rights made prior to the effective date of the Solar Recordation Act pursuant to Paragraph (3) of Subsection B of Section 47-3-4 NMSA 1978 or any local solar rights ordinance.

History: Laws 1983, ch. 233, § 5.

47-3-11. Local authority.

A. Notwithstanding any other provisions of the Solar Recordation Act [47-3-6 to 47-3-12 NMSA 1978] or the Solar Rights Act [47-3-1 to 47-3-5 NMSA 1978], the governing body of a county or municipality may by ordinance regulate in whole or in part the claiming of solar rights in accordance with its powers to regulate zoning, planning and platting, and subdivisions; except that any solar right claimed pursuant to such local ordinance shall vest with respect to any property benefited or burdened by the solar right only after recordation as provided in Section 4 [47-3-9 NMSA 1978] of the Solar Recordation Act. Such local regulation shall not affect any solar right vested before the effective date of such ordinance, nor shall the local regulation affect any solar rights transfer which vested prior to the effective date of such ordinance. In the absence of the local regulation of solar rights, the following principles shall apply in addition to those set forth in the Solar Rights Act. If the property burdened by a solar right has or could have improvements constructed to a maximum height of twenty-four feet, then the solar right shall be limited, as to that burdened property, to protecting an unobstructed line-of-sight path from the solar collector to the sun only as to obstructions located on the burdened property which cast a shadow greater than the shadow cast by a hypothetical fence ten feet in height located on the property line of the property on which the solar collector is located. If the property burdened by a solar right has or could have improvements constructed in excess of twenty-four feet in height, but no greater than thirty-six feet, then the solar right shall be limited, as to that burdened property, to protecting an unobstructed line-of-sight path from the solar collector to the sun only as to obstructions located on the burdened property which cast a shadow greater than the shadow cast by a hypothetical fence fifteen feet in height located on the property line of the property on which the solar collector is located. No solar right shall be obtained against property which has or could have improvements constructed in excess of thirty-six feet in height unless so provided in a local ordinance or agreed to by contract. Unless otherwise provided by contract or local ordinance, a person may allow vegetation to grow or construct or plan to construct any improvement which obstructs the protected solar right so long as such obstruction does not block more than ten percent of the collectible solar energy between the hours of 9:00 a.m. and 3:00 p.m. Unless otherwise provided by contract or local ordinance, solar rights shall be protected between 9:00 a.m. and 3:00 p.m.

B. Nothing in the Solar Recordation Act shall be construed to limit any county or municipal ordinances concerning solar rights in effect prior to the effective date of this section.

History: Laws 1983, ch. 233, § 6.

47-3-12. Indexing.

A declaration filed pursuant to Section 4 [47-3-9 NMSA 1978] of the Solar Recordation Act shall be indexed by the county clerk in the grantees index under the names of the persons receiving notice in the declaration and in the grantors index under the name of the person filing the declaration.

History: Laws 1983, ch. 233, § 7.

ARTICLE 4
Abstracters

47-4-1. Definitions.

As used in this act [47-4-1 to 47-4-9 NMSA 1978]:

A. "person" includes individuals, firms, partnerships, associations, cooperatives and corporations; and

B. "abstracter's business" means the business of compiling or furnishing abstracts of title to any real estate within this state.

History: 1953 Comp., § 70-2-5, enacted by Laws 1963, ch. 307, § 1.

47-4-2. Requirements for bond.

A. No person shall conduct an abstracter's business without first entering into a bond to the state of New Mexico for the use and benefit of any person who shall sustain any loss or damage by reason of the failure of the abstracter to set out, or record, properly, any instrument, or other item of record, affecting the title to the real estate covered by the abstract.

B. The bond shall be with a surety company authorized to do business in this state and shall be in the penal sum of $7,500.00.

C. The bond shall be approved, as to the statutory amount, by the county clerk of the county in which the abstract business is to be conducted, and the county clerk shall record the bond. If an abstracter's business is to be conducted in more than one county, a separate bond, in the proper amount, shall be filed in each county.

History: 1953 Comp., § 70-2-6, enacted by Laws 1963, ch. 307, § 2.

47-4-3. Limitation of action on bond.

No suit shall be brought upon the bond, or against the surety, after six years from the date of the last certificate contained in the abstract.

History: 1953 Comp., § 70-2-7, enacted by Laws 1963, ch. 307, § 3.

47-4-4. Requirement of abstract plant.

No person shall conduct an abstracter's business unless the person owns, operates or controls an abstract plant consisting of tract indexes and other records, showing in brief comprehensive form, or full copy, all instruments of record or on file, affecting real estate in the county where he is bonded to transact business. The plant shall include an index, by name, covering district court and probate court records, transcripts of judgments, federal and state tax liens and other required information for the proper preparation of an abstract. The abstract plant may be maintained in bound books, looseleaf books, jackets, folders, on card files or film, or any other form or system, whether manual, mechanical, electronic or otherwise, or in any combination of such forms or systems. The abstract plant shall cover the period from twenty years prior to July 1, 1963, or twenty years prior to the date the abstracter commences business, whichever is later, up to date. The plant must also be currently maintained to include all daily filings in the county affecting real property.

History: 1953 Comp., § 70-2-8, enacted by Laws 1963, ch. 307, § 4.

47-4-5. Exemption from requirement of abstract plant for certain abstracters.

A. Every person who, on January 1, 1963, was actively engaged in the business of compiling or furnishing abstracts of title to real estate within any county in this state, shall be exempt from the requirement of having a twenty-year abstract plant in order to conduct an abstracters [abstracter's] business in such county, provided that an abstract plant is maintained on a current basis, commencing July 1, 1963.

B. There shall be excluded from the provisions of Section 4 [47-4-4 NMSA 1978] all persons exclusively engaged in the preparation of abstracts using only the records of the bureau of land management, commissioner of public lands, and/or bureau of Indian affairs.

History: 1953 Comp., § 70-2-9, enacted by Laws 1963, ch. 307, § 5.

47-4-6. Affidavit of requirement of compliance with requirement of abstract plant.

No person shall conduct an abstracter's business without first filing with the county clerk of the county where the business shall be conducted, an affidavit that such person has complied, and is complying, with the requirements for an abstract plant. The affidavit shall be filed on or before July 1 of each year and abstracter is required to file such an affidavit yearly.

History: 1953 Comp., § 70-2-10, enacted by Laws 1963, ch. 307, § 6.

47-4-7. Territorial limit on abstracters [abstracter's] business.

An abstracter who has filed the necessary bond and affidavit shall receive a certificate from the county clerk to the effect that the bond and affidavit have been recorded, and this certificate shall be evidence of the right and authority of the abstracter to conduct business in the county so long as he maintains, unimpaired, the surety on the bond and the necessary abstract plant. The certificate shall permit the abstracter to compile and furnish abstracts of title on property located in the county or counties for which the abstracter has the necessary abstract plant, provided that a bonded abstracter may compile and furnish abstracts for any county where there is no bonded abstracter.

History: 1953 Comp., § 70-2-11, enacted by Laws 1963, ch. 307, § 7.

47-4-8. Penalty for violation of act.

Any person found guilty of violating the provisions of this act [47-4-1 to 47-4-9 NMSA 1978], including, but not limited to the filing of a false affidavit, shall, upon conviction, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

History: 1953 Comp., § 70-2-12, enacted by Laws 1963, ch. 307, § 8.

47-4-9. [Application of act.]

The provisions of Sections 4, 6 and 7 [47-4-4, 47-4-6, 47-4-7 NMSA 1978] of this act do not apply to mineral abstracting.

History: 1953 Comp., § 70-2-13, enacted by Laws 1963, ch. 307, § 9.

47-4-10. Real estate sales; disclosure of certain attorney's fees required; provisions for civil liability.

A. No abstract company or other person regularly engaged in the business of handling the closing of real estate sales shall collect attorney's fees imposed by the abstract company or other person regularly engaged in the business of handling the closing of real estate upon the vendor or vendee of the real estate in a real estate

closing unless the name of the attorney is disclosed on the vendor's and vendee's closing statement or, if there is no closing statement prepared, the statement shall be disclosed in the other closing documents.

B. The attorney's fees required to be disclosed by Subsection A of this section shall be limited to the actual reasonable attorney's fees incurred for professional services rendered and expenses incurred by an attorney not a salaried employee of the abstract company or a salaried employee of any other person regularly engaged in the business of handling the closing of real estate sales.

C. Any person aggrieved by a violation of Subsection A or B of this section may sue for the amount of money wrongfully collected and upon proof of the violation in a court of competent jurisdiction an award equal to the amount of money collected in violation of Section [Subsection] A or B of this section shall be awarded.

History: Laws 1979, ch. 271, § 1.

ARTICLE 5
Subdivisions Generally

47-5-1. Short title.

This act [47-5-1 to 47-5-8 NMSA 1978] may be cited as the "Land Subdivision Act."

History: 1953 Comp., § 70-3-1, enacted by Laws 1963, ch. 217, § 1.

47-5-2. Definitions.

As used in the Land Subdivision Act:

A. "subdivided land" and "subdivision" means improved or unimproved land divided, or proposed to be divided, into twenty-five or more lots or parcels for the purpose of sale or lease, but does not include the leasing of apartments, offices, stores or similar space within a building unless an undivided interest in the land is granted as a condition precedent to occupying space within the building and does not include subdivisions approved by an agency of the United States or by a municipality, and does not include any subdivision where the primary business of the developer is the construction of home improvements;

B. "blanket encumbrance" means a trust deed, mortgage or any other lien or encumbrance, including mechanics' liens, securing or evidencing the payment of money or the furnishing of services or materials and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one lot or parcel by which the owner or subdivider holds the subdivision under an option,

contract to sell or trust agreement. Taxes and assessments levied by public authority are not included.

History: 1953 Comp., § 70-3-2, enacted by Laws 1963, ch. 217, § 2.

47-5-3. [Approval of plat by county commission prior to sale.]

It shall be unlawful to sell, offer to sell, lease or offer to lease to the public subdivided land as defined hereinabove until a plat of such subdivided land being sold has been approved by the county commission wherein such land is situate; and

Until legal access from an existing public way and to each lot offered for sale or lease has been dedicated and accepted by the appropriate county commission.

History: 1953 Comp., § 70-3-3, enacted by Laws 1963, ch. 217, § 3.

47-5-4. [Conditions affecting use or occupancy of subdivided land; written disclosure prior to sale.]

It shall be unlawful to sell or lease until there has been disclosed in writing to the purchaser or lessee of a lot or parcel in the subdivided land, the following:

A. all restrictions or reservations of record which subject the subdivided land to any unusual conditions affecting its use or occupancy;

B. the fact that any street or road facilities have not been accepted for maintenance by a governmental agency when such is the case;

C. availability of public utilities in the subdivision including water, electricity, gas and telephone facilities;

D. if water is available only from subterranean sources the average depth of such water within the subdivision;

E. the complete price and financing terms or rental; and

F. the existence of blanket encumbrances, if any, on such subdivision, unless such blanket encumbrances provide for a proper release or subordination of said blanket encumbrances to such lot or parcel.

History: 1953 Comp., § 70-3-4, enacted by Laws 1963, ch. 217, § 4.

47-5-5. Advertising standards.

Brochures, publications and advertising of any form relating to subdivided land shall:

A. not misrepresent or contain false or misleading statements of fact;

B. not describe deeds, title insurance or other items included in a transaction as "free," and shall not state that any lot or parcel is "free" or given as an "award" or "prize" if any consideration is required for any reason;

C. not describe lots or parcels available for "closing costs only" or similar terms unless all such costs are accurately and completely itemized or when additional lots must be purchased at a higher price;

D. not include an asterisk or other reference symbol as a means of contradicting or substantially changing any statement;

E. disclose that individual lots or parcels are not identifiable when such is the case;

F. if illustrations of the subdivision are used, accurately portray the subdivision in its present state, and if illustrations are used portraying points of interest outside the subdivision, state the actual road miles from the subdivision;

G. not contain artists' conceptions of the subdivision or any facilities within it unless clearly described as such, and shall not contain maps unless accurately drawn to scale and the scale indicated;

H. not contain references to any facilities, points of interest or municipalities located outside the subdivision unless the distances from the subdivision are stated in the advertisement in actual road miles.

History: 1953 Comp., § 70-3-5, enacted by Laws 1963, ch. 217, § 5.

47-5-6. Fraud; penalty.

Any officer, agent or employee of any firm or corporation, or any other person who knowingly authorizes or assists in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, and any person, firm or corporation who, with knowledge that any written statement relating to the subdivided land is false or fraudulent, issues, circulates, publishes or distributes it in this state, is guilty of a felony and shall be puinshed [punished] by imprisonment for not more than five years, or by a fine of not more than one hundred thousand dollars ($100,000), or both.

History: 1953 Comp., § 70-3-6, enacted by Laws 1963, ch. 217, § 6.

47-5-7. Other violations; penalty.

A. It is unlawful to:

(1) willfully violate or fail to comply with any provisions of the Land Subdivision Act; or

(2) advertise or publish, or assist in advertising and publishing in this state the sale or lease of any lot or parcel of subdivided land located in another state, territory or foreign country unless the advertisement or publication complies with the requirements of the Land Subdivision Act with respect to subdivisions located in this state.

B. Any person, firm or corporation violating any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred thousand dollars ($100,000).

History: 1953 Comp., § 70-3-7, enacted by Laws 1963, ch. 217, § 7.

47-5-8. [Injunction.]

Whenever the attorney general of the state of New Mexico or any district attorney of a judicial district of the state of New Mexico, after a complaint has been filed by any individual alleging injury hereunder, or upon his own initiative, after investigation made, believes any officer, agent or employee of any firm or corporation or other person is knowingly violating or authorizing violation of any part of this act [47-5-1 to 47-5-8 NMSA 1978], he shall bring an action to enjoin the violation in any district court regardless of whether criminal charges are filed.

History: 1953 Comp., § 70-3-8, enacted by Laws 1963, ch. 217, § 8.

47-5-9. Application.

The Land Subdivision Act applies to all subdivisions except where the subdivision is located within a county for which subdivision regulations have been adopted as provided in the New Mexico Subdivision Act [Chapter 47, Article 6 NMSA 1978].

History: 1953 Comp., § 70-3-9, enacted by Laws 1973, ch. 348, § 37.

ARTICLE 6
County Subdivisions

47-6-1. Short title.

Chapter 47, Article 6 NMSA 1978 may be cited as the "New Mexico Subdivision Act".

History: 1953 Comp., § 70-5-1, enacted by Laws 1973, ch. 348, § 1; 1995, ch. 212, § 1.

47-6-2. Definitions.

As used in the New Mexico Subdivision Act:

A. "board of county commissioners" means the governing board of a county;

B. "common promotional plan" means a plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where the land is either contiguous or part of the same area of land or is known, designated or advertised as a common unit or by a common name;

C. "final plat" means a map, chart, survey, plan or replat certified by a licensed, registered land surveyor containing a description of the subdivided land with ties to permanent monuments prepared in a form suitable for filing of record;

D. "immediate family member" means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, stepgrandson, granddaughter, stepgranddaughter, nephew and niece, whether related by natural birth or adoption;

E. "Indian nation, tribe or pueblo" means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;

F. "lease" means to lease or offer to lease land;

G. "parcel" means land capable of being described by location and boundaries and not dedicated for public or common use;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

I. "preliminary plat" means a map of a proposed subdivision showing the character and proposed layout of the subdivision and the existing conditions in and around it, and need not be based upon an accurate and detailed survey of the land;

J. "sell" means to sell or offer to sell land;

K. "subdivide" means to divide a surface area of land into a subdivision;

L. "subdivider" means any person who creates or who has created a subdivision individually or as part of a common promotional plan or any person engaged in the sale, lease or other conveyance of subdivided land; however, "subdivider" does not include any duly licensed real estate broker or salesperson acting on another's account;

M. "subdivision" means the division of a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease

or other conveyance or for building development, whether immediate or future; but "subdivision" does not include:

(1) the sale, lease or other conveyance of any parcel that is thirty-five acres or larger in size within any twelve-month period; provided that the land has been used primarily and continuously for agricultural purposes, in accordance with Section 7-36-20 NMSA 1978, for the preceding three years;

(2) the sale or lease of apartments, offices, stores or similar space within a building;

(3) the division of land within the boundaries of a municipality;

(4) the division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land;

(5) the division of land created by court order where the order creates no more than one parcel per party;

(6) the division of land for grazing or farming activities; provided the land continues to be used for grazing or farming activities;

(7) the division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased;

(8) the division of land to create burial plots in a cemetery;

(9) the division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member;

(10) the division of land created to provide security for mortgages, liens or deeds of trust; provided that the division of land is not the result of a seller-financed transaction;

(11) the sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty acres;

(12) the division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity; or

(13) the division of a tract of land into two parcels that conform with applicable zoning ordinances; provided that a second or subsequent division of either of the two parcels within five years of the date of the division of the original tract of land shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey, and a deed if a parcel is subsequently conveyed, shall be filed with the county clerk indicating that the parcel shall be subject to the provisions of the New Mexico Subdivision Act if the parcel is further divided within five years of the date of the division of the original tract of land;

N. "terrain management" means the control of floods, drainage and erosion and measures required for adapting proposed development to existing soil characteristics and topography;

O. "time of purchase, lease or other conveyance" means the time of signing any document obligating the person signing the document to purchase, lease or otherwise acquire a legal interest in land;

P. "type-one subdivision" means any subdivision containing five hundred or more parcels, any one of which is less than ten acres in size;

Q. "type-two subdivision" means any subdivision containing not fewer than twenty-five but not more than four hundred ninety-nine parcels, any one of which is less than ten acres in size;

R. "type-three subdivision" means any subdivision containing not more than twenty-four parcels, any one of which is less than ten acres in size;

S. "type-four subdivision" means any subdivision containing twenty-five or more parcels, each of which is ten acres or more in size; and

T. "type-five subdivision" means any subdivision containing not more than twenty-four parcels, each of which is ten acres or more in size.

History: 1953 Comp., § 70-5-2, enacted by Laws 1973, ch. 348, § 2; 1979, ch. 172, § 1; 1981, ch. 148, § 1; 1995, ch. 212, § 2; 2005, ch. 139, § 1; 2009, ch. 65, § 1; 2013, ch. 96, § 1.

47-6-3. Final plat; description.

A. Any person desiring to subdivide land shall have a final plat of the proposed subdivision certified by a surveyor registered in New Mexico. The final plat shall:

(1) define the subdivision and all roads by reference to permanent monuments;

(2) accurately describe legal access to, roads to and utility easements for each parcel, and if the access or easements are based upon an agreement, the recording data in the land records for the agreement;

(3) number each parcel in progression, give its dimensions and the dimensions of all land dedicated for public use or for the use of the owners of parcels fronting or adjacent to the land; and

(4) delineate those portions of the subdivision that are located in a flood plain.

B. Descriptions of parcels by number and plat designation are valid in conveyances and valid for the purpose of taxation.

History: 1953 Comp., § 70-5-3, enacted by Laws 1973, ch. 348, § 3; 1995, ch. 212, § 3.

47-6-4. Final plat acknowledgment; affidavit.

Every final plat shall contain a statement that the land being subdivided is subdivided in accordance with the final plat. The final plat shall be acknowledged by the owner and subdivider or their authorized agents in the manner required for the acknowledgment of deeds. Every final plat submitted to the county clerk shall be accompanied by an affidavit of the owner and subdivider or their authorized agents stating whether or not the proposed subdivision lies within the subdivision regulation jurisdiction of the county. A copy of the final plat shall be provided to every purchaser, lessee or other person acquiring an interest in the subdivided land prior to sale, lease or other conveyance.

History: 1953 Comp., § 70-5-4, enacted by Laws 1973, ch. 348, § 4; 1995, ch. 212, § 4.

47-6-5. Dedication for public use; maintenance.

The final plat shall contain a certificate stating that the board of county commissioners accepted, accepted subject to improvement or rejected, on behalf of the public, any land offered for dedication for public use in conformity with the terms of the offer of dedication. Upon full conformance with the county road construction standards, the roads may be accepted for maintenance by the county. Acceptance of offers of dedication on a final plat shall not be effective until the final plat is filed in the office of the county clerk or a resolution of acceptance by the board of county commissioners is filed in such office.

History: 1953 Comp., § 70-5-5, enacted by Laws 1973, ch. 348, § 5; 1981, ch. 148, § 2; 1995, ch. 212, § 5.

47-6-6. Filing with county clerk; duties of county clerk.

The county clerk shall not accept for filing any final plat subject to the New Mexico Subdivision Act that has not been approved as provided in the New Mexico Subdivision Act. Whenever separate documents are to be recorded concurrently with the final plat, the county clerk shall cross-reference such documents. Preliminary plats shall not be filed with the county clerk.

History: 1953 Comp., § 70-5-6, enacted by Laws 1973, ch. 348, § 6; 1979, ch. 172, § 2; 1995, ch. 212, § 6.

47-6-7. Vacation of plats; approval; duties of county clerk; effect.

A. Any final plat filed in the office of the county clerk may be vacated or a portion of the final plat may be vacated if:

(1) the owners of the land proposed to be vacated sign an acknowledged statement, declaring the final plat or a portion of the final plat to be vacated; and

(2) the statement is approved by the board of county commissioners of the county within whose platting authority the vacated portion of the subdivision is located.

B. In approving the vacation of all or a part of a final plat, the board of county commissioners shall determine whether or not the vacation will adversely affect the interests of persons on contiguous land or persons within the subdivision being vacated. In approving the vacation of all or a portion of a final plat, the board of county commissioners may require that streets dedicated to the county in the final plat continue to be dedicated to the county. The owners of parcels on the vacated portion of the final plat may enclose in equal proportions the adjoining streets and alleys that are authorized to be abandoned.

C. The approved statement declaring the vacation of a portion or all of a final plat shall be filed in the office of the county clerk in which the final plat is filed. The county clerk shall mark the final plat with the words "Vacated" or "Partially Vacated" and refer on the final plat to the volume and page on which the statement of vacation is recorded.

D. The rights of any utility existing prior to the vacation, total or partial, of any final plat are not affected by the vacation of a final plat.

History: 1953 Comp., § 70-5-7, enacted by Laws 1973, ch. 348, § 7; 1995, ch. 212, § 7.

47-6-8. Requirements prior to sale, lease or other conveyance.

It is unlawful to sell, lease or otherwise convey land within a subdivision before the following conditions have been met:

A. the final plat has been approved by the board of county commissioners and has been filed with the clerk of the county in which the subdivision is located. Where a

subdivision lies within more than one county, the final plat shall be approved by the board of county commissioners of each county in which the subdivision is located and shall be filed with the county clerk of each county in which the subdivision is located;

B. the subdivider has furnished the board of county commissioners a sample copy of his sales contracts, leases and any other documents that will be used to convey an interest in the subdivided land; and

C. all corners of all parcels and blocks within a subdivision have been permanently marked with metal stakes in the ground and a reference stake placed beside one corner of each parcel.

History: 1953 Comp., § 70-5-8, enacted by Laws 1973, ch. 348, § 8; 1995, ch. 212, § 8.

47-6-9. Subdivision regulation; county authority.

A. The board of county commissioners of each county shall regulate subdivisions within the county's boundaries. In regulating subdivisions, the board of county commissioners of each county shall adopt regulations setting forth the county's requirements for:

(1) preliminary and final subdivision plats, including their content and format;

(2) quantifying the maximum annual water requirements of subdivisions, including water for indoor and outdoor domestic uses;

(3) assessing water availability to meet the maximum annual water requirements of subdivisions;

(4) water conservation measures;

(5) water of an acceptable quality for human consumption and for protecting the water supply from contamination;

(6) liquid waste disposal;

(7) solid waste disposal;

(8) legal access to each parcel;

(9) sufficient and adequate roads to each parcel, including ingress and egress for emergency vehicles;

(10) utility easements to each parcel;

(11) terrain management;

(12) phased development;

(13) protecting cultural properties, archaeological sites and unmarked burials, as required by the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978];

(14) specific information to be contained in a subdivider's disclosure statement in addition to that required in Section 47-6-17 NMSA 1978;

(15) reasonable fees approximating the cost to the county of determining compliance with the New Mexico Subdivision Act and county subdivision regulations while passing upon subdivision plats;

(16) a summary procedure for reviewing certain type-three and all type-five subdivisions as provided in Section 47-6-11 NMSA 1978;

(17) recording all conveyances of parcels with the county clerk;

(18) financial security to assure the completion of all improvements that the subdivider proposes to build or to maintain;

(19) fencing subdivided land, where appropriate, in conformity with Section 77-16-1 NMSA 1978, which places the duty on the purchaser, lessee or other person acquiring an interest in the subdivided land to fence out livestock; and

(20) any other matter relating to subdivisions that the board of county commissioners feels is necessary to promote health, safety or the general welfare.

B. Subsection A of this section does not preempt the authority of any state agency to regulate or perform any activity that it is required or authorized by law to perform.

C. Nothing in the New Mexico Subdivision Act shall be construed to limit the authority of counties to adopt subdivision regulations with requirements that are more stringent than the requirements set forth in the New Mexico Subdivision Act, provided that:

(1) the county has adopted a comprehensive plan in accordance with Section 3-21-5 NMSA 1978;

(2) the comprehensive plan contains goals, objectives and policies that identify and explain the need for requirements that are more stringent; and

(3) the more stringent regulations are specifically identified in the comprehensive plan.

D. The board of county commissioners of a class A county with a population according to the most recent federal decennial census of greater than three hundred

thousand may delegate the authority to review and approve preliminary plats and final plats to a county administrative officer or to the planning commission; provided that the delegation complies with the public hearing requirements contained in Section 47-6-14 NMSA 1978.

History: 1953 Comp., § 70-5-9, enacted by Laws 1973, ch. 348, § 9; 1981, ch. 148, § 3; 1995, ch. 212, § 9; 2003, ch. 322, § 1; 2005, ch. 139, § 2.

47-6-9.1. Merger of contiguous parcels; prohibition.

A. Contiguous parcels that are owned by a single owner shall not be required by a board of county commissioners to be merged into one parcel if:

(1) each of the contiguous parcels:

(a) is shown on the official plat map of the county; or

(b) was created by a deed or survey recorded with the office of the county clerk;

(2) the chain of title to the contiguous parcels clearly demonstrates that the parcels have been considered separate prior to transfer into common ownership; and

(3) the owner of the contiguous parcels has taken no action to consolidate the parcels.

B. Nothing in this section limits a board of county commissioners, pursuant to notice and public hearing, from requiring consolidation of contiguous parcels in common ownership for the purpose of enforcing minimum zoning or subdivision standards on the parcels.

History: Laws 2003, ch. 326, § 1.

47-6-10. County subdivision regulations; hearings; appeal.

In promulgating subdivision regulations, the board of county commissioners shall adhere to the following procedures.

A. Prior to adopting, amending or repealing any regulation, the board of county commissioners shall consult with representatives of the office of the state engineer, the department of environment, the cultural affairs department, all soil and water conservation districts within the county, the department of transportation and the attorney general about the subjects within their respective expertise for which the board of county commissioners is considering promulgating a regulation. In the process of the consultation, the representatives of each of the state agencies shall give consideration to the conditions peculiar to the county and shall submit written guidelines to the board

of county commissioners for its consideration in formulating regulations. The guidelines:

(1) shall be given consideration by the board of county commissioners in the formulation of the county's subdivision regulations;

(2) shall become a part of the record of any hearing in which regulations are adopted, amended or repealed; and

(3) may be in such detail as the agency involved desires.

B. A regulation may not be adopted, amended or repealed until after a public hearing held by the board of county commissioners. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state:

(1) the subject of the regulation;

(2) the time and place of the hearing;

(3) the manner in which interested persons may present their views; and

(4) the place and manner in which interested persons may secure copies of any proposed regulation. The board of county commissioners may impose a reasonable charge for the costs of reproducing and mailing of the proposed regulations.

C. The notice shall be published in a newspaper of general circulation in the county.

D. Reasonable effort shall be made to give notice to all persons who have made a written request to the board of county commissioners for advance notice of its hearings.

E. The board of county commissioners shall give the state engineer, the department of environment, the cultural affairs department, the department of transportation, all soil and water conservation districts within the county and the attorney general thirty days' notice of its regulation hearings.

F. At the hearing, the board of county commissioners shall allow all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing. The board shall keep a complete record of the hearing proceedings.

G. Representatives from the office of the state engineer, the department of environment, the cultural affairs department, all soil and water conservation districts within the county, the department of transportation and the attorney general shall be given the opportunity to make an oral statement at the hearing and to enter into the record of the hearing a written statement setting forth any comments that they may have

about the proposed regulation, whether favorable or unfavorable, when the proposed regulation relates to an issue that is within the agencies' respective areas of expertise.

H. A regulation is not invalid because of the failure of a state agency to submit a guideline prior to the promulgation of the regulation or because the representative of a state agency did not appear at a public hearing on the regulation or did not make any comment for entry in the hearing record.

I. The board of county commissioners shall act on the proposed regulations at the regulation hearings or at a public meeting to be held within thirty days of the hearing on the proposed regulations. Upon adopting, amending or repealing the regulations, the board of county commissioners shall include in the record a short statement setting forth the board's reasoning and the basis of the board's decision, including the facts and circumstances considered and the weight given to those facts and circumstances.

J. Any person heard or represented at the hearing shall be given written notice of the board's decision, including the facts and circumstances considered, if the person makes a written request to the board for notice of its decision.

K. A regulation, amendment or repeal is not effective until thirty days after it is filed with the county clerk.

L. Any person who is or may be adversely affected by a decision of the board of county commissioners to adopt, amend or repeal a regulation may appeal that decision to the district court. All appeals shall be upon the record made at the hearing and shall be filed in the district court within thirty days after the board of county commissioners votes to adopt, amend or repeal the regulation.

M. An appeal is perfected by filing a notice of appeal in the district court of the county that has adopted, amended or repealed the regulation. The appellant shall certify in the notice of appeal that arrangements have been made with the board of county commissioners for preparation of a sufficient number of transcripts of the record of the hearing to support the appeal, including one copy that the appellant shall furnish at the appellant's own expense to the board of county commissioners. A copy of the notice of appeal shall also be served upon the board of county commissioners.

N. Upon appeal, the district court shall set aside the regulation only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence; or

(3) otherwise not in accordance with law.

O. Any party to the action in district court may appeal to the court of appeals for further relief.

History: 1953 Comp., § 70-5-10, enacted by Laws 1973, ch. 348, § 10; 1977, ch. 253, § 71; 1995, ch. 212, § 10; 2019, ch. 9, § 1.

47-6-11. Preliminary plat approval; summary review.

A. Preliminary plats shall be submitted for type-one, type-two, type-three, except type-three subdivisions that are subject to review under summary procedure as set forth in Subsection I of this section, and type-four subdivisions.

B. Prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall require that the subdivider furnish documentation of:

(1) water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses;

(2) water of an acceptable quality for human consumption and measures to protect the water supply from contamination;

(3) the means of liquid waste disposal for the subdivision;

(4) the means of solid waste disposal for the subdivision;

(5) satisfactory roads to each parcel, including ingress and egress for emergency vehicles, and utility easements to each parcel;

(6) terrain management to protect against flooding, inadequate drainage and erosion; and

(7) protections for cultural properties, archaeological sites and unmarked burials that may be affected directly by the subdivision, as required by the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978].

C. In addition to the requirements of Subsection B of this section, prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision will conform with the New Mexico Subdivision Act and the county's subdivision regulations.

D. The board of county commissioners shall not approve the preliminary plat if the subdivider cannot reasonably demonstrate that the subdivider can fulfill the requirements of Subsections B and C of this section.

E. Any subdivider submitting a preliminary plat for approval shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsections B and C of this section.

F. In determining whether a subdivider can fulfill the requirements of Subsections B and C of this section, the board of county commissioners shall, within ten days after the preliminary plat is deemed complete, request opinions from:

(1) the state engineer to determine:

(a) whether the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses; and

(b) whether the subdivider can fulfill the proposals in the subdivider's disclosure statement concerning water, excepting water quality;

(2) the department of environment to determine:

(a) whether the subdivider can furnish water of an acceptable quality for human consumption and measures to protect the water supply from contamination in conformity with state regulations promulgated pursuant to the Environmental Improvement Act [Chapter 74, Article 1 NMSA 1978];

(b) whether there are sufficient liquid and solid waste disposal facilities to fulfill the requirements of the subdivision in conformity with state regulations promulgated pursuant to the Environmental Improvement Act, the Water Quality Act [Chapter 74, Article 6 NMSA 1978] and the Solid Waste Act [74-9-1 to 74-9-42 NMSA 1978]; and

(c) whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement concerning water quality and concerning liquid and solid waste disposal facilities;

(3) the department of transportation to determine whether the subdivider can fulfill the state highway access requirements for the subdivision in conformity with state regulations promulgated pursuant to Section 67-3-16 NMSA 1978;

(4) the soil and water conservation district to determine:

(a) whether the subdivider can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion; and

(b) whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement concerning terrain management;

(5) each Indian nation, tribe or pueblo with a historical, cultural or resource tie with the county that submits at least annually, via certified mail, return receipt requested, a written request for notification to the board of county commissioners, which request indicates the Indian nation, tribe or pueblo's historical, cultural or resource tie with the county, its contact information and a listing of the types of documentation required to be submitted by a subdivider to the county that may be necessary for its review to determine:

(a) whether the subdivider can furnish, fulfill or otherwise meet the requirements set forth in Paragraphs (1) through (4) of this subsection; and

(b) how the subdivider's proposed plat may directly affect cultural properties, archaeological sites and unmarked burials; and

(6) such other public agencies as the county deems necessary, such as local school districts and fire districts, to determine whether there are adequate facilities to accommodate the proposed subdivision.

G. If, in the opinion of each appropriate public agency or an Indian nation, tribe or pueblo, a subdivider can fulfill the requirements of Subsection F of this section, the board of county commissioners shall weigh these opinions in determining whether to approve the preliminary plat at a public hearing to be held in accordance with Section 47-6-14 NMSA 1978.

H. If, in the opinion of the appropriate public agency or an Indian nation, tribe or pueblo, a subdivider cannot fulfill the requirements of Subsection F of this section or, if the appropriate public agency or the Indian nation, tribe or pueblo does not have sufficient information upon which to base an opinion on any one of these subjects, the subdivider shall be notified of this fact by the board of county commissioners, and the procedure set out below shall be followed:

(1) if the appropriate public agency or the Indian nation, tribe or pueblo has rendered an adverse opinion, the board of county commissioners shall give the subdivider a copy of the opinion;

(2) the subdivider shall be given thirty days from the date of notification to submit additional information to the public agency or the Indian nation, tribe or pueblo through the board of county commissioners; and

(3) the public agency or the Indian nation, tribe or pueblo shall have thirty days from the date the subdivider submits additional information to change its opinion or issue a favorable opinion when it has withheld one because of insufficient information. No more than thirty days following the date of the expiration of the thirty-day period, during which the public agency or the Indian nation, tribe or pueblo reviews any additional information submitted by the subdivider, the board of county commissioners shall hold a public hearing in accordance with Section 47-6-14 NMSA 1978 to determine whether to approve the preliminary plat. Where the public agency has rendered an adverse opinion, the subdivider has the burden of showing that the adverse opinion is incorrect either as to factual or legal matters. Where the Indian nation, tribe or pueblo has rendered an adverse opinion, the subdivider may submit additional information to the board of county commissioners. If a public agency disagrees with an adverse opinion rendered by an Indian nation, tribe or pueblo, that agency shall submit a response to the board of county commissioners.

I. If a type-three subdivision contains five or fewer parcels of land, and unless the land within the subdivision has been previously identified in the county's comprehensive plan, as amended or supplemented, or zoning ordinances as an area subject to unique circumstances or conditions that require additional review:

(1) if the smallest parcel is not less than three acres in size, the board of county commissioners shall use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions; or

(2) if the smallest parcel is less than three acres in size, the board of county commissioners may use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions.

J. Prior to approving the final plat of a type-five subdivision, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision conforms with the New Mexico Subdivision Act and the county's subdivision regulations.

K. The board of county commissioners shall not approve the final plat of any type-five subdivision if the subdivider cannot reasonably demonstrate that the subdivider can fulfill the requirements of Subsection J of this section.

L. Any subdivider submitting a plat of a type-five subdivision shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsection J of this section.

M. The board of county commissioners shall by regulation establish a procedure for summary review for certain type-three subdivisions, as provided in Subsection I of this section, and all type-five subdivisions. If the board of county commissioners fails to adopt criteria for summary review, the board of county commissioners shall approve the plat if it complies with Sections 47-6-3 and 47-6-4 NMSA 1978 within the time limitation set forth in Section 47-6-22 NMSA 1978. The board of county commissioners may delegate to any county administrative officer or planning commission member the authority to approve any subdivision under summary review. Approval by summary review is conclusive evidence of the approval of the board of county commissioners.

History: 1953 Comp., § 70-5-11, enacted by Laws 1973, ch. 348, § 11; 1977, ch. 253, § 72; 1995, ch. 212, § 11; 2009, ch. 65, § 2.

47-6-11.1. Expiration of preliminary plat.

A. An approved or conditionally approved preliminary plat shall expire twenty-four months after its approval or conditional approval, or after any additional period of time as may be prescribed by county regulation, not to exceed an additional twelve months. However, if the subdivider proposes to file multiple final plats as provided for under county regulations governing phased development, each filing of a final plat shall extend the expiration of the approved or conditionally approved preliminary plat for an additional thirty-six months from the date of its expiration or the date of the previously filed final plat, whichever is later. The number of phased final plats shall be determined by the board of county commissioners at the time of the approval or conditional approval of the preliminary plat.

B. Prior to the expiration of the approved or conditionally approved preliminary plat, the subdivider may submit an application for extension of the preliminary plat for a period of time not exceeding a total of three years. The period of time specified in this subsection shall be in addition to the period of time provided in Subsection A of this section.

C. The expiration of the approved or conditionally approved preliminary plat shall terminate all proceedings on the subdivision, and no final plat shall be filed without first processing a new preliminary plat.

History: Laws 1995, ch. 212, § 12.

47-6-11.2. Water permit required for final plat approval.

Before approving the final plat for a subdivision containing ten or more parcels, any one of which is two acres or less in size, the board of county commissioners shall require that the subdivider provide proof of a service commitment from a water provider and an opinion from the state engineer that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978 or provide a copy of a permit obtained from the state engineer, issued pursuant to Section 72-5-1, 72-5-23, 72-

5-24, 72-12-3 or 72-12-7 NMSA 1978 for the subdivision water use. In acting on the permit application, the state engineer shall determine whether the amount of water permitted is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses. The board of county commissioners shall not approve the final plat unless the state engineer has so issued a permit for the subdivision water use or the subdivider has provided proof of a service commitment from a water provider and the state engineer has provided an opinion that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978. The board of county commissioners shall not approve the final plat based on the use of water from any permit issued pursuant to Section 72-12-1.1 NMSA 1978.

History: Laws 1995, ch. 212, § 13; 2013, ch. 224, § 1.

47-6-11.3. Approval of final plats.

A. After the approval or conditional approval of a preliminary plat and prior to the expiration of such plat, the subdivider may prepare a final plat in accordance with the approved or conditionally approved preliminary plat.

B. The board of county commissioners shall not deny a final plat if it has previously approved a preliminary plat for the proposed subdivision and it finds that the final plat is in substantial compliance with the previously approved preliminary plat. Denial of a final plat shall be accompanied by a finding identifying the requirements that have not been met.

C. If, at the time of approval of the final plat, any public improvements have not been completed by the subdivider as required by the board of county commissioners pursuant to the New Mexico Subdivision Act or county subdivision regulations, the board of county commissioners shall, as a condition precedent to the approval of the final plat, require the subdivider to enter into an agreement with the county upon mutually agreeable terms to thereafter complete the improvements at the subdivider's expense.

History: Laws 1995, ch. 212, § 14.

47-6-11.4. Plat approval; proof of adequate water supply on lands from which irrigation water rights have been severed.

A. Before approving the final plat for a subdivision of land from which irrigation water rights appurtenant to the land have been severed, the board of county commissioners shall require that the subdivider provide proof of a service commitment from a water provider and an opinion from the state engineer that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978 or acquire sufficient water rights through a permit issued pursuant to Section 72-5-1, 72-5-23, 72-5-24, 72-12-3 or 72-12-7 NMSA 1978 for subdivision water use. In acting on

the permit application, the state engineer shall determine whether the amount of water permitted is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses. The board of county commissioners shall not approve the final plat unless the state engineer has so issued a permit for the subdivision water use or the subdivider has provided proof of a service commitment from a water provider and the state engineer has provided an opinion that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978. The board of county commissioners shall not approve the final plat based on the use of water from any permit issued pursuant to Section 72-12-1.1 NMSA 1978.

B. The provisions of this section shall only apply to land from which irrigation water rights that are appurtenant to that land are severed after the effective date of this section.

History: Laws 2013, ch. 173, § 2.

47-6-12, 47-6-13. Repealed.

47-6-14. Public hearings on preliminary plats.

The board of county commissioners shall adhere to the following requirements concerning public hearings on preliminary plats.

A. Notice of the hearing shall be given at least twenty-one days prior to the hearing date and shall state:

(1) the subject of the hearing;

(2) the time and place of the hearing;

(3) the manner for interested persons to present their views; and

(4) the place and manner for interested persons to secure copies of any favorable or adverse opinion and of the subdivider's proposal. The board of county commissioners may impose a reasonable charge for the costs of reproducing and mailing the opinions and proposals.

B. The notice shall be published in a newspaper of general circulation in the county.

C. Reasonable effort shall be made to give notice to all persons who have made a written request to the board of county commissioners for advance notice of its hearings. Notice shall also be given to any public agency that issued an opinion or withheld an opinion on the basis of insufficient information.

D. Public hearings on preliminary plats shall be held within thirty days from the receipt of all requested public agency opinions where all such opinions are favorable, or within thirty days from the date all public agencies complete their review of any additional information submitted by the subdivider pursuant to Section 47-6-11 NMSA 1978. If the board of county commissioners does not receive a requested opinion within the thirty-day period, the board shall proceed.

E. At the hearing, the board of county commissioners shall allow all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.

F. The board of county commissioners shall approve, approve with conditions or disapprove the preliminary plat within thirty days of the public hearing at a public meeting of the board of county commissioners.

History: 1953 Comp., § 70-5-14, enacted by Laws 1973, ch. 348, § 14; 1995, ch. 212, § 15.

47-6-15. Appeals.

A. A party who is or may be adversely affected by a decision of a delegate of the board of county commissioners shall appeal the delegate's decision to the board of county commissioners within thirty days of the date of the delegate's decision. The board of county commissioners shall hear the appeal and shall render a decision within thirty days of the date the board receives notice of the appeal. Thereafter, the procedure for appealing the decision of the board of county commissioners set out in Subsection B of this section shall apply.

B. A party who is or may be adversely affected by a decision of the board of county commissioners may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 70-5-15, enacted by Laws 1973, ch. 348, § 15; 1995, ch. 212, § 16; 1998, ch. 55, § 46; 1999, ch. 265, § 48; 2005, ch. 139, § 3.

47-6-16. Succeeding subdivisions.

Any proposed subdivision may be combined and upgraded for classification purposes by the board of county commissioners with a previous subdivision if the proposed subdivision includes:

A. a part of a previous subdivision that has been created in the preceding seven-year period; or

B. any land retained by a subdivider after creating a previous subdivision when the previous subdivision was created in the preceding seven-year period.

History: 1953 Comp., § 70-5-16, enacted by Laws 1973, ch. 348, § 16; 1995, ch. 212, § 17.

47-6-17. Disclosure.

A. Prior to selling, leasing or otherwise conveying any land in a subdivision, the subdivider shall disclose in writing such information as the board of county commissioners requires, by regulation, to permit the prospective purchaser, lessee or other person acquiring an interest in subdivided land to make an informed decision about the purchase, lease or other conveyance of the land.

B. The disclosure statement for subdivisions with not fewer than five and not more than one hundred parcels shall contain at least the following information:

(1) the name of the subdivision;

(2) name and address of the subdivider and the name and address of the person in charge of sales or leasing in New Mexico;

(3) total acreage of the subdivision, both present and anticipated;

(4) size of the largest and smallest parcels offered for sale, lease or other conveyance within the subdivision and the proposed range of selling or leasing prices including financing terms;

(5) distance from the nearest town to the subdivision and the route over which this distance is computed;

(6) name and address of the person who is recorded as having legal and equitable title to the land offered for sale, lease or other conveyance;

(7) a statement of the condition of title including any encumbrances;

(8) a statement of all restrictions or reservations of record that subject the subdivided land to any conditions affecting its use or occupancy;

(9) name and address of the escrow agent, if any;

(10) a statement as to availability and cost of public utilities;

(11) a statement describing the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses, and describing the availability of water to meet the maximum annual water requirements;

(12) a statement describing the quality of water in the subdivision available for human consumption;

(13) a description of the means of liquid waste disposal for the subdivision;

(14) a description of the means of solid waste disposal for the subdivision;

(15) a description of the means of water delivery within the subdivision;

(16) the average depth to water within the subdivision if water is available only from subterranean sources;

(17) a description of access to the subdivision;

(18) a statement disclosing whether the roads and other improvements within the subdivision will be maintained by the county, the subdivider or an association of lot owners and what measures have been taken to ensure that maintenance will take place;

(19) a description of the subdivider's provisions for terrain management;

(20) a summary, approved by the issuing state agency, of the opinions, if any, whether favorable or adverse, provided by state agencies to the board of county commissioners concerning any one of the points listed above;

(21) a statement that the subdivider shall record the deed, real estate contract, lease or other instrument conveying an interest in subdivided land with the appropriate county clerk within thirty days of the signing of such instrument by the purchaser, lessee or other person acquiring an interest in the land;

(22) a statement advising the purchaser, lessee or other person acquiring an interest in subdivided land that building permits, wastewater permits or other use permits are required to be issued by state or county officials before improvements are constructed; and that further, he is advised to investigate the availability of such permits before purchase, lease or other conveyance and whether these are requirements for construction of additional improvements before he may occupy the property; and

(23) such other information as the board of county commissioners may require.

C. The disclosure statement for subdivisions with one hundred or more parcels shall contain all of the information required in Subsection B of this section as well as the following information:

(1) a statement of any activities or conditions adjacent to or nearby the subdivision that would subject the subdivided land to any unusual conditions affecting its use or occupancy;

(2) a description of all recreational facilities, actual and proposed, in the subdivision;

(3) a statement as to the availability of:

(a) fire protection;

(b) police protection;

(c) public schools for the inhabitants of the subdivision, including a statement concerning the proximity of the nearest elementary and secondary schools;

(d) hospital facilities;

(e) shopping facilities; and

(f) public transportation; and

(4) a statement setting forth the projected dates upon which any of the items mentioned in this section for which the subdivider has responsibility will be completed if they are not yet completed.

D. Disclosure statements shall be in the form that the board of county commissioners, after consultation with the attorney general, may require by regulation. The board of county commissioners may require by regulation that disclosure statements be printed in both English and Spanish. The form of disclosure statements, insofar as possible, shall be uniform for all counties.

E. Any subdivider who has satisfied the disclosure requirement of the Interstate Land Sales Full Disclosure Act may submit his approved statement of record in lieu of the disclosure statement required by the New Mexico Subdivision Act. However, any information required in the New Mexico Subdivision Act and not covered in the subdivider's statement of record shall be attached to the statement of record.

F. It is unlawful to sell, lease or otherwise convey land in a subdivision until:

(1) the required disclosure statement has been filed with the county clerk, the board of county commissioners and the attorney general's office; and

(2) the prospective purchaser, lessee or other person acquiring an interest in the subdivided land has been given a copy of the disclosure statement.

History: 1953 Comp., § 70-5-17, enacted by Laws 1973, ch. 348, § 17; 1995, ch. 212, § 18.

47-6-18. Advertising standards.

A. Brochures, disclosure statements, publications and advertising of any form relating to subdivided land shall:

(1) not misrepresent or contain false or misleading statements of fact;

(2) not describe deeds, title insurance or other items included in a transaction as "free" and shall not state that any parcel is "free" or given as an "award" or "prize" if any consideration is required for any reason;

(3) not describe parcels available for "closing costs only" or similar terms unless all such costs are accurately and completely itemized or when additional parcels must be purchased at a higher price;

(4) not include an asterisk or other reference symbol as a means of contradicting or substantially changing any statement;

(5) if subdivision illustrations are used, accurately portray the subdivision in its present state, and if illustrations are used portraying points of interest outside the subdivision, state the actual road miles from the subdivision;

(6) not contain artists' conceptions of the subdivision or any facilities within it unless clearly described as such and shall not contain maps unless accurately drawn to scale with the scale indicated;

(7) not contain references to any facilities, points of interest or municipalities located outside the subdivision unless the distances from the subdivision are stated in the advertisement in actual road miles; and

(8) refer to where the subdivider's disclosure statement may be obtained.

B. Copies of all brochures, publications and advertising relating to subdivided land shall be filed with the board of county commissioners of the county in which the subdivision is located and with the attorney general within fifteen days after initial use by the subdivider.

History: 1953 Comp., § 70-5-18, enacted by Laws 1973, ch. 348, § 18; 1995, ch. 212, § 19.

47-6-19. Road development.

A. Roads within a subdivision shall be constructed only on a schedule approved by the board of county commissioners. In approving or disapproving a subdivider's road construction schedule, the board of county commissioners shall consider:

(1) the proposed use of the subdivision;

(2) the period of time before the roads will receive substantial use;

(3) the period of time before construction of homes will commence on the portion of the subdivision serviced by the road;

(4) the county regulations governing phased development; and

(5) the needs of prospective purchasers, lessees and other persons acquiring an interest in subdivided land in viewing the land within the subdivision.

B. All proposed roads shall conform to minimum county safety standards.

C. The board of county commissioners shall not approve the grading or construction of roads unless and until the subdivider can reasonably demonstrate that the roads to be constructed will receive use and that the roads are required to provide access to parcels or improvements within twenty-four months from the date of construction of the road.

D. It is unlawful for the subdivider to grade or otherwise commence construction of roads unless the construction conforms to the schedule of road development approved by the board of county commissioners.

History: 1953 Comp., § 70-5-19, enacted by Laws 1973, ch. 348, § 19; 1981, ch. 148, § 5; 1995, ch. 212, § 20.

47-6-20. Public agencies required to provide counties with information.

A. Any public agency receiving a request from the board of county commissioners for an opinion and any Indian nation, tribe or pueblo that chooses to submit an opinion pursuant to Section 47-6-11 NMSA 1978 shall furnish the board with the requested opinion within the time period set forth in Subsection A of Section 47-6-22 NMSA 1978. The board of county commissioners shall furnish the appropriate public agency and Indian nation, tribe or pueblo with all relevant information that the board has received from the subdivider on the subject for which the board is seeking an opinion. If the public agency or Indian nation, tribe or pueblo does not have sufficient information upon which to base an opinion, the public agency or Indian nation, tribe or pueblo shall notify the board of this fact.

B. All opinion requests mailed by the board of county commissioners shall be by certified mail, return receipt requested. Boards of county commissioners delivering opinion requests shall obtain receipts showing the day the opinion request was received by the particular public agency or Indian nation, tribe or pueblo.

History: 1953 Comp., § 70-5-20, enacted by Laws 1973, ch. 348, § 20; 1995, ch. 212, § 21; 2009, ch. 65, § 3.

47-6-21. Information reports.

In determining whether the subdivider can fulfill the requirements of the subdivision and the proposals contained in his disclosure statement, the appropriate public agency may request, through the board of county commissioners, that the subdivider submit such information as the agency may feel necessary to permit it to make that determination.

History: 1953 Comp., § 70-5-21, enacted by Laws 1973, ch. 348, § 21; 1995, ch. 212, § 22.

47-6-22. Time limit on administrative action.

A. All opinions required of public agencies or submitted by an Indian nation, tribe or pueblo shall be furnished to the board of county commissioners within thirty days after the public agencies or Indian nation, tribe or pueblo receives the written request and accompanying information from the board of county commissioners. If the board of county commissioners does not receive a requested opinion within the thirty-day period, the board shall proceed in accordance with its own best judgment concerning the subject of the opinion request. The failure of a public agency or Indian nation, tribe or pueblo to provide an opinion when requested by the board of county commissioners does not indicate that the subdivider's provisions concerning the subject of the opinion request were acceptable or unacceptable or adequate or inadequate.

B. Final plats submitted to the board of county commissioners for approval shall be approved or disapproved at a public meeting of the board of county commissioners within thirty days of the date the final plat is deemed complete.

C. If the board of county commissioners does not act upon a final plat within the required period of time, the subdivider shall give the board of county commissioners written notice of its failure to act. If the board of county commissioners fails to approve or reject the final plat within thirty days, the board of county commissioners shall, upon demand by the subdivider, issue a certificate stating that the final plat has been approved.

History: 1953 Comp., § 70-5-22, enacted by Laws 1973, ch. 348, § 22; 1981, ch. 148, § 6; 1995, ch. 212, § 23; 2009, ch. 65, § 4.

47-6-23. Right of inspection; rescission.

If the purchaser, lessee or other person acquiring an interest in the subdivided land has not inspected his parcel prior to the time of purchase, lease or other conveyance, the purchase, lease or other conveyancing agreement shall contain a provision giving the purchaser, lessee or other person acquiring an interest in the subdivided land six months within which to personally inspect his parcel. After making the personal inspection within the six-month period, the purchaser, lessee or other person acquiring an interest in the subdivided land has the right to rescind the purchase, lease or other conveyancing agreement and receive a refund of all funds paid on the transaction to the

seller, lessor or other conveyor of subdivided land when merchantable title is revested in the seller, lessor or other conveyor of subdivided land. Notice of such rescission to the seller, lessor or other conveyor of subdivided land shall be made in writing and shall be given within three days of the date of personal inspection.

History: 1953 Comp., § 70-5-23, enacted by Laws 1973, ch. 348, § 23; 1995, ch. 212, § 24.

47-6-24. Schedule of compliance.

In approving subdivision plats, the board of county commissioners may require the subdivider to set forth a schedule of compliance with county subdivision regulations that is acceptable to the board of county commissioners.

History: 1953 Comp., § 70-5-24, enacted by Laws 1973, ch. 348, § 24.

47-6-25. Suspension of right of sale.

The board of county commissioners may suspend or revoke approval of a plat as to the unsold, unleased or otherwise unconveyed portions of a subdivider's plat if the subdivider does not meet the schedule of compliance approved by the board.

History: 1953 Comp., § 70-5-25, enacted by Laws 1973, ch. 348, § 25; 1995, ch. 212, § 26.

47-6-25.1. Attorney general; district attorneys; investigation.

A. If the attorney general or a district attorney has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act, the attorney general or the district attorney, or both, may before bringing any action apply to the district court of Santa Fe county, or any county where the district attorney has his office, for approval of a civil investigative demand, demanding, in writing, such person to appear and be examined under oath, to answer written interrogatories under oath or to produce the document or object for inspection and copying. The demand shall:

(1) be served upon the person in the manner required for service of process in this state or, if the person cannot be found or does not reside or maintain a principal place of business within this state, in the manner required for service of process in the state in which the person resides, maintains a principal place of business or can be found;

(2) describe the nature of the conduct under investigation;

(3) describe the class of documents or objects with sufficient definiteness to permit it to be fairly identified if the production of documents or objects is requested;

(4) contain a copy of the written interrogatories if answers to written interrogatories are sought;

(5) prescribe a reasonable time at which the person shall appear to testify or within which the document or object must be produced;

(6) specify a place for the taking of testimony or for production of the document or object and designate a person who may be an authorized employee of the attorney general or district attorney to be custodian of the document or object; and

(7) contain a copy of Subsections C through E of this section.

B. No demand to produce a document or object for inspection and copying shall contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued in a civil proceeding by a district court of this state. The district court shall approve the demand if it finds that the attorney general or district attorney has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act and that the demand is proper in form. A demand shall not be issued without approval of the district court.

C. If a person fails to comply with the written demand served upon him under the provisions of Subsection A of this section, the attorney general or district attorney may file a petition for an order to enforce the demand in the district court of the county in which the person resides or in which he maintains a principal place of business within this state or of the county of Santa Fe if the person neither resides nor has a principal place of business in this state. Notice of hearing on the petition and a copy of the petition shall be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper in form and there is reasonable cause to believe that the person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act, the court shall order the person to comply with the demand, subject to any modification that the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further protective order in the proceedings that justice requires.

D. Prior to the filing of an action under the provisions of the New Mexico Subdivision Act for the violation under investigation, any testimony taken or material produced under this section shall be kept confidential by the attorney general or district attorney unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories or produced material, or unless disclosure is authorized by the court. Any testimony taken or material produced under this section shall be open to inspection only to the attorney general or district attorney and the

person upon whom the demand for which inspection is sought has been served, unless otherwise ordered by the court.

E. Any person compelled to appear under this section and required to testify under oath may be accompanied, represented and advised by counsel. An objection may properly be made, received and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege.

History: 1978 Comp., § 47-6-25.1, enacted by Laws 1981, ch. 148, § 7; 1995, ch. 212, § 27.

47-6-26. Injunctive relief; mandamus.

A. The board of county commissioners, the district attorney or the attorney general may apply to the district court for any one or more of the following remedies in connection with violations of the New Mexico Subdivision Act and county subdivision regulations:

(1) injunctive relief to prohibit a subdivider from selling, leasing or otherwise conveying an interest in subdivided land until he complies with the terms of the New Mexico Subdivision Act and county subdivision regulations;

(2) mandatory injunctive relief to compel compliance by any person with the provisions of the New Mexico Subdivision Act and county subdivision regulations;

(3) rescission and restitution for persons who have purchased, leased or otherwise acquired an interest in subdivided land that was divided, sold, leased or otherwise conveyed in material violation of the New Mexico Subdivision Act or county subdivision regulations; or

(4) a civil penalty of up to five thousand dollars ($5,000) for each parcel created in knowing, intentional or willful material violation of the New Mexico Subdivision Act or county subdivision regulations.

B. The board of county commissioners, the district attorney and the attorney general shall not be required to post bond when seeking a temporary or permanent injunction or mandamus pursuant to the provisions of the New Mexico Subdivision Act.

C. In any action by the attorney general pursuant to the New Mexico Subdivision Act, venue shall be proper in the district court of any county where all or part of the land is situated or the district court of the county where the defendant resides.

D. Nothing in this section shall be construed as limiting any common-law right of any person in any court relating to subdivisions.

History: 1953 Comp., § 70-5-26, enacted by Laws 1973, ch. 348, § 26; 1979, ch. 172, § 3; 1995, ch. 212, § 28.

47-6-27. Criminal penalties.

A. Any person who knowingly, intentionally or willfully commits a material violation of the New Mexico Subdivision Act is guilty of a misdemeanor, punishable by a fine of not more than ten thousand dollars ($10,000) per violation, or by imprisonment for not more than one year, or both.

B. Any person who is convicted of a second or subsequent knowing, intentional or willful violation of the New Mexico Subdivision Act is guilty of a fourth degree felony, punishable by a fine of not more than twenty-five thousand dollars ($25,000) per violation or by imprisonment for not more than eighteen months, or both.

History: 1953 Comp., § 70-5-27, enacted by Laws 1973, ch. 348, § 27; 1981, ch. 148, § 8; 1995, ch. 212, § 29.

47-6-27.1. Private remedies.

A. Any sale, lease or other conveyance of land within a subdivision subject to the New Mexico Subdivision Act, which subdivision has not been approved by the board of county commissioners, shall be voidable at the option of the purchaser, lessee or other person acquiring an interest in the subdivided land. The purchaser, lessee or other person acquiring an interest in the subdivided land may recover restitution of all money, property or other things paid to or received by the seller, lessor or other conveyor of the subdivided land. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

B. Any purchaser, lessee or other person acquiring an interest in the subdivided land who suffers any loss of money or property, real or personal, as a result of any violation of the New Mexico Subdivision Act or any county subdivision regulation may bring an action to recover actual damages. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

C. Any purchaser, lessee or other person acquiring an interest in the subdivided land who has purchased, leased or otherwise acquired an interest in land within an approved subdivision may bring an action in district court to compel specific performance of any proposed improvement set forth in a subdivider's disclosure statement or in any document obligating the person signing the document to purchase, lease or otherwise acquire an interest in subdivided land or set forth in any advertising or promotional materials relating to the subdivided land. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

D. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court, in its discretion, may award reasonable attorneys' fees to the prevailing party.

E. The remedies provided in this section are in addition to remedies otherwise available under common law or other statutes of this state.

F. This section shall apply to all purchases, leases or other conveyances of subdivided land in approved or unapproved subdivisions that occur after the effective date of this section.

History: 1978 Comp., § 47-6-27.1, enacted by Laws 1981, ch. 148, § 9; 1995, ch. 212, § 30.

47-6-27.2. Approval necessary for utility connection.

Any water, sewer, electric or gas utility that connects service to individual parcels within a subdivision, before a final plat for the subdivision has been approved by the board of county commissioners or before the landowner holds a valid building permit, may be fined a civil penalty of up to five hundred dollars ($500) by the board of county commissioners. The board of county commissioners may also require any utility connected in violation of this section to be disconnected.

History: Laws 1995, ch. 212, § 25.

47-6-28. Use of fees.

All fees collected by a county for passing upon subdivision plats shall be deposited in the county general fund.

History: 1953 Comp., § 70-5-28, enacted by Laws 1973, ch. 348, § 28.

47-6-29. Jurisdiction.

Nothing in the New Mexico Subdivision Act shall be construed as limiting the municipal extraterritorial subdivision and platting jurisdiction provided for in Sections 3-20-1 through 3-20-15 NMSA 1978.

History: 1953 Comp., § 70-5-29, enacted by Laws 1973, ch. 348, § 41; 1979, ch. 172, § 4; 1995, ch. 212, § 31.

ARTICLE 7
Building Unit Ownership

47-7-1. Short title.

This act [47-7-1 to 47-7-25, 47-7-26 to 47-7-28 NMSA 1978] may be cited as the "Building Unit Ownership Act."

History: 1953 Comp., § 70-4-1, enacted by Laws 1963, ch. 221, § 1; 1975, ch. 318, § 1.

47-7-2. Definitions.

As used in the Building Unit Ownership Act:

A. "unit" means a part of the property intended for residential, professional, commercial, industrial or any type of independent use, including one or more rooms or enclosed spaces located on one or more floors in a building, and with a direct exit to a public street or highway or to a common area leading to a public street or highway;

B. "unit owner" means the person or persons owning a unit in fee simple absolute and undivided interest in the fee simple or leasehold estate of the common areas and facilities in the percentage established by the declaration;

C. "association of unit owners" means all of the unit owners acting as a group in accordance with the bylaws and declarations;

D. "blanket encumbrance" means a trust deed, mortgage or any other lien or encumbrance, including mechanics' liens, securing or evidencing the payment of money or the furnishing of services or materials and affecting the entire property or affecting more than one unit but does not include taxes and assessments levied by a public authority;

E. "building" means a building or group of buildings having a total of two or more units and comprising a part of the property;

F. "common areas and facilities," unless otherwise provided in the declaration, includes:

(1) the land on which the building is located;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes and entrances and exits of the building;

(3) the basements, yards, gardens, parking areas and storage spaces;

(4) the premises for the lodging of persons in charge of the property;

(5) installations of central services including power, light, gas, water, heating, refrigeration, air conditioning and incinerating;

(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and all apparatus and installations existing for common use;

(7) the community and commercial facilities provided in the declaration; and

(8) all other parts of the property necessarily in common use or convenient to its existence, maintenance and safety;

G. "common expenses" includes:

(1) all sums lawfully assessed against the unit owners by the association of unit owners;

(2) expenses of administration, maintenance, repair or replacement of the common areas and facilities; and

(3) expenses declared common expenses;

H. "common profits" means the balance of income, rents, profits and revenues from the common areas and facilities remaining after the deduction of common expenses;

I. "declaration" means the instrument by which the property is submitted to the provisions of the Building Unit Ownership Act and its lawful amendments;

J. "limited common areas and facilities" means common areas and facilities designated in the declaration as reserved for use of certain units to the exclusion of the others;

K. "majority" or "majority of unit owners" means the majority of voting unit owners;

L. "person" means individual, corporation, partnership, combination, association, trustee or other legal entity;

M. "property" means the land, the building, improvements and structures owned in fee simple absolute or long term ground lease, all easements, servitude, rights and appurtenances belonging thereto, and all chattels intended for use in connection therewith, which have been or are intended to be submitted to the provisions of the Building Unit Ownership Act; and

N. "condominium" means any property which is submitted to the provisions of the Building Unit Ownership Act.

History: 1953 Comp., § 70-4-2, enacted by Laws 1963, ch. 221, § 2; 1965, ch. 6, § 1; 1967, ch. 57, § 1; 1975, ch. 318, § 2; 1981, ch. 282, § 1.

47-7-3. Application of act.

The Building Unit Ownership Act shall apply to property, the sole owner or all of the owners of which submit it to the provisions of the act by duly executing and recording a declaration.

History: 1953 Comp., § 70-4-3, enacted by Laws 1963, ch. 221, § 3; 1975, ch. 318, § 3.

47-7-4. Status of the units.

Each unit together with its undivided interest in the common areas and facilities, shall constitute real property.

History: 1953 Comp., § 70-4-4, enacted by Laws 1963, ch. 221, § 4; 1975, ch. 318, § 4.

47-7-5. Ownership of units.

Each unit owner shall be entitled to sole ownership and possession of his unit.

History: 1953 Comp., § 70-4-5, enacted by Laws 1963, ch. 221, § 5; 1975, ch. 318, § 5.

47-7-6. Common areas and facilities.

A. Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentage established by the declaration. The percentage shall be computed by taking as a basis the value of the particular unit in relation to the value of the whole property.

B. The percentage of the undivided interest of each unit owner in the common areas and facilities as established by the declaration shall be permanent and shall not be altered without the consent of all of the unit owners expressed in an amended declaration duly recorded. The percentage of the undivided interest in the common areas and facilities shall not be separated from the unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the unit even though the interest is not expressly mentioned or described in a conveyance or other instrument.

C. The common areas and facilities shall remain undivided, and no unit owner or any other person shall bring any action for partition or division, unless the property has been removed from the provisions of the Building Unit Ownership Act as provided in Sections 47-7-17 and 47-7-27 NMSA 1978. Any covenant to the contrary is unenforceable.

D. Each unit owner may use the common areas and facilities, in accordance with the purpose for which they were intended, without hindering or encroaching upon the lawful rights of the other unit owners.

E. The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided in the Building Unit Ownership Act and in the bylaws.

F. The association of unit owners shall have the irrevocable right, exercisable by the manager or board of directors, of access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom, and for making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit.

History: 1953 Comp., § 70-4-6, enacted by Laws 1963, ch. 221, § 6; 1975, ch. 318, § 6.

47-7-7. Compliance with covenants; bylaws; administrative provisions.

Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto and shall comply with the covenants, conditions and restrictions set forth in the declaration or in the deed to his unit. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors for the use of the association of unit owners or maintainable in a proper case by an aggrieved unit owner.

History: 1953 Comp., § 70-4-7, enacted by Laws 1963, ch. 221, § 7; 1975, ch. 318, § 7.

47-7-8. Certain work prohibited.

No unit owner shall undertake any work which would jeopardize the soundness or safety of the property, reduce the value or impair an easement or hereditament without the unanimous consent of all the other unit owners. Structural alterations shall not be made by a unit owner to the building or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith; nor shall a unit owner remove any additions, improvements or fixtures from the building without the written consent of the board of directors.

History: 1953 Comp., § 70-4-8, enacted by Laws 1963, ch. 221, § 8; 1975, ch. 318, § 8.

47-7-9. Liens against units; removal from lien; effect of part payment.

A. Subsequent to recording the declaration as provided in the Building Unit Ownership Act, and while the property remains subject to the act, no lien shall arise or be effective against the property. During the period, liens or encumbrances shall only arise or be created against each unit and the percentage of undivided interest in the common areas and facilities, appurtenant to the unit, in the same manner and under the

same conditions as liens and encumbrances may arise or be created upon any other parcel of real property subject to individual ownership; provided, however, that no labor performed or materials furnished, with the consent or at the request of a unit owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to law against the unit or other property of another unit owner not expressly consenting to or requesting the same; except that express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the association of unit owners, the manager or board of directors in accordance with the Building Unit Ownership Act, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to law against each of the units.

B. In the event a lien is effected against two or more units, the unit owners of the separate units may remove their unit and the percentage of undivided interest in the common areas and facilities appurtenant to the unit from the lien by payment of the fractional or proportional amount attributable to each of the units affected. Individual payment shall be computed by reference to the percentages established by the declaration. Subsequent to payment, discharge or other satisfaction, the unit and the percentage of undivided interest in the appurtenant common areas and facilities shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the percentage of undivided interest in the appurtenant common areas and facilities not released or discharged.

History: 1953 Comp., § 70-4-9, enacted by Laws 1963, ch. 221, § 9; 1975, ch. 318, § 9.

47-7-10. Common profits and expenses.

The common profits of the property shall be distributed among, and the common expenses shall be charged to, each unit owner according to the percentage of his undivided interest in the common areas and facilities.

History: 1953 Comp., § 70-4-10, enacted by Laws 1963, ch. 221, § 10; 1975, ch. 318, § 10.

47-7-11. Contents of declaration.

The declaration shall contain:

A. a description of the land on which the building and improvements are or will be located;

B. a description of the building, stating the number of stories and basements, the number of units and the principal materials of which it is, or will be, constructed;

C. the number of each unit, and a statement of its location, approximate area, number of rooms and immediate common area to which it has access, and any other data necessary for its proper identification;

D. a description of the common areas and facilities;

E. a description of the limited common areas and facilities, stating to which units their use is reserved;

F. the value of the property and of each unit, and the percentage of undivided interest in the common areas and facilities appertaining to each unit and its owner for all purposes including voting. In the case of any building consisting of separate units not substantially sharing any common structural elements, the value of each unit shall be computed on the basis of the square footage contained within its exterior dimensions;

G. a statement of the purposes for which the building and the units are intended and restricted;

H. the name and address of agent for service;

I. a provision as to the percentage of votes by the unit owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction;

J. any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with the Building Unit Ownership Act; and

K. the method by which the declaration may be amended.

History: 1953 Comp., § 70-4-11, enacted by Laws 1963, ch. 221, § 11; 1971, ch. 148, § 1; 1975, ch. 318, § 11.

47-7-12. Declaration; apportionment of interest.

The declaration shall specify a method by which the interest attributable to each unit shall be apportioned. The apportionment may be based upon:

A. the square or cubic footage in the unit as a percentage of the square or cubic footage in all of the units;

B. the value, as that term is defined in the declaration, of the unit as a percentage of the value of all of the units; or

C. the unit itself as a percentage of all of the units in the property. The percentage interest shall change if additional units are added after the filing of the declaration.

History: 1953 Comp., § 70-4-11.1, enacted by Laws 1975, ch. 318, § 12.

47-7-13. Contents of deeds of units.

Deeds of units shall include:

A. a description of the land as provided in Section 47-7-11 NMSA 1978, or the post-office address of the property, including in either case the book, page and date of recording of the declaration;

B. any other data necessary for proper identification of that unit;

C. a statement of the use for which the unit is intended, and restrictions on its use;

D. the percentage of undivided interest appertaining to the unit in the common areas and facilities; and

E. any other details which the grantor and grantee may deem desirable to set forth and which shall be consistent with the declaration and the Building Unit Ownership Act.

History: 1953 Comp., § 70-4-12, enacted by Laws 1963, ch. 221, § 12; 1975, ch. 318, § 13.

47-7-14. Copy of the floor plans to be filed.

Simultaneously with the recording of the declaration, there shall be filed in the office of the county clerk a set of the floor plans of the building showing:

A. the layout, location and dimensions of the units, stating the name of the building or that it has no name, and bearing the verified statement of a registered architect or licensed professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with, and approved by, the governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings; or

B. if the building consists of separate units not substantially sharing any common structural elements, the exterior dimensions of the units, their location and the common areas, and bearing the verified statement of a registered architect or licensed professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with, and approved by, the governmental subdivision having jurisdiction over the approval of plats for real estate.

The plans shall be kept by the county clerk in a separate file for each building, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "unit ownership," a reference to the book, page and date of recording of the declaration. The record of the declaration shall contain a reference to the file number of the floor plans of the building affected.

History: 1953 Comp., § 70-4-13, enacted by Laws 1963, ch. 221, § 13; 1971, ch. 148, § 2; 1975, ch. 318, § 14.

47-7-15. Blanket encumbrances affecting a unit at time of first conveyance.

At the time of the first conveyance of each unit, every blanket encumbrance affecting the unit shall be paid and satisfied of record, or the unit being conveyed shall be released therefrom by partial release duly recorded.

History: 1953 Comp., § 70-4-14, enacted by Laws 1963, ch. 221, § 14; 1975, ch. 318, § 15.

47-7-16. Recording.

A. The declaration, any amendment thereof, any instrument by which the provisions of the Building Unit Ownership Act may be waived and every instrument affecting the property or any unit shall be entitled to be recorded. Neither the declaration nor any amendment thereof shall be valid unless duly recorded.

B. In addition to the records and indexes required to be maintained by the county clerk, the county clerk shall maintain an index whereby the record of each conveyance of a unit affected by the declaration, and the record of each conveyance of a unit contains a reference to the declaration of the building of which the unit is a part.

History: 1953 Comp., § 70-4-15, enacted by Laws 1963, ch. 221, § 15; 1975, ch. 318, § 16.

47-7-17. Removal from provisions of the Building Unit Ownership Act.

A. All unit owners may remove a property from the provisions of the Building Unit Ownership Act by an instrument to that effect, duly recorded; provided that the holders of liens affecting any unit shall consent or agree by instrument duly recorded, provided that their liens be transferred to the percentage of the undivided interest of the debtor unit owner in the property as hereinbefore provided.

B. Upon removal of the property from the provisions of the Building Unit Ownership Act, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by an owner in the common areas and facilities.

History: 1953 Comp., § 70-4-16, enacted by Laws 1963, ch. 221, § 16; 1975, ch. 318, § 17.

47-7-18. Removal no bar to subsequent resubmission.

The removal provided in Section 47-7-17 NMSA 1978 shall not bar the subsequent resubmission of the property to the provisions of the Building Unit Ownership Act.

History: 1953 Comp., § 70-4-17, enacted by Laws 1963, ch. 221, § 17; 1975, ch. 318, § 18.

47-7-19. Bylaws.

The administration of every property shall be governed by bylaws, a true copy of which shall be annexed to the declaration and shall be a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and the amendment be duly recorded.

History: 1953 Comp., § 70-4-18, enacted by Laws 1963, ch. 221, § 18; 1975, ch. 318, § 19.

47-7-20. Contents of bylaws.

The bylaws may provide for:

A. the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation of the directors; and the authority of the board to engage the services of a manager or managing agent;

B. the method of calling meetings of the unit owners; what number of unit owners shall constitute a quorum;

C. the election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of unit owners;

D. the election of a secretary who shall keep the minute book in which resolutions shall be recorded;

E. the election of a treasurer who shall keep the financial records and books of account;

F. the maintenance, repair and replacement of the method of approving payment vouchers;

G. the manner of collecting from each unit owner his share of the common expenses;

H. the designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities; designation, and any changes, of agent for process;

I. the method of adopting and of amending administrative rules and regulations governing the details of the operation and the use of the common areas and facilities;

J. the restrictions on and requirements of the use and maintenance of the units and the use of the common areas and facilities, not set forth in the declaration, which are designed to prevent unreasonable interference with the use of units and of the common areas and facilities by the several unit owners;

K. a method by which the manager, the board of directors or the association of unit owners may lease or rent unsold units; provided, that nothing in the Building Unit Ownership Act shall be construed to prevent the lease or rental of unsold units by the proper authorities before bylaws are adopted or before the declaration is executed;

L. the percentage of votes required to amend the bylaws; and

M. other provisions as may be deemed necessary for the administration of the property consistent with the Building Unit Ownership Act.

History: 1953 Comp., § 70-4-19, enacted by Laws 1963, ch. 221, § 19; 1975, ch. 318, § 20.

47-7-21. Books of receipts and expenditures; availability for examination.

The manager or board of directors, shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. The records and the vouchers authorizing payments shall be available for examination by any unit owner at convenient hours of weekdays.

History: 1953 Comp., § 70-4-20, enacted by Laws 1963, ch. 221, § 20; 1975, ch. 318, § 21.

47-7-22. Waiver of use of common areas and facilities; abandonment of unit.

No unit owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

History: 1953 Comp., § 70-4-21, enacted by Laws 1963, ch. 221, § 21; 1975, ch. 318, § 22.

47-7-23. Taxation.

The association of unit owners shall elect whether:

A. the entire property shall be deemed a single parcel for the purposes of assessment and taxation, in which event the association shall promptly notify the unit owners of the payment of the taxes. For purposes of assessment or valuation and taxation under this paragraph, the association shall be deemed to be the owner as defined in Section 7-35-2 NMSA 1978; or

B. each unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments.

History: 1953 Comp., § 70-4-22, enacted by Laws 1963, ch. 221, § 22; 1975, ch. 318, § 23.

47-7-24. Priority of lien.

A. All sums, assessed by the association of unit owners but unpaid, for the share of the common expenses chargeable to any unit shall constitute a lien on the unit prior to all other liens except:

(1) tax liens on the unit in favor of any assessing unit and special district; and

(2) all sums unpaid on a first mortgage of record. The lien may be foreclosed by suit by the manager or board of directors, acting on behalf of the unit owners, in like manner as a foreclosure of mortgage or real property. In any foreclosure the unit owner shall be required to pay a reasonable rental for the unit if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rent paid. The manager or board of directors, acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid on the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

B. Where the mortgagee of a first mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of mortgage, the acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the association of unit owners chargeable to the unit which became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of

common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners including the acquirer, his successors and assigns.

History: 1953 Comp., § 70-4-23, enacted by Laws 1963, ch. 221, § 23; 1975, ch. 318, § 24.

47-7-25. Joint and several liability of grantor and grantee for unpaid common expenses.

In a voluntary conveyance the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses to the time of grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. However, any grantee shall be entitled to a statement from the manager or board of directors, setting forth the amount of the unpaid assessments against the grantor and the grantee shall not be liable for, nor shall the unit conveyed by [be] subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

History: 1953 Comp., § 70-4-24, enacted by Laws 1963, ch. 221, § 24; 1975, ch. 318, § 25.

47-7-25.1. Merger or consolidation of condominiums.

A. By agreement of the unit owners, any two or more condominiums may be merged or consolidated into a single condominium. Unless the agreement provides otherwise, the combined condominium is, for all purposes, the legal successor to the preexisting condominiums. The associations of the preexisting condominiums shall also be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of the preexisting associations.

B. An agreement of two or more condominiums to merge or consolidate pursuant to Subsection A of this section shall be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the precentage [percentage] of votes in each condominium required to terminate that condominium. Any such agreement shall be recorded in each county in which a portion of the condominium is located and is not effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating the reallocations or the formulas upon which they are based or by stating the percentage of overall allocated interests of the new condominium which are [is] allocated to all of the units comprising each of the preexisting condominiums; providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

History: 1978 Comp., § 47-7-25.1, enacted by Laws 1981, ch. 282, § 2.

47-7-26. Actions.

Without limiting the rights of any unit owner, actions may be brought by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the unit owners, as their respective interests may appear, with respect to any claim relating to the common areas and facilities or more than one unit. Service of process on two or more unit owners in any action relating to the common areas and facilities or more than one unit may be made on the person designated in the declaration to receive service of process.

History: 1953 Comp., § 70-4-25, enacted by Laws 1963, ch. 221, § 25; 1975, ch. 318, § 26.

47-7-27. Personal application.

A. All unit owners, tenants of owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to the provisions of the Building Unit Ownership Act shall be subject to the act and to the declaration and bylaws of the association of unit owners adopted pursuant to the provisions of the act.

B. All agreements, decisions and determinations lawfully made by the association of unit owners in accordance with the voting percentages established in the Building Unit Ownership Act, declaration or bylaws, shall be deemed to be binding on all unit owners.

History: 1953 Comp., § 70-4-26, enacted by Laws 1963, ch. 221, § 26; 1975, ch. 318, § 27.

47-7-28. Insurance.

A. The manager or the board of directors if required by the declaration, bylaws or by a majority of the unit owners shall insure the property against the risks and under the terms required. The insurance coverage shall be written in the name of the manager, board of directors or the association of unit owners as trustees for each unit owner in the percentage established in the declaration. Insurance premiums shall be common expenses. The requirement of common insurance coverage shall not prejudice the right of each unit owner to insure separately his own unit.

B. In the case of fire or other disaster, the insurance indemnity shall be applied to reconstruct the building unless the damage comprises more than two-thirds of the building, in which case the indemnity may be delivered pro rata to the co-owners in accordance with the decision of three-fourths of the co-owners.

History: 1953 Comp., § 70-4-27, enacted by Laws 1963, ch. 221, § 27; 1975, ch. 318, § 28.

ARTICLE 7A
Condominium Act - General Provisions

47-7A-1. Short title.

This act [47-7A-1 to 47-7D-20 NMSA 1978] may be cited as the "Condominium Act."

History: Laws 1982, ch. 27, § 1.

47-7A-2. Applicability.

A. The Condominium Act applies to all condominiums created within this state after the effective date of that act.

B. The provisions of the Building Unit Ownership Act do not apply to condominiums created after the effective date of the Condominium Act. Any provisions of the declaration, bylaws, plats or plans of a condominium created before the effective date of the Condominium Act, which provisions are not expressly authorized by the Building Unit Ownership Act [47-7-1 to 47-7-25, 47-7-26 to 47-7-28 NMSA 1978] but which would have been authorized by the Condominium Act, had it been in effect, are hereby ratified. A condominium subject to the provisions of the Building Unit Ownership Act shall become subject to the Condominium Act and not the Building Unit Ownership Act if a resolution to that effect is approved by a majority of the unit owners and is then recorded as are instruments creating interests in real property. The declaration, bylaws, plats or plans of a condominium created before the effective date of the Condominium Act shall be amended in conformity with the procedures and requirements specified by those instruments and by the Building Unit Ownership Act. If the amendment grants to any person any rights, powers or privileges not expressly authorized by the Building Unit Ownership Act but permitted by the Condominium Act, all correlative obligations, liabilities and restrictions in the Condominium Act also apply to that person.

History: Laws 1982, ch. 27, § 69.

47-7A-3. Definitions.

As used in the Condominium Act and declaration and bylaws, unless the context otherwise requires or otherwise specifically provided:

A. "affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant. For the purpose of this subsection:

(1) a person "controls" a declarant if the person is a general partner, officer, director or employer of the declarant; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the declarant; controls in any manner the election of a majority of the directors of the declarant; or has contributed more than twenty percent of the capital of the declarant; and

(2) a person "is controlled by" a declarant if the declarant is a general partner, officer, director or employer of the person; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; controls in any manner the election of a majority of the directors of the person; or has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised;

B. "allocated interests" means the undivided interest in the common elements, the common expense liability and votes in the association allocated to each unit;

C. "association" or "unit owners' association" means the unit owners' association organized under Section 34 [47-7C-1 NMSA 1978] of the Condominium Act;

D. "common elements" means all portions of a condominium other than the units;

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

F. "common expense liability" means the liability for common expenses allocated to each unit pursuant to Section 19 [47-7B-7 NMSA 1978] of the Condominium Act;

G. "condominium" 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. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners;

H. "conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers or persons who occupy with the consent of purchasers, and shall for the purposes of Sections 64 and 65 [47-7D-12, 47-7D-17 NMSA 1978] only of the Condominium Act include mobile housing parks;

I. "declarant" means any person or group of persons acting in concert who:

(1) as part of a common promotional plan, offers to dispose of its interest in a unit not previously disposed of;

(2) reserves or succeeds to any special declarant right; or

(3) executes and records a declaration;

J. "declaration" means any instruments, however denominated, that create a condominium, and any amendments to such instruments;

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

(1) add real estate to a condominium;

(2) create units, common elements or limited common elements within a condominium;

(3) subdivide units or convert units into common elements; or

(4) withdraw real estate from a condominium;

L. "dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but such term does not include the transfer or release of a security interest;

M. "executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association;

N. "identifying number" means a symbol or address that identifies only one unit in a condominium;

O. "leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size;

P. "limited common element" means a portion of the common elements allocated by the declaration or by operation of Subsections B and D of Section 14 [47-7B-2 NMSA 1978] of the Condominium Act for the exclusive use of one or more but fewer than all of the units;

Q. "master association" means an organization described in Section 32 [47-7B-20 NMSA 1978] of the Condominium Act, whether or not it is also an association described in Section 34 [47-7C-1 NMSA 1978] of the Condominium Act;

R. "mobile housing park" means any site used for the business of renting, leasing or providing, for any form of compensation, a mobile housing unit for occupancy on property not owned by the mobile housing unit's occupant or providing space and facilities for a mobile housing unit owned by the occupant;

S. "mobile housing unit" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width, constructed to be towed on its own chassis and designed so as to be installed without a permanent foundation for human occupancy as a residence which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit; except that the definition does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property;

T. "offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation or in any broadcast medium to the general public of a condominium not located in New Mexico is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located;

U. "person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal or commercial entity;

V. "purchaser" means any person other than a declarant or a person in the business of selling real estate for his own account who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

(1) a leasehold interest, including renewal options, of less than twenty years; or

(2) as security for obligation;

W. "real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance, and includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water;

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

Y. "special declarant rights" means rights reserved for the benefit of a declarant to:

(1) complete improvements indicated on plats and plans filed with the declaration;

(2) exercise any development right;

(3) maintain sales offices, management offices, signs advertising the condominium and models;

(4) use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium;

(5) make the condominium part of a larger condominium or a planned community;

(6) make the condominium subject to a master association; or

(7) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control;

Z. "time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof;

AA. "unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 17 [14] [47-7B-2 NMSA 1978] of the Condominium Act; and

BB. "unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

History: Laws 1982, ch. 27, § 2.

47-7A-4. Variation by agreement.

Except as expressly provided in the Condominium Act, the provisions of that act shall not be varied by agreement, and the rights conferred by the Condominium Act shall not be waived. A declarant shall not evade the limitations or prohibitions of that act or the declaration by use of a power of attorney or any other device.

History: Laws 1982, ch. 27, § 3.

47-7A-5. Taxation.

A. The association of unit owners shall elect whether:

(1) the entire property shall be deemed a single parcel for the purposes of assessment and taxation, in which event the association shall promptly notify the unit owners of the payment of the taxes. For purposes of assessment or valuation and taxation under this paragraph, the association shall be deemed to be the owner as defined in Section 7-35-2 NMSA 1978; or

(2) each unit and its percentage of undivided interest in the common elements shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments.

B. Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and only the declarant is liable for payment of such taxes.

C. If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978].

History: Laws 1982, ch. 27, § 4; 1983, ch. 245, § 1.

47-7A-6. Applicability of local ordinances, regulations and building codes.

No provision of the Condominium Act invalidates or modifies any provision of any zoning, subdivision, building code or other real estate use law, ordinance or regulation; provided, however, a zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon the same development under a different form of ownership.

History: Laws 1982, ch. 27, § 5.

47-7A-7. Eminent domain.

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner for his unit and his interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

B. Except as provided in Subsection A of this section, if part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and the unit's interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of the unit's reduced allocated interests.

C. Unless the declaration provides otherwise, if part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

D. The court decree shall be recorded in each county in which any portion of the condominium is located.

History: Laws 1982, ch. 27, § 6.

47-7A-8. Supplemental general principles of law applicable.

Except to the extent inconsistent with the Condominium Act, the principles of law and equity, including the law of corporations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance or other validating or invalidating cause supplement the provisions of that act.

History: Laws 1982, ch. 27, § 7.

47-7A-9. Construction against implicit repeal, amendment or expansion.

The Condominium Act is a general act intended as a unified coverage of its subject matter; no part of it shall be deemed impliedly repealed, amended or expanded by subsequent legislation if that construction can reasonably be avoided.

History: Laws 1982, ch. 27, § 8.

47-7A-10. Reserved.

47-7A-11. Severability.

If any part or application of the Condominium Act is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

History: Laws 1982, ch. 27, § 9.

47-7A-12. Unconscionable agreement or term of contract.

A. The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause or limit the application of any unconscionable clause in order to avoid an unconscionable result.

B. Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to unconscionability, including:

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors; and

(3) the effect and purpose of the contract or clause.

History: Laws 1982, ch. 27, § 10.

47-7A-13. Obligation of good faith.

Every contract or duty governed by the Condominium Act imposes an obligation of good faith in its performance or enforcement.

History: Laws 1982, ch. 27, § 11.

47-7A-14. Remedies to be liberally administered.

A. The remedies provided by the Condominium Act shall be liberally administered in order that the aggrieved party is placed in as good a position as if the other party had fully performed. However, consequential, special or punitive damages shall not be awarded except as specifically provided in the Condominium Act or by other law.

B. Any right or obligation declared by the Condominium Act is enforceable by judicial proceeding.

History: Laws 1982, ch. 27, § 12.

ARTICLE 7B
Condominium Act - Creation, Alteration and Termination of Condominiums

47-7B-1. Creation of condominium.

A. A condominium may be created pursuant to the Condominium 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 condominium is located and shall be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of each person executing the declaration.

B. A declaration or an amendment to a declaration adding units to a condominium shall not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by a licensed engineer, architect, the appropriate building inspection authority or by the declarant. This section does not apply to a conversion building restricted in its entirety to uses other than for residential purposes.

History: Laws 1982, ch. 27, § 13.

47-7B-2. Unit boundaries.

Except as provided by the declaration:

A. if walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements;

B. if any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements;

C. subject to the provisions of Subsection B of this section, all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit;

D. any shutters, awnings, window boxes, doorsteps or stoops and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit; and

E. any porches, balconies or patios designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

History: Laws 1982, ch. 27, § 14.

47-7B-3. Construction and validity of declaration and bylaws.

A. All provisions of the declaration and bylaws are severable.

B. The rule against perpetuities shall not be applied to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to Section 35 [47-7C-2 NMSA 1978] of the Condominium Act.

C. In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the Condominium Act.

D. Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with the Condominium Act. Whether a substantial failure impairs marketability is not affected by that act.

History: Laws 1982, ch. 27, § 15.

47-7B-4. Description of units.

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws.

History: Laws 1982, ch. 27, § 16.

47-7B-5. Contents of declaration.

A. The declaration for a condominium shall contain:

(1) the names of the condominium, which shall include the word "condominium" or be followed by the words "a condominium", and the association;

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

(3) a description, legally sufficient for conveyance, of the real estate included in the condominium;

(4) a statement of the maximum number of units that the declarant reserves the right to create;

(5) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(6) a description of any limited common elements, other than those specified in Subsections B, D and E of Section 47-7B-2 NMSA 1978, as provided in Section 47-7B-9 NMSA 1978;

(7) a description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in Subsections B, D and E of Section 47-7B-2 NMSA 1978, together with a statement that they may be so allocated;

(8) a description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(9) if any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards, and a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) any other conditions or limitations under which the rights described in Paragraph (8) of this subsection shall be exercised or they shall lapse;

(11) an allocation to each unit of the allocated interests in the manner described in Section 47-7B-7 NMSA 1978;

(12) any restrictions on use, occupancy and alienation of the units;

(13) if required by local ordinance, written confirmation from the local zoning official that the condominium complies with the zoning density requirements of local

zoning and subdivision ordinances or regulations as required in Section 47-7A-6 NMSA 1978; and

(14) all matters required by Sections 47-7B-6 through 47-7B-9, 47-7B-15, 47-7B-16 and Subsection D of Section 47-7C-3 NMSA 1978.

B. The declaration may contain any other matters that the declarant deems appropriate.

History: Laws 1982, ch. 27, § 17; 1983, ch. 245, § 2; 2012, ch. 43, § 1.

47-7B-6. Leasehold condominiums.

A. With respect to any condominium created on a leasehold estate, the declaration shall state:

(1) the recording data for the lease, or a copy of the lease shall be attached as an exhibit;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real estate subject to the lease;

(4) any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

B. Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests.

C. If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with Subsection A of Section 6 [47-7A-7 NMSA 1978] of the Condominium Act as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

History: Laws 1982, ch. 27, § 18.

47-7B-7. Allocation of common element interests; votes; common expense liabilities.

A. The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

B. If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

C. The declaration may provide:

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

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

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

A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by the Condominium Act, nor may units constitute a class because they are owned by a declarant.

D. Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

E. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

History: Laws 1982, ch. 27, § 19.

47-7B-8. Limited common elements.

A. Except for the limited common elements described in Subsections B, D and E of Section 47-7B-2 NMSA 1978, the declaration shall specify to which unit or units each

limited common element is allocated. That allocation shall not be altered without the consent of the unit owners whose units are affected.

B. Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy of the amendment to the association, which shall record it. The amendment shall be recorded in the names of the parties and the condominium.

C. A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with Paragraph (7) of Subsection A of Section 47-7B-5 NMSA 1978. The allocations shall be made by amendments to the declaration.

History: Laws 1982, ch. 27, § 20; 1983, ch. 245, § 3.

47-7B-9. Plats and plans.

A. Plats and plans are a part of the declaration. Separate plats and plans are not required by the Condominium Act [47-7A-1 to 47-7D-20 NMSA 1978] if all the information required by this section is contained in either a plat or plan. Each plat and plan shall be clear and legible and contain a certification that the plat or plan contains all information required by this section.

B. Each plat shall show:

(1) the name of the condominium and a survey or a general schematic map of the condominium;

(2) the location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(3) a legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(4) the extent of any encroachments by or upon any portion of the condominium;

(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;

(6) the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to Subsection D of this section and that unit's identifying number;

(7) the location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to Subsection D of this section and that unit's identifying number;

(8) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(9) the distance between noncontiguous parcels of real estate comprising the condominium;

(10) the location and dimensions of limited common elements, other than the limited common elements described in Subsections B and D of Section 14 [47-7B-2 NMSA 1978] of the Condominium Act; and

(11) in the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

C. A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown shall be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT." Any certification of a plat required by this section shall be made by a licensed surveyor.

D. To the extent not shown or projected on the plats, plans of the units must show or project:

(1) the location and dimensions of the vertical boundaries of each unit and that unit's identifying number;

(2) any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(3) any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately.

E. Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

F. Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of Subsections A, B and D of this section or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

G. Any certification of a plan required by this section shall be made by a licensed surveyor, architect or engineer.

History: Laws 1982, ch. 27, § 21.

47-7B-10. Exercise of development rights.

A. To exercise any development right reserved under Paragraph (8) of Subsection A of Section 17 [47-7B-5 NMSA 1978] of the Condominium Act, the declarant shall prepare, execute and record an amendment to the declaration and comply with Section 21 [47-7B-9 NMSA 1978] of the Condominium Act. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in Subsection C of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 20 [47-7B-8 NMSA 1978] of the Condominium Act.

B. Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by Section 17 or 18 [47-7B-5, 47-7B-6 NMSA 1978] of the Condominium Act as the case may be, and the plats and plans include all matters required by Section 21 [47-7B-9 NMSA 1978] of that act. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to Paragraph (8) of Subsection A of Section 17 [47-7B-5 NMSA 1978] of that act.

C. Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements or both:

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration shall reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration shall reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides, pursuant to Paragraph (8) of Subsection A of Section 17 [47-7B-5 NMSA 1978] of the Condominium Act, that all or a portion of the real estate is subject to the development right of withdrawal:

(1) if all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) if a portion or portions are subject to withdrawal, no portion shall be withdrawn after a unit in that portion has been conveyed to a purchaser.

History: Laws 1982, ch. 27, § 22.

47-7B-11. Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a unit owner:

A. may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

B. may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association; and

C. after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not an alteration of boundaries.

History: Laws 1982, ch. 27, § 23.

47-7B-12. Relocation of boundaries between adjoining units.

A. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application shall state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them and, upon recordation, is indexed in the name of the grantor and the grantee.

B. The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

History: Laws 1982, ch. 27, § 24.

47-7B-13. Subdivision of units.

A. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute

and record an amendment to the declaration, including the plats and plans, subdividing that unit.

B. The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

History: Laws 1982, ch. 27, § 25.

47-7B-14. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

History: Laws 1982, ch. 27, § 26.

47-7B-15. Use for sales purposes.

A declarant may maintain sales offices, management offices and models in units or on common elements in the condominium if the declaration so provides. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances.

History: Laws 1982, ch. 27, § 27.

47-7B-16. Easement rights.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under the Condominium Act or reserved in the declaration.

History: Laws 1982, ch. 27, § 28.

47-7B-17. Amendment of declaration.

A. Except in cases of amendments that may be executed by a declarant under Section 47-7B-9 or 47-7B-10 NMSA 1978, the association under Section 47-7B-6, 47-7B-7, 47-7B-8, 47-7B-12 or 47-7B-13 NMSA 1978 or certain unit owners under Section 47-7B-8, 47-7B-12, 47-7B-13 or 47-7B-18 NMSA 1978 and except as limited by Subsection D of this section, the declaration, including the plats and plans, may be

amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

B. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

C. Every amendment to the declaration shall be recorded in each county in which any portion of the condominium is located and is effective only upon recordation. An amendment shall be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of the parties executing the amendment.

D. Except to the extent expressly permitted or required by other provisions of the Condominium Act, no amendment shall create or increase special declarant rights, increase the number of units or change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted in the absence of unanimous consent of the unit owners.

E. Amendments to the declaration required by the Condominium Act to be recorded by the association shall be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

F. No amendment to the declaration which would limit, prohibit or eliminate the exercise of a special declarant right shall be effective, during the period of the reservation, without the concurrence of the declarant.

History: Laws 1982, ch. 27, § 29; 1983, ch. 245, § 4.

47-7B-18. Termination of condominium.

A. Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

B. An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in each county in which a portion of the condominium is situated and is effective only upon recordation.

C. In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

D. In the case of a condominium containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale.

E. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to Subsections A and B of this section. If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in Subsection H of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by the Condominium Act or the declaration.

F. If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in Subsection H of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their unit.

G. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lienholder.

H. The respective interests of unit owners referred to in Subsections E, F and G of this section are as follows:

(1) except as provided in Paragraph (2) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements; and

(2) if any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

I. Except as provided in Subsection J of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

J. If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may upon foreclosure record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

History: Laws 1982, ch. 27, § 30.

47-7B-19. Rights of secured lenders.

The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units or vendors of units under installment sales contracts approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board or prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding or receiving and distributing any insurance proceeds except pursuant to Section 46 [47-7C-13 NMSA 1978] of the Condominium Act.

History: Laws 1982, ch. 27, § 31.

47-7B-20. Master associations.

A. If the declaration for a condominium provides that any of the powers described in Section 35 [47-7C-2 NMSA 1978] of the Condominium Act are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of that act [47-7A-1 to 47-7D-20 NMSA 1978] applicable to unit owners' associations apply to any such corporation or unincorporated association, except as modified by this section.

B. Unless a master association is acting in the capacity of an association described in Section 34 [47-7C-1 NMSA 1978] of the Condominium Act, it may exercise the powers set forth in Section 35 [47-7C-2 NMSA 1978] of that act only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

C. If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

D. The rights and responsibilities of unit owners with respect to the unit owners' association set forth in Sections 36, 41, 42, 43 and 45 [47-7C-3, 47-7C-8 to 47-7C-10, 47-7C-12 NMSA 1978] of the Condominium Act apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of that act.

E. Notwithstanding the provisions of Section 36 [47-7C-3 NMSA 1978] of the Condominium Act with respect to the election of the executive board of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in Section 34 [47-7C-1 NMSA 1978] of that act, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association may provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(1) all unit owners of all condominiums subject to the master association shall elect all members of that executive board;

(2) all members of the executive boards of all condominiums subject to the master association shall elect all members of that executive board;

(3) all unit owners of each condominium subject to the master association shall elect specified members of that executive board; and

(4) all members of the executive board of each condominium subject to the master association shall elect specified members of that executive board.

History: Laws 1982, ch. 27, § 32.

47-7B-21. Merger or consolidation of condominiums.

A. Any two or more condominiums, by agreement of the unit owners as provided in Subsection B of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums, and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

B. An agreement of two or more condominiums to merge or consolidate pursuant to Subsection A of this section shall be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement shall be recorded in each county in which a portion of the condominium is located and is not effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating the reallocations or the formulas upon which they are based or by stating the percentage of overall allocated interests of the new condominium which is

allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

History: Laws 1982, ch. 27, § 33.

ARTICLE 7C
Condominium Act - Management of Condominium

47-7C-1. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under Section 30 [47-7B-18 NMSA 1978] of the Condominium Act or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

History: Laws 1982, ch. 27, § 34.

47-7C-2. Powers of unit owners' association.

A. Except as provided in Subsection B of this section, and subject to the provisions of the declaration, the association may:

(1) adopt and amend bylaws and rules and regulations;

(2) adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners;

(3) hire and discharge managing agents and other employees, agents and independent contractors;

(4) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) make contracts and incur liabilities;

(6) regulate the use, maintenance, repair, replacement and modification of common elements;

(7) cause additional improvements to be made as a part of the common elements;

(8) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but common elements shall be conveyed or subjected to a security interest only pursuant to Section 45 [47-7C-12 NMSA 1978] of the Condominium Act;

(9) grant easements, leases, licenses and concessions through or over the common elements;

(10) impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in Subsections B and D of Section 14 [47-7B-2 NMSA 1978] of the Condominium Act, and for services provided to the unit owners;

(11) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association;

(12) impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by Section 61 [47-7D-9 NMSA 1978] of the Condominium Act or statements of unpaid assessments;

(13) provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(15) exercise any other powers conferred by the declaration or bylaws;

(16) exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(17) exercise any other powers necessary and proper for the governance and operation of the association.

B. The declaration shall not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

History: Laws 1982, ch. 27, § 35.

47-7C-3. Executive board members and officers.

A. Except as provided in the declaration, the bylaws or other provisions of the Condominium Act, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise, if appointed by the declarant, the care required of fiduciaries of the unit owners and, if elected by the unit owners, ordinary and reasonable care.

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

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

D. Subject to Subsection E 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 him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

(1) one hundred eighty days after conveyance of ninety percent of the units which may be created to unit owners other than a declarant;

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

(3) five years after any development right to add new units was last exercised.

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

E. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board shall be appointed by the

declarant from among the unit owners. No member so appointed shall be an affiliate of the declarant if such persons are available.

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

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

History: Laws 1982, ch. 27, § 36.

47-7C-4. Transfer of special declarant rights.

A. No special declarant right created or reserved under the Condominium Act shall be transferred except by an instrument evidencing the transfer recorded in each county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

B. Upon tranfer [transfer] of any special declarant right, the liability of a transferor declarant is as follows:

(1) a transferor is not relieved of any obligation or liability arising before the transfer. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor;

(2) if a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium;

(3) if a transferor retains any special declarant right but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by the Condominium Act or by the declaration relating to the retained special declarant rights and arising after the transfer; and

(4) a transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

C. Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale or sale under bankruptcy laws or

receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration pursuant to Section 27 [47-7B-15 NMSA 1978] of the Condominium Act and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

D. Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust or sale under bankruptcy laws or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control terminates unless the judgment of instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. The obligations and liabilities of a person who succeeds to special declarant rights are as follows:

(1) a successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by the Condominium Act or by the declaration;

(2) a successor to any special declarant right, other than a successor described in Paragraph (3) or (4) of this subsection, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by the Condominium Act or the declaration:

(a) on a declarant which relate to his exercise or nonexercise of special declarant rights; or

(b) on his transferor, other than:

1) misrepresentations by any previous declarant;

2) warranty obligations on improvements made by any previous declarant, or made before the condominium was created;

3) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

4) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(3) a successor to only a right reserved in the declaration to maintain models, sales offices and signs, if he is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligations to provide a disclosure statement; and

(4) a successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under Subsection C of this section may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor shall not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of Section 36 [47-7C-3 NMSA 1978] of the Condominium Act for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any obligation or liability as a declarant other than liability for his acts and omissions under Section 36 of the Condominium Act.

F. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under the Condominium Act or the declaration.'

History: Laws 1982, ch. 27, § 37.

47-7C-5. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the unit owners pursuant to Section 36 [47-7C-3 NMSA 1978] of the Condominium Act takes office, any management contract, employment contract or lease of recreational or parking areas or facilities, any other contract or lease between the association and a declarant or an affiliate of a declarant or any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to Section 36 of that act takes office, upon not less than ninety days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

History: Laws 1982, ch. 27, § 38.

47-7C-6. Bylaws.

A. The bylaws of the association shall provide for:

(1) the number of members of the executive board and the titles of the officers of the association;

(2) election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;

(3) the qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies;

(4) which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association; and

(6) the method of amending the bylaws.

B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

History: Laws 1982, ch. 27, § 39.

47-7C-7. Upkeep of condominium.

A. Except to the extent provided by the declaration, Subsection B of this section or Section 46 [47-7C-13 NMSA 1978] of the Condominium Act, the association is responsible for maintenance, repair and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

B. In addition to the liability that a declarant as a unit owner has under the Condominium Act, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

History: Laws 1982, ch. 27, § 40.

47-7C-8. Meetings.

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by unit owners having twenty percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten days nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes and any proposal to remove a director or officer.

History: Laws 1982, ch. 27, § 41.

47-7C-9. Quorums.

A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

B. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

History: Laws 1982, ch. 27, § 42.

47-7C-10. Voting; proxies.

A. If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is a majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

B. Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

C. If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units:

(1) the provisions of Subsections A and B of this section apply to lessees as if they were unit owners;

(2) unit owners who have leased their units to other persons may not cast votes on those specified matters; and

(3) lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners. Unit owners shall also be given notice, in the manner provided in Section 41 [47-7C-8 NMSA 1978] of the Condominium Act, of all meetings at which lessees may be entitled to vote.

D. No votes allocated to a unit owned by the association may be cast.

History: Laws 1982, ch. 27, § 43.

47-7C-11. Tort and contract liability.

Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, any action alleging a wrong done by the association shall be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association shall indemnify the association or any unit owner other than an affiliate of the declarant for all judgments paid which are not covered by insurance, which judgments resulted from a breach of control or other wrongful act or omission on the part of the declarant. Whenever the declarant is liable under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees. Any statute of limitation affecting the association's right of indemnification under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by Section 50 [47-7C-17 NMSA 1978] of the Condominium Act.

History: Laws 1982, ch. 27, § 44.

47-7C-12. Conveyance or encumbrance of common elements.

A. Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action, but

all the owners of units to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

B. An agreement to convey common elements or subject them to a security interest shall be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof shall be recorded in each county in which a portion of the condominium is situated, and is effective only upon recordation.

C. The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to Subsections A and B of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

D. Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements, unless made pursuant to this section, is void.

E. A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.

F. A conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

History: Laws 1982, ch. 27, § 45.

47-7C-13. Insurance.

A. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

(2) liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the

declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements.

B. In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under Paragraph (1) of Subsection A of this section, to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

C. If the insurance described in Subsections A and B of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

D. Insurance policies carried pursuant to Subsection A of this section must provide that:

(1) each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

(2) the insurer waives its right to subrogation under the policy against any unit owner or member of his household;

(3) no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, shall void the policy or be a condition to recovery under the policy; and

(4) if, at the time of a loss under the policy, there is other insurance in the name of the unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

E. Any loss covered by the property policy under Paragraph (1) of Subsection A and Subsection B of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of Subsection H of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

F. An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

G. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at his last known address.

H. Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance or eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, and the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under Subsection A of Section 6 [47-7A-7 NMSA 1978] of the Condominium Act, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

I. Notwithstanding the provisions of Subsection H of this Section, Section 30 [47-7B-18 NMSA 1978] of the Condominium Act governs the distribution of insurance proceeds if the condominium is terminated.

J. Unless the declaration otherwise provides, the provisions of this section do not apply to a condominium all of whose units are restricted to nonresidential use.

History: Laws 1982, ch. 27, § 46.

47-7C-14. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

History: Laws 1982, ch. 27, § 47.

47-7C-15. Assessments for common expenses.

A. Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association.

B. Except for assessments under Subsections C, D and E of this section, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to Subsection A of Section 19 [47-7B-7 NMSA 1978] of the Condominium Act. Any past-due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent per year.

C. To the extent required by the declaration:

(1) any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and

(3) the costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.

D. Assessments to pay a judgment against the association shall be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

E. If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

F. If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

History: Laws 1982, ch. 27, § 48.

47-7C-16. Lien for assessments.

A. The association has a lien on a unit for any assesssment [assessment] levied against that unit or fines imposed against its unit owner from the time the assessment or

fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to Section 47-7C-2 NMSA 1978 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

B. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

C. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of the claim of lien for assessment under this section is required.

D. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

E. This section does not prohibit actions to recover sums for which Subsection A of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

F. A judgment or decree in any action brought under this section may include costs and reasonable attorney's fees for the prevailing party.

G. The association upon written request shall furnish at a unit owner's request a recordable statement setting forth the amount of unpaid assessments against his unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

H. To the extent provided in the declaration, the lien established by this section shall be subordinate to other liens or encumbrances.

History: Laws 1982, ch. 27, § 49; 1983, ch. 245, § 5.

47-7C-17. Other liens affecting the condominium.

A. Except as provided in Subsection B of this section, a judgment for money against the association is not a lien on the common elements but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the transcript of judgment was recorded. No other property of a unit owner is subject to the claims of creditors of the association.

B. If the association has granted a security interest in the common elements to a creditor of the association pursuant to Section 47-7C-12 NMSA 1978, the holder of that

security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

C. Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association shall not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

D. Subsequent to recording the declaration as provided in the Condominium Act and while the real estate remains subject to that act, no lien shall arise or be effective against the real estate. During the period, liens or encumbrances shall only arise or be created against each unit and the percentage of undivided interest in the common elements, appurtenant to the unit, in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel of real property subject to individual ownership; provided, however, that no labor performed or materials furnished, with the consent or at the request of a unit owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to law against the unit or other property of another unit owner not expressly consenting to or requesting the same; except that express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs. Labor performed or materials furnished for the common elements, if duly authorized by the association of unit owners, the manager or board of directors in accordance with the Condominium Act, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to law against each of the units.

E. A judgment against the association must be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units.

History: Laws 1982, ch. 27, § 50; 1983, ch. 245, § 6.

47-7C-18. Association records.

The association shall keep financial records sufficiently detailed to enable the association to comply with Section 61 [47-7D-9 NMSA 1978] of the Condominium Act. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

History: Laws 1982, ch. 27, § 51.

47-7C-19. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

History: Laws 1982, ch. 27, § 52.

ARTICLE 7D
Condominium Act - Protection of Condominium Purchasers

47-7D-1. Requirement for disclosure statement.

A. Except as provided in Subsection B of this section, Sections 53 through 72 of the Condominium Act apply to all units restricted to residential use subject to that act [47-7A-1 through 47-7D-20 NMSA 1978].

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

(1) a gratuitous disposition of a unit;

(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 units to purchasers;

(6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty;

(7) a disposition to a nonresident alien; or

(8) a disposition of a unit restricted to nonresidential use.

History: Laws 1982, ch. 27, § 53.

47-7D-2. Liability for disclosure statement requirements.

A. Except as provided in Subsection B of this section, prior to the offering of any interest in a unit to the public, a declarant shall prepare a disclosure statement conforming to the requirements of Sections 55 through 58 [47-7D-3 to 47-7D-6 NMSA 1978] of the Condominium Act.

B. A declarant may transfer responsibility for preparation of all or part of the disclosure statement to a successor declarant or to a person in the business of selling real estate who intends to offer units in the condominium for his own account. 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 transferor is not liable for insuring that the transferee complies with the requirements of Sections 55 through 58 [47-7D-3 to 47-7D-6 NMSA 1978] of the Condominium Act.

C. Any declarant or other person in the business of selling real estate who offers a unit for his own account to a purchaser shall deliver a disclosure statement in the manner prescribed in Subsection A of Section 60 [47-7D-8 NMSA 1978] of the Condominium Act. The declarant or any other person specified in Subsection B of this section who prepared all or part of the disclosure statement is liable under Sections 60 and 69 [65] [47-7D-8, 47-7D-17 NMSA 1978] of that act for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the disclosure statement which he prepared. If a declarant did not prepare any part of a disclosure statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

D. If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a disclosure statement is required under the laws of this state, a single disclosure statement conforming to the requirements of Sections 55 through 58 [47-7D-3 to 47-7D-6 NMSA 1978] of the Condominium Act as those requirements relate to all real estate regimes in which the unit is located, and to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more disclosure statements.

History: Laws 1982, ch. 27, § 54.

47-7D-3. Disclosure statement; general provisions.

A. Except as provided in Subsection B of this section, a disclosure statement must contain or fully and accurately disclose:

(1) the name and principal address of the declarant and of the condominium;

(2) a general description of the condominium, 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 condominium;

(3) the number of units in the condominium;

(4) copies of the declaration, other than the plats and plans, and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under Section 38 [47-7C-5 NMSA 1978] of the Condominium Act;

(5) any current balance sheet and a projected budget for the association, either within or as an exhibit to the disclosure statement, 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 type of unit;

(6) any services not reflected in the budget that the declarant provides, or expenses that he pays, and that he expects may become at any 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 type of unit;

(7) any 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 any liens, defects or encumbrances on or affecting the title to the condominium;

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

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

(11) a statement that:

(a) within seven days after receipt of a disclosure statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;

(b) if a declarant fails to provide a disclosure statement to a purchaser before conveying a unit, that purchaser may rescind the purchase within six months from the date of conveyance;

(c) shall set forth the procedures set forth in Subsection C of Section 60 [47-7D-8 NMSA 1978] of the Condominium Act; and

(d) if a purchaser receives the disclosure statement more than seven days before signing a contract to purchase a unit, he cannot cancel the contract;

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

(13) a statement that any deposit made in connection with the purchase of a unit 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 60 [47-7D-8 NMSA 1978] of the Condominium Act, together with the name and address of the escrow agent;

(14) any restraints on alienation of any portion of the condominium;

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

(16) any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium; and

(17) the extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to Section 21 [47-7B-9 NMSA 1978] of the Condominium Act.

B. If a condominium composed of not more than twenty-five units is not subject to any development rights and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums or other real estate, a public offering statement may but need not include the information otherwise required by Paragraphs (9), (10) and (15) through (17) of Subsection A of this section.

C. A declarant promptly shall amend the disclosure statement to report any material change in the information required by this section.

History: Laws 1982, ch. 27, § 55.

47-7D-4. Condominiums subject to development rights.

If the declaration provides that a condominium is subject to any development rights, the disclosure statement shall disclose, in addition to the information required by Section 55 [47-7D-3 NMSA 1978] of the Condominium Act:

A. the maximum number of units and the maximum number of units per acre that may be created;

B. a statement of how many or what percentage of the units which may be created shall be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;

C. if any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;

D. a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

E. a statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in Subsection C of this section;

F. a statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium shall be compatible with existing buildings and improvements in the condominium in terms of architectural style, quality of construction and size, or a statement that no assurances are made in that regard;

G. general descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to

any development right reserved by the declarant, or a statement that no assurances are made in that regard;

H. a statement of any limitations as to the locations of any building or other improvement that may be made within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

I. a statement that any limited common elements created pursuant to any development right reserved by the declarant shall be of the same general types and sizes as the limited common elements within other parts of the condominium, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

J. a statement that all restrictions in the declaration affecting use, occupancy and alienation of units shall apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

K. a statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

History: Laws 1982, ch. 27, § 56.

47-7D-5. Time shares.

If the declaration provides that ownership or occupancy of any units is or may be in time shares, the disclosure statement shall disclose, in addition to the information required by Section 55 [47-7D-3 NMSA 1978] of the Condominium Act:

A. a description of the time share interest that may be created;

B. the number and identity of units in which time shares may be created;

C. the total number of time shares that may be created;

D. the minimum duration of any time shares that may be created; and

E. the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in Section 49 [47-7C-16 NMSA 1978] of the Condominium Act.

History: Laws 1982, ch. 27, § 57.

47-7D-6. Condominiums containing conversion buildings.

A. The disclosure statement of a condominium containing any conversion building shall contain, in addition to the information required by Section 54 [55] [47-7D-3 NMSA 1978] of the Condominium Act:

(1) a statement by the declarant, based on a report prepared by a licensed architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building; and

(2) a list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations.

B. Paragraph (1) of Subsection A of this section applies only to buildings containing more than fifteen units that shall be occupied for residential use.

History: Laws 1982, ch. 27, § 58.

47-7D-7. Condominium securities.

If an interest in a condominium is currently registered with the securities and exchange commission of the United States, a declarant satisfies all requirements relating to the preparation of a disclosure statement of the Condominium Act if he delivers to the purchaser a copy of the prospectus approved by the securities and exchange commission.

History: Laws 1982, ch. 27, § 59.

47-7D-8. Purchaser's right to cancel.

A. A person required to deliver a disclosure statement pursuant to Subsection C of Section 54 [47-7D-2 NMSA 1978] of the Condominium Act shall provide a purchaser of a unit with a copy of the disclosure statement and all amendments thereto before conveyance of that unit and not later than the date of any contract of sale. Unless a purchaser is given the disclosure statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the disclosure statement.

B. If a purchaser elects to cancel a contract pursuant to Subsection A of this section, he may do so by hand-delivering notice thereof to the offerer or by mailing notice thereof by prepaid United States mail to the offerer or to his agent for service of process. 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 Subsection C of Section 54 of the Condominium Act fails to provide a purchaser to whom a unit is conveyed with that disclosure statement and all amendments thereto as required by

Subsection A of this section, the purchaser is entitled to rescind the purchase within six months from the date of conveyance upon delivery to the seller of a deed subject to no encumbrance attaching to the property suffered or caused by the purchaser.

History: Laws 1982, ch. 27, § 60.

47-7D-9. Resales of units.

A. Except in the case of a sale where delivery of a disclosure statement is required, or unless exempt under Subsection B of Section 53 [47-7D-1 NMSA 1978] of the Condominium Act, a unit owner shall furnish to a purchaser before conveyance a copy of the declaration, other than the plats and plans, the bylaws, 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 unit;

(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 unit owner;

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

(4) a statement of any capital expenditures anticipated by the association for the current and 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 against the association;

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

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

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

Subsection A of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for seven days thereafter or until conveyance, whichever first occurs.

History: Laws 1982, ch. 27, § 61.

47-7D-10. Escrow of deposits.

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a disclosure statement pursuant to Subsection C of Section 54 [47-7D-2 NMSA 1978] of the Condominium Act shall be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose until:

A. delivered to the declarant at closing;

B. delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or

C. refunded to the purchaser.

History: Laws 1982, ch. 27, § 62.

47-7D-11. Release of liens.

A. In the case of a sale of a unit where delivery of a disclosure statement is required pursuant to Subsection C of Section 54 [47-7D-2 NMSA 1978] of the Condominium Act, a seller shall, before conveying a unit, record or furnish to the purchaser releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any real estate which a declarant has the right to withdraw.

B. Before conveying real estate to the association, the declarant shall have that real estate released from all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and all other liens on that real estate unless the disclosure statement describes certain real estate which may be conveyed subject to liens in specified amounts.

History: Laws 1982, ch. 27, § 63.

47-7D-12. Conversion buildings.

A. A declarant of a condominium containing conversion buildings and any person in the business of selling real estate for his own account who intends to offer units in such a condominium shall give each of the residential tenants and residential subtenants in possession of a portion of a conversion building notice of the conversion and provide those persons with the disclosure statement no later than sixty days before the tenants and subtenants in possession are required to vacate. The notice shall set forth generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. If mailed, the notice will be deemed received on the earlier of actual receipt or thirty days after mailing. No tenant or subtenant shall be required to vacate upon shorter notice than that required by the Uniform Owner-Resident Relations Act, Section 47-8-1 NMSA 1978 et seq. Failure to give notice as required by this section is a defense to an action for possession.

B. For sixty days after receipt of the notice described in Subsection A of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during the sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following sixty days at a price more favorable to the offeree than the price offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

C. If a seller, in violation of Subsection B of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under Subsection B of this section to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of Subsection B of this section.

D. From the date on which the tenant or subtenant accepts the offer pursuant to Subsection B of this section, there shall be no increase in the rental rate applicable to the portion of the conversion building of which the tenant or subtenant is in possession. If the tenant fails or refuses to consummate the purchase, the rent may thereafter be increased.

E. Nothing in this section permits termination of a lease by a declarant in violation of its terms. Any provision in a lease which would permit termination or cancellation of the lease by a declarant prior to its stated term solely because the declarant seeks to convert the real estate to a condominium is unenforceable.

History: Laws 1982, ch. 27, § 64.

47-7D-13 to 47-7D-16. Reserved.

47-7D-17. Effect of violations on rights of action; attorney's fees.

If a declarant or any other person subject to the Condominium Act fails to comply with any provision of that act or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees.

History: Laws 1982, ch. 27, § 65.

47-7D-18. Labeling of promotional material.

If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material shall be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT."

History: Laws 1982, ch. 27, § 66.

47-7D-19. Declarant's obligation to complete and restore.

A. The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to Section 21 [47-7B-9 NMSA 1978] of the Condominium Act.

B. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by Sections 22, 23, 24, 25, 27 and 28 [47-7B-10 to 47-7B-13, 47-7B-15, 47-7B-16 NMSA 1978] of the Condominium Act.

History: Laws 1982, ch. 27, § 67.

47-7D-20. Substantial completion of units.

In case of a sale of a unit where delivery of a disclosure statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion pursuant to Section 13 [47-7B-1 NMSA 1978] of the Condominium Act.

History: Laws 1982, ch. 27, § 68.

ARTICLE 7E
Homeowner Association (Recompiled.)

47-7E-1. Recompiled.

History: Laws 2013, ch. 122, § 1; recompiled as § 47-16-1 NMSA 1978.

47-7E-2. Recompiled.

History: Laws 2013, ch. 122, § 2; recompiled as § 47-16-2 NMSA 1978.

47-7E-3. Recompiled.

History: Laws 2013, ch. 122, § 3; recompiled as § 47-16-3 NMSA 1978.

47-7E-4. Recompiled.

History: Laws 2013, ch. 122, § 4; recompiled as § 47-16-4 NMSA 1978.

47-7E-5. Recompiled.

History: Laws 2013, ch. 122, § 5; recompiled as § 47-16-5 NMSA 1978.

47-7E-6. Recompiled.

History: Laws 2013, ch. 122, § 6; recompiled as § 47-16-6 NMSA 1978.

47-7E-7. Recompiled.

History: Laws 2013, ch. 122, § 7; recompiled as § 47-16-7 NMSA 1978.

47-7E-8. Recompiled.

History: Laws 2013, ch. 122, § 8; recompiled as § 47-16-8 NMSA 1978.

47-7E-9. Recompiled.

History: Laws 2013, ch. 122, § 9; recompiled as § 47-16-9 NMSA 1978.

47-7E-10. Recompiled.

History: Laws 2013, ch. 122, § 10; recompiled as § 47-16-10 NMSA 1978.

47-7E-11. Recompiled.

History: Laws 2013, ch. 122, § 11; recompiled as § 47-16-11 NMSA 1978.

47-7E-12. Recompiled.

History: Laws 2013, ch. 122, § 12; recompiled as § 47-16-12 NMSA 1978.

47-7E-13. Recompiled.

History: Laws 2013, ch. 122, § 13; recompiled as § 47-16-13 NMSA 1978.

47-7E-14. Recompiled.

History: Laws 2013, ch. 122, § 14; recompiled as § 47-16-14 NMSA 1978.

ARTICLE 8
Owner-Resident Relations

47-8-1. Short title.

Sections 47-8-1 through 47-8-51 [47-8-52] NMSA 1978 may be cited as the "Uniform Owner-Resident Relations Act".

History: 1953 Comp., § 70-7-1, enacted by Laws 1975, ch. 38, § 1; 1995, ch. 195, § 1.

47-8-2. Purpose.

The purpose of the Uniform Owner-Resident Relations Act is to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of owner and resident, and to encourage the owners and the residents to maintain and improve the quality of housing in New Mexico.

History: 1953 Comp., § 70-7-2, enacted by Laws 1975, ch. 38, § 2.

47-8-3. Definitions.

As used in the Uniform Owner-Resident Relations Act:

A. "abandonment" means absence of the resident from the dwelling, without notice to the owner, in excess of seven continuous days; providing such absence occurs only after rent for the dwelling unit is delinquent;

B. "action" includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined, including an action for possession;

C. "amenity" means a facility appurtenance or area supplied by the owner and the absence of which would not materially affect the health and safety of the resident or the habitability of the dwelling unit;

D. "codes" includes building codes, housing codes, health and safety codes, sanitation codes and any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy or use of a dwelling unit;

E. "deposit" means an amount of currency or instrument delivered to the owner by the resident as a pledge to abide by terms and conditions of the rental agreement;

F. "dwelling unit" means a structure, mobile home or the part of a structure, including a hotel or motel, that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes a parcel of land leased by its owner for use as a site for the parking of a mobile home;

G. "eviction" means any action initiated by the owner to regain possession of a dwelling unit and use of the premises under terms of the Uniform Owner-Resident Relations Act;

H. "fair rental value" is that value that is comparable to the value established in the market place;

I. "good faith" means honesty in fact in the conduct of the transaction concerned as evidenced by all surrounding circumstances;

J. "normal wear and tear" means deterioration that occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident, abuse or intentional damage of the premises, equipment or chattels of the owner by the residents or by any other person in the dwelling unit or on the premises with the resident's consent; however, uncleanliness does not constitute normal wear and tear;

K. "organization" includes a corporation, government, governmental subdivision or agency thereof, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

L. "owner" means one or more persons, jointly or severally, in whom is vested:

(1) all or part of the legal title to property, but shall not include the limited partner in an association regulated under the Uniform Limited Partnership Act [repealed]; or

(2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and agents thereof and includes a mortgagee in possession and the lessors, but shall not include a person or persons, jointly or severally, who as owner leases the entire premises to a lessee of vacant land for apartment use;

M. "person" includes an individual, corporation, entity or organization;

N. "premises" means facilities, facilities and appurtenances, areas and other facilities held out for use of the resident or whose use is promised to the resident coincidental with occupancy of a dwelling unit;

O. "rent" means payments in currency or in-kind under terms and conditions of the rental agreement for use of a dwelling unit or premises, to be made to the owner by the resident, but does not include deposits;

P. "rental agreement" means all agreements between an owner and resident and valid rules and regulations adopted under Section 47-8-23 NMSA 1978 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises;

Q. "resident" means a person entitled under a rental agreement to occupy a dwelling unit in peaceful possession to the exclusion of others and includes the owner of a mobile home renting premises, other than a lot or parcel in a mobile home park, for use as a site for the location of the mobile home;

R. "roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility in a structure where one or more major facilities are used in common by occupants of the dwelling units. As referred to in this subsection, "major facility", in the case of a bathroom, means toilet and either a bath or shower and, in the case of a kitchen, means refrigerator, stove or sink;

S. "single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit;

T. "substantial violation" means a violation of the rental agreement or rules and regulations by the resident or occurring with the resident's consent that occurs in the dwelling unit, on the premises or within three hundred feet of the premises and that includes the following conduct, which shall be the sole grounds for a substantial violation:

(1) possession, use, sale, distribution or manufacture of a controlled substance, excluding misdemeanor possession and use;

(2) unlawful use of a deadly weapon;

(3) unlawful action causing serious physical harm to another person;

(4) sexual assault or sexual molestation of another person;

(5) entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;

(6) theft or attempted theft of the property of another person by use or threatened use of force; or

(7) intentional or reckless damage to property in excess of one thousand dollars ($1,000);

U. "term" is the period of occupancy specified in the rental agreement; and

V. "transient occupancy" means occupancy of a dwelling unit for which rent is paid on less than a weekly basis or where the resident has not manifested an intent to make the dwelling unit a residence or household.

History: 1953 Comp., § 70-7-3, enacted by Laws 1975, ch. 38, § 3; 1977, ch. 55, § 1; 1983, ch. 122, § 18; 1985, ch. 146, § 1; 1989, ch. 340, § 1; 1995, ch. 195, § 2; 1997, ch. 39, § 1; 1999, ch. 91, § 1.

47-8-4. Principles of law and equity.

Unless displaced by the provisions of the Uniform Owner-Resident Relations Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, equitable abatement, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.

History: 1953 Comp., § 70-7-4, enacted by Laws 1975, ch. 38, § 4; 1995, ch. 195, § 3.

47-8-5. General act.

The Uniform Owner-Resident Relations Act being a general act is intended as a unified coverage of its subject matter, and no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: 1953 Comp., § 70-7-5, enacted by Laws 1975, ch. 38, § 5.

47-8-6. Recovery of damages.

A. The remedies provided by the Uniform Owner-Resident Relations Act shall be so administered that the aggrieved party may recover damages as provided in the Uniform Owner-Resident Relations Act. The aggrieved party has a duty to mitigate damages.

B. Any right or obligation declared by the Uniform Owner-Resident Relations Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: 1953 Comp., § 70-7-6, enacted by Laws 1975, ch. 38, § 6.

47-8-7. Provision for agreement.

A claim or right arising under the Uniform Owner-Resident Relations Act or on a rental agreement may be settled by agreement.

History: 1953 Comp., § 70-7-7, enacted by Laws 1975, ch. 38, § 7.

47-8-8. Rights, obligations and remedies.

The Uniform Owner-Resident Relations Act applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: 1953 Comp., § 70-7-8, enacted by Laws 1975, ch. 38, § 8.

47-8-9. Exemptions.

Unless created to avoid the application of the Uniform Owner-Resident Relations Act, the following arrangements are exempted by that act:

A. residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, counseling, religious, educational when room and board are an entity or similar service;

B. occupancy under a contract of sale of a dwelling unit or the property of which it is part, if the occupant is the purchaser or a person who succeeds to his interest;

C. occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

D. transient occupancy in a hotel or motel;

E. occupancy by an employee of an owner pursuant to a written rental or employment agreement that specifies the employee's right to occupancy is conditional upon employment in and about the premises; and

F. occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

History: 1953 Comp., § 70-7-9, enacted by Laws 1975, ch. 38, § 9; 1995, ch. 195, § 4.

47-8-10. Judicial jurisdiction.

A. The district or magistrate court of this state may exercise jurisdiction over any person with respect to any conduct in this state governed by the Uniform Owner-Resident Relations Act or with respect to any claim arising from a transaction subject to this act for a dwelling unit located within its jurisdictional boundaries. In addition to any other method provided by rule or by statute, personal jurisdiction over a person may be acquired in a civil action or proceeding instituted in the district or magistrate court by the service of process in the manner provided by this section.

B. If a person is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by the Uniform Owner-Resident Relations Act, or engages in a transaction subject to this act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and shall be filed with the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon him is not effective unless the plaintiff or petitioner immediately mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

History: 1953 Comp., § 70-7-10, enacted by Laws 1975, ch. 38, § 10.

47-8-11. Obligation of good faith.

Every duty under the Uniform Owner-Resident Relations Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under the Uniform Owner-Resident Relations Act imposes an obligation of good faith in its performance or enforcement.

History: 1953 Comp., § 70-7-11, enacted by Laws 1975, ch. 38, § 11.

47-8-12. Inequitable agreement provision.

A. If the court, as a matter of law, finds that any provision of a rental agreement was inequitable when made, the court may limit the application of such inequitable provisions to avoid an inequitable result.

B. If inequitability is put into issue by a party to the rental agreement, the parties to the rental agreement shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement, or settlement, to aid the court in making determination.

History: 1953 Comp., § 70-7-12, enacted by Laws 1975, ch. 38, § 12.

47-8-13. Service of notice.

A. A person has notice of a fact if:

(1) he has actual knowledge of it;

(2) he has received a notice or notification of it; or

(3) from all facts and circumstances known to him at the time in question he has reason to know that it exists.

B. A person notifies or gives a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course, whether or not the other actually comes to know of it.

C. A person receives a notice or notification:

(1) when it comes to his attention;

(2) where written notice to the owner is required, when it is mailed or otherwise delivered at the place of business of the owner through which the rental agreement was made or at any place held out by him as the place for receipt of the communication; or

(3) if written notice to the resident is required, when it is delivered in hand to the resident or mailed to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

D. Notwithstanding any other provisions of this section, notice to a resident for nonpayment of rent shall be effective only when hand delivered or mailed to the resident or posted on an exterior door of the dwelling unit. In all other cases where written notice to the resident is required, even if there is a notice by posting, there must also be a mailing of the notice by first class mail or hand delivery of the notice to the resident. The date of a posting shall be included in any notice posted, mailed or hand delivered, and shall constitute the effective date of the notice. A posted notice shall be affixed to a door by taping all sides or placed in a fixture or receptacle designed for notices or mail.

E. Notice, knowledge or a notice or notification received by the resident or person is effective for a particular transaction from the time it is brought to the attention of the resident or person conducting that transaction, and in any event from the time it would have been brought to the resident's or person's attention if the resident or person had exercised reasonable diligence.

F. Where service of notice is required under the Uniform Owner-Resident Relations Act, and the item is mailed but returned as undeliverable, or where the last known address is the vacated dwelling unit, the owner shall serve at least one additional notice if an alternative address has been provided to the owner by the resident.

History: 1953 Comp., § 70-7-13, enacted by Laws 1975, ch. 38, § 13; 1995, ch. 195, § 5.

47-8-14. Terms and conditions of agreement.

The owner and resident may include in a rental agreement terms and conditions not prohibited by the Uniform Owner-Resident Relations Act or other rule of law including rent, term of the agreement or other provisions governing the rights and obligations of the parties.

History: 1953 Comp., § 70-7-14, enacted by Laws 1975, ch. 38, § 14.

47-8-15. Payment of rent.

A. The resident shall pay rent in accordance with the rental agreement. In the absence of an agreement, the resident shall pay as rent the fair rental value for the use of the premises and occupancy of the dwelling unit.

B. Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit. Unless otherwise agreed, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each monthly period. The date of one month to the same date of the following month shall constitute a term of one month.

C. Unless the rental agreement fixes a definite term, the residency is week-to-week in the case of a person who pays weekly rent and in all other cases month-to-month.

D. If the rental agreement provides for the charging of a late fee, and if the resident does not pay rent in accordance with the rental agreement, the owner may charge the resident a late fee in an amount not to exceed ten percent of the total rent payment for each rental period that the resident is in default. To assess a late fee, the owner shall provide notice of the late fee charged no later than the last day of the next rental period immediately following the period in which the default occurred.

E. An owner may not assess a fee from the resident for occupancy of the dwelling unit by a reasonable number of guests for a reasonable length of time. This shall not preclude charges for use of premises or facilities other than the dwelling unit by guests.

F. An owner may increase the rent payable by the resident in a month-to-month residency by providing written notice to the resident of the proposed increase at least

thirty days prior to the periodic rental date specified in the rental agreement or, in the case of a fixed term residency, at least thirty days prior to the end of the term. In the case of a periodic residency of less than one month, written notice shall be provided at least one rental period in advance of the first rental payment to be increased.

G. Unless agreed upon in writing by the owner and the resident, a resident's payment of rent may not be allocated to any deposits or damages.

History: 1953 Comp., § 70-7-15, enacted by Laws 1975, ch. 38, § 15; 1995, ch. 195, § 6.

47-8-16. Waiver of rights prohibited.

No rental agreement may provide that the resident or owner agrees to waive or to forego rights or remedies under the law.

History: 1953 Comp., § 70-7-16, enacted by Laws 1975, ch. 38, § 16.

47-8-17. Unlawful agreement provision.

If an owner deliberately uses a rental agreement containing provisions known by him to be prohibited by law, the resident may recover damages sustained by him resulting from application of the illegal provision and reasonable attorney's fees.

History: 1953 Comp., § 70-7-17, enacted by Laws 1975, ch. 38, § 17.

47-8-18. Deposits.

A. An owner is permitted to demand from the resident a reasonable deposit to be applied by the owner to recover damages, if any, caused to the premises by the resident during his term of residency.

(1) Under the terms of an annual rental agreement, if the owner demands or receives of the resident such a deposit in an amount greater than one month's rent, the owner shall be required to pay to the resident annually an interest equal to the passbook interest permitted to savings and loan associations in this state by the federal home loan bank board on such deposit.

(2) Under the terms of a rental agreement of a duration less than one year, an owner shall not demand or receive from the resident such a deposit in an amount in excess of one month's rent.

B. It is not the intention of this section to include the last month's prepaid rent, which may be required by the rental agreement as a deposit as defined in Subsection D [E] of Section 47-8-3 NMSA 1978. Any deposit as defined in Paragraph (1) of Subsection A of this section shall not be construed as prepaid rent.

C. Upon termination of the residency, property or money held by the owner as deposits may be applied by the owner to the payment of rent and the amount of damages which the owner has suffered by reason of the resident's noncompliance with the rental agreement or Section 47-8-22 NMSA 1978. No deposit shall be retained to cover normal wear and tear. In the event actual cause exists for retaining any portion of the deposit, the owner shall provide the resident with an itemized written list of the deductions from the deposit and the balance of the deposit, if any, within thirty days of the date of termination of the rental agreement or resident departure, whichever is later. The owner is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the resident. Nothing in this section shall preclude the owner from retaining portions of the deposit for nonpayment of rent or utilities, repair work or other legitimate damages.

D. If the owner fails to provide the resident with a written statement of deductions from the deposit and the balance shown by the statement to be due, within thirty days of the termination of the tenancy, the owner:

(1) shall forfeit the right to withhold any portion of the deposit;

(2) shall forfeit the right to assert any counterclaim in any action brought to recover that deposit;

(3) shall be liable to the resident for court costs and reasonable attorneys' fees; and

(4) shall forfeit the right to assert an independent action against the resident for damages to the rental property.

E. An owner who in bad faith retains a deposit in violation of this section is liable for a civil penalty in the amount of two hundred fifty dollars ($250) payable to the resident.

History: 1953 Comp., § 70-7-18, enacted by Laws 1975, ch. 38, § 18; 1985, ch. 146, § 2; 1989, ch. 340, § 2.

47-8-19. Owner disclosure.

A. The owner or any person authorized to enter into a rental agreement on his behalf shall disclose to the resident in writing at or before the commencement of the residency the name, address and telephone number of:

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

B. The information required to be furnished by this section shall be kept current, and this section extends to and is enforceable against any successor, owner or manager.

C. A person designated under Paragraph (2) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of service of process and receiving and receipting for notices and demands. A person designated under Paragraph (1) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of performing the obligations of the owner under the Uniform Owner-Resident Relations Act and under the rental agreement.

D. Failure of the owner to comply with this section shall relieve the resident from the obligation to provide notice to the owner as required by the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-19, enacted by Laws 1975, ch. 38, § 19; 1995, ch. 195, § 7.

47-8-20. Obligations of owner.

A. The owner shall:

(1) substantially comply with requirements of the applicable minimum housing codes materially affecting health and safety;

(2) make repairs and do whatever is necessary to put and keep the premises in a safe condition as provided by applicable law and rules and regulations as provided in Section 47-8-23 NMSA 1978;

(3) keep common areas of the premises in a safe condition;

(4) maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and

(6) supply running water and a reasonable amount of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the resident and supplied by a direct public utility connection.

B. If there exists a minimum housing code applicable to the premises, the owner's maximum duty under this section shall be determined by Paragraph (1) of Subsection A

of this section. The obligations imposed by this section are not intended to change existing tort law in the state.

C. The owner and resident of a single family residence may agree that the resident perform the owner's duties specified in Paragraphs (5) and (6) of Subsection A of this section and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is in writing, for consideration, entered into in good faith and not for the purpose of evading the obligations of the owner.

D. The owner and resident of a dwelling unit other than a single family residence may agree that the resident is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the owner and is set forth in a separate writing signed by the parties and supported by consideration; and

(2) the agreement does not diminish or affect the obligation of the owner to other residents in the premises.

E. Notwithstanding any provision of this section, an owner may arrange with a resident to perform the obligations of the owner. Any such arrangement between the owner and the resident will not serve to diminish the owner's obligations as set forth in this section, nor shall the failure of the resident to perform the obligations of the owner serve as a basis for eviction or in any way be considered a material breach by the resident of his obligations under the Uniform Owner-Resident Relations Act or the rental agreement.

F. In multi-unit housing, if there is separate utility metering for each unit, the resident shall receive a copy of the utility bill for his unit upon request made to the owner or his agent. If the unit is submetered, the resident shall then be entitled to receive a copy of the apartment's utility bill. When utility bills for common areas are separately apportioned between units and the costs are passed on to the residents of each unit, each resident may, upon request, receive a copy of all utility bills being apportioned. The calculations used as the basis for apportioning the cost of utilities for common areas and submetered apartments shall be made available to any resident upon request. The portion of the common area cost that would be allocated to an empty unit if it were occupied shall not be allocated to the remaining residents. It is solely the owner's responsibility to supply the items and information in this subsection to the resident upon request. The owner may charge an administrative fee not to exceed five dollars ($5.00) for each monthly request of the items in this subsection.

G. The owner shall provide a written rental agreement to each resident prior to the beginning of occupancy.

History: 1953 Comp., § 70-7-20, enacted by Laws 1975, ch. 38, § 20; 1987, ch. 297, § 1; 1989, ch. 340, § 3; 1999, ch. 91, § 2.

47-8-21. Relief of owner liability.

A. Unless otherwise agreed, upon termination of the owner's interest in the dwelling unit, including but not limited to terminations of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the owner is relieved of all liability under the rental agreement and of all obligations under the Uniform Owner-Resident Relations Act as to events occurring subsequent to written notice to the resident of the termination of the owner's interest. The successor in interest to the owner shall be liable for all obligations under the rental agreement or under the Uniform Owner-Resident Relations Act. Upon receipt by the resident of written notice of the termination of the owner's interest in the dwelling unit, the resident shall pay all future rental payments, when due, to the successor in interest to the owner.

B. Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and the Uniform Owner-Resident Relations Act as to events occurring after written notice to the resident of the termination of his management.

History: 1953 Comp., § 70-7-21, enacted by Laws 1975, ch. 38, § 21.

47-8-22. Obligations of resident.

The resident shall:

A. comply with obligations imposed upon residents by applicable minimum standards of housing codes materially affecting health or safety;

B. keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and, upon termination of the residency, place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when residency commenced;

C. dispose from his dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner;

D. keep all plumbing fixtures in the dwelling unit or used by the resident as clean as their condition permits;

E. use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilation, air conditioning and other facilities and appliances including elevators, if any, in the premises;

F. not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;

G. conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

H. abide by all bylaws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement or neighborhood association not inconsistent with owner's rights or duties; and

I. not knowingly commit or consent to any other person knowingly committing a substantial violation.

History: 1953 Comp., § 70-7-22, enacted by Laws 1975, ch. 38, § 22; 1995, ch. 195, § 8.

47-8-23. Application of rules or regulations.

An owner, from time to time, may adopt rules or regulations, however described, concerning the resident's use and occupancy of the premises. They are enforceable as provided in Section 47-8-33 NMSA 1978 against the resident only if:

A. their purpose is to promote the appearance, convenience, safety or welfare of the residents in the premises, preserve the owner's property from abusive use or make a fair distribution of services and facilities held out for the residents generally;

B. they are reasonably related to the purpose for which they are adopted;

C. they apply to all residents in the premises in a fair manner;

D. they are sufficiently explicit in their prohibition, direction or limitation of the resident's conduct to fairly inform him of what he must or must not do to comply;

E. they are not for the purpose of evading the obligations of the owner; and

F. the resident is presented with copies of existing rules and regulations at the time he enters into the rental agreement and is presented notice of amendments to the rules and regulations and rules and regulations adopted subsequent to the time he enters into the rental agreement. A rule or regulation adopted after the resident enters into the rental agreement is enforceable against the resident if reasonable notice of its adoption is given to the resident and it does not work a substantial modification of his bargain.

History: 1953 Comp., § 70-7-23, enacted by Laws 1975, ch. 38, § 23; 1995, ch. 195, § 9.

47-8-24. Right of entry.

A. The resident shall, in accordance with provisions of the rental agreement and notice provisions as provided in this section, consent to the owner to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, prospective residents, workmen or contractors; provided that:

(1) unless otherwise agreed upon by the owner and resident, the owner may enter the resident's dwelling unit pursuant to this subsection only after giving the resident twenty-four hours written notification of his intent to enter, the purpose for entry and the date and reasonable estimate of the time frame of the entry;

(2) this subsection is not applicable to entry by the owner to perform repairs or services within seven days of a request by the resident or when the owner is accompanied by a public official conducting an inspection or a cable television, electric, gas or telephone company representative; and

(3) where the resident gives reasonable prior notice and alternate times or dates for entry and it is practicable or will not result in economic detriment to the owner, then the owner shall attempt to reasonably accommodate the alternate time of entry.

B. The owner may enter the dwelling unit without consent of the resident in case of an emergency.

C. The owner shall not abuse the right of access.

D. The owner has no other right of access except by court order, as permitted by this section if the resident has abandoned or surrendered the premises or if the resident has been absent from the premises more than seven days, as permitted in Section 47-8-34 NMSA 1978.

E. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages.

F. If the owner makes an unlawful entry, or a lawful entry in an unreasonable manner, or makes repeated demands for entry that are otherwise lawful but that have the effect of unreasonably interfering with the resident's quiet enjoyment of the dwelling unit, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages.

History: 1953 Comp., § 70-7-24, enacted by Laws 1975, ch. 38, § 24; 1995, ch. 195, § 10.

47-8-25. Use of dwelling unit limited.

Unless otherwise agreed, the resident shall occupy his dwelling unit only as a dwelling unit and in compliance with terms and conditions of the rental agreement. The rental agreement may require that the resident notify the owner of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.

History: 1953 Comp., § 70-7-25, enacted by Laws 1975, ch. 38, § 25.

47-8-26. Delivery of possession.

A. At the time specified in the rental agreement for the commencement of occupancy, the owner shall deliver possession of the premises to the resident in compliance with the rental agreement and Section 47-8-20 NMSA 1978. The owner may bring an action for possession against the resident or any person wrongfully in possession and may recover the damages provided in Subsection F of Section 47-8-33 NMSA 1978.

B. If the owner fails to deliver possession of the premises to the prospective resident as provided in Subsection A of this section, one hundred percent of the rent abates until possession is delivered and the prospective resident may:

(1) upon written notice to the owner, terminate the rental agreement effective immediately. Upon termination the owner shall return all prepaid rent and deposits; or

(2) demand performance of the rental agreement by the owner and, if the prospective resident elects, maintain an action for possession of the premises against any person wrongfully withholding possession and recover the damages sustained by him and seek the remedies provided in Section 47-8-48 NMSA 1978.

C. If the owner makes reasonable efforts to obtain possession of the premises and returns prepaid rents, deposits and fees within seven days of receiving a prospective resident's notice of termination, the owner shall not be liable for damages under this section.

History: 1953 Comp., § 70-7-26, enacted by Laws 1975, ch. 38, § 26; 1999, ch. 91, § 3.

47-8-27. Repealed.

47-8-27.1. Breach of agreement by owner and relief by resident.

A. Upon the failure of the owner to perform his obligations as required by Section 47-8-20 NMSA 1978, the resident shall give written notice to the owner specifying the breach and:

(1) if there is a material noncompliance by the owner with the rental agreement or a noncompliance with the Uniform Owner-Resident Relations Act materially affecting health and safety, the resident shall deliver a written notice to the owner specifying the acts and omissions constituting the breach. The notice shall state that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if a reasonable attempt to remedy the breach is not made in seven days, and the rental agreement shall terminate as provided in the notice. If the owner makes a reasonable attempt to adequately remedy the breach prior to the date specified in the notice, the rental agreement shall not terminate. If the rental agreement is terminated by the resident and possession restored to the owner, the owner shall return the balance, if any, of prepaid rent and deposit to which the resident is entitled pursuant to the rental agreement or Section 47-8-18 NMSA 1978; or

(2) the resident may be entitled to abatement of the rent as provided in Section 47-8-27.2 NMSA 1978.

B. The rights provided under this section do not arise if the condition was caused by the deliberate or negligent act or omission of the resident, a member of his family or other person on the premises with his consent. If the noncompliance with the rental agreement or with Section 47-8-20 NMSA 1978 results solely from circumstances beyond the owner's control, the resident is entitled only to those remedies set forth in Paragraph (1) or (2) of this subsection and is not entitled to an action for damages or injunctive relief against the owner.

C. The resident may also recover damages and obtain injunctive relief for any material noncompliance by the owner with the rental agreement or the provisions of Section 47-8-20 NMSA 1978. The remedy provided in this subsection is in addition to any right of the resident arising under Subsection A of this section.

D. If the resident proceeds under Paragraph (1) of Subsection A of this section, he shall not proceed under Paragraph (2) of Subsection A of this section in the same rental period for the same violation. If the resident proceeds under Paragraph (2) of Subsection A of this section, he shall not proceed under Paragraph (1) of Subsection A of this section in the same rental period for the same violation. A resident may, however, proceed under another paragraph of Subsection A of this section for a subsequent violation or the same violation that occurs in subsequent rental periods.

E. When the last day for remedying any breach pursuant to the written notice required under the Uniform Owner-Resident Relations Act occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

History: 1978 Comp., § 47-8-27.1, enacted by Laws 1995, ch. 195, § 11.

47-8-27.2. Abatement.

A. If there is a violation of Subsection A of Section 47-8-20 NMSA 1978, other than a failure or defect in an amenity, the resident shall give written notice to the owner of the conditions needing repair. If the owner does not remedy the conditions set out in the notice within seven days of the notice, the resident is entitled to abate rent as set forth below:

(1) one-third of the pro-rata daily rent for each day from the date the resident notified the owner of the conditions needing repair, through the day the conditions in the notice are remedied. If the conditions complained of continue to exist without remedy through any portion of a subsequent rental period, the resident may abate at the same rate for each day that the conditions are not remedied; and

(2) one hundred percent of the rent for each day from the date the resident notified the owner of the conditions needing repair until the date the breach is cured if the dwelling is uninhabitable and the resident does not inhabit the dwelling unit as a result of the condition.

B. For each rental period in which there is a violation under Subsection A of this section, the resident may abate the rent or may choose an alternate remedy in accordance with the Uniform Owner-Resident Relations Act. The choice of one remedy shall not preclude the use of an alternate remedy for the same violation in a subsequent rental period.

C. If the resident's rent is subsidized in whole or in part by a government agency, the abatement limitation of one month's rent shall mean the total monthly rent paid for the dwelling and not the portion of the rent that the resident alone pays. Where there is a third party payor, either the payor or the resident may authorize the remedy and may abate rent payments as provided in this section.

D. Nothing in this section shall limit a court in its discretion to apply equitable abatement.

E. Nothing in this section shall entitle the resident to abate rent for the unavailability of an amenity.

History: 1978 Comp., § 47-8-27.2, enacted by Laws 1995, ch. 195, § 12; 1999, ch. 91, § 4.

47-8-28. Repealed.

47-8-29. Repealed.

47-8-30. Action for counterclaim for resident.

A. In an action for possession based upon nonpayment of rent or in an action for rent where the resident is in possession, the resident may counterclaim for any amount

which he may recover under the rental agreement or the Uniform Owner-Resident Relations Act, providing that the resident shall be responsible for payment to the owner of the rent specified in the rental agreement during his period of possession. Judgment shall be entered in accordance with the facts of the case.

B. If the defense or counterclaim by the resident is without merit and is not raised in good faith, the owner may recover reasonable attorney's fees and his court costs.

C. If the action or reply to the counterclaim is without merit and is not in good faith, the resident may recover reasonable attorney's fees and his court costs.

History: 1953 Comp., § 70-7-30, enacted by Laws 1975, ch. 38, § 30.

47-8-31. Resident rights following fire or casualty.

A. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the resident may:

(1) vacate the premises and notify the owner in writing within seven days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the resident's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

B. If the rental agreement is terminated, the owner shall return the balance, if any, [of] prepaid rent and deposits recoverable under Section 18 [47-8-18 NMSA 1978] of the Uniform Owner-Resident Relations Act. Accounting for rent, in the event of termination or apportionment, is to occur as of the date of the vacation. Notwithstanding the provisions of this section, the resident is responsible for damage caused by his negligence.

History: 1953 Comp., § 70-7-31, enacted by Laws 1975, ch. 38, § 31.

47-8-32. Repealed.

47-8-33. Breach of agreement by resident and relief by owner.

A. Except as provided in the Uniform Owner-Resident Relations Act, if there is noncompliance with Section 47-8-22 NMSA 1978 materially affecting health and safety or upon the initial material noncompliance by the resident with the rental agreement or any separate agreement, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental

agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days.

B. Upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement shall terminate upon a date not less than seven days after receipt of the notice. If the subsequent breach occurs more than six months after the initial breach, it shall constitute an initial breach for purposes of applying the provisions of this section.

C. The initial notice provided in this section shall state that the rental agreement will terminate upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach. To be effective, any notice pursuant to this subsection shall be given within thirty days of the breach or knowledge thereof.

D. If rent is unpaid when due and the resident fails to pay rent within three days after written notice from the owner of nonpayment and his intention to terminate the rental agreement, the owner may terminate the rental agreement and the resident shall immediately deliver possession of the dwelling unit; provided that tender of the full amount due, in the manner stated in the notice, prior to the expiration of the three-day notice shall bar any action for nonpayment of rent.

E. In any court action for possession for nonpayment of rent or other charges where the resident disputes the amount owed because:

(1) the resident has abated rent pursuant to Section 47-8-27.2 or 47-8-4 NMSA 1978; or

(2) the owner has allocated rent paid by the resident as payment for damages to the premises, then, if the owner is the prevailing party, the court shall enter a writ of restitution conditioned upon the right of the resident to remedy within three days of entry of judgment. If the resident has satisfied the judgment within three days, the writ shall be dismissed. If the resident has not satisfied the judgment within three days, the owner may execute upon the writ without further order of the court.

F. Except as provided in the Uniform Owner-Resident Relations Act, the owner may recover damages and obtain injunctive or other relief for any noncompliance by the resident with the rental agreement or this section or Section 47-8-22 NMSA 1978.

G. In a judicial action to enforce a remedy for which prior written notice is required, relief may be granted based only upon the grounds set forth in the written notice served; provided, however, that this shall not bar a defendant from raising any and all defenses

or counterclaims for which written notice is not otherwise required by the Uniform Owner-Resident Relations Act.

H. When the last day for remedying any breach pursuant to written notice required under the Uniform Owner-Resident Relations Act occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

I. If the resident knowingly commits or consents to another person in the dwelling unit or on the premises knowingly committing a substantial violation, the owner shall deliver a written notice to the resident specifying the time, place and nature of the act constituting the substantial violation and that the rental agreement will terminate upon a date not less than three days after receipt of the notice.

J. In any action for possession under Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the termination notice or as a result of a prior incident, the writ of restitution shall not issue. In all other cases where domestic violence is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

K. In any action for possession under Subsection I of this section, it shall be a defense that the resident did not know of, and could not have reasonably known of or prevented, the commission of a substantial violation by any other person in the dwelling unit or on the premises.

L. In an action for possession under Subsection I of this section, it shall be a defense that the resident took reasonable and lawful actions in defense of himself, others or his property.

M. In any action for possession under Subsection I of this section, if the court finds that the action was frivolous or brought in bad faith, the petitioner shall be subject to a civil penalty equal to two times the amount of the monthly rent, plus damages and costs.

History: 1953 Comp., § 70-7-33, enacted by Laws 1975, ch. 38, § 33; 1977, ch. 130, § 1; 1995, ch. 195, § 14; 1999, ch. 91, § 5.

47-8-34. Notice of extended absence.

A. If the rental agreement requires the resident to give notice to the owner of an anticipated extended absence in excess of seven days as required in Subsection A of Section 3 [47-8-3 NMSA 1978] of the Uniform Owner-Resident Relations Act and the resident willfully fails to do so, the owner may recover damages from the resident.

B. During any absence of the resident in excess of seven days, the owner may enter the dwelling unit at times reasonably necessary.

C. If the resident abandons the dwelling unit as defined in Subsection A of Section 3 of the Uniform Owner-Resident Relations Act, the owner shall be entitled to take immediate possession of the dwelling unit. The owner shall, in such cases, be responsible for the removing and storing of the personal property for such periods as are provided by law. Upon abandonment, the owner may make reasonable efforts to rent the dwelling unit and premises at a fair rental. If the owner rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins.

History: 1953 Comp., § 70-7-34, enacted by Laws 1975, ch. 38, § 34.

47-8-34.1. Disposition of property left on the premises.

A. Where the rental agreement terminates by abandonment pursuant to Section 47-8-34 NMSA 1978:

(1) the owner shall store all personal property of the resident left on the premises for not less than thirty days;

(2) the owner shall serve the resident with written notice stating the owner's intent to dispose of the personal property on a date not less than thirty days from the date of the notice. The notice shall also contain a telephone number and address where the resident can reasonably contact the owner to retrieve the property prior to the disposition date in the notice;

(3) the notice of intent to dispose of personal property shall be personally delivered to the resident or be sent by first class mail, postage prepaid, to the resident at his last known address. If the notice is returned as undeliverable, or where the resident's last known address is the vacated dwelling unit, the owner shall also serve at least one notice to such other address as has been provided to the owner by the resident, including the address of the resident's place of employment, or of a family member or emergency contact for which the owner has a record;

(4) the resident may contact the owner to retrieve the property at any time prior to the date specified in the notice for disposition of the property;

(5) the owner shall provide reasonable access and adequate opportunities for the resident to retrieve all of the property stored prior to any disposition; and

(6) if the resident does not claim or make attempt to retrieve the stored personal property prior to the date specified in the notice of disposition of the property, the owner may dispose of the stored personal property.

B. Where the rental agreement terminates by the resident's voluntary surrender of the premises, the owner shall store any personal property on the premises for a minimum of fourteen days from the date of surrender of the premises. The owner shall provide reasonable access to the resident for the purpose of the resident obtaining possession of the personal property stored. If after fourteen days from surrender of the premises, the resident has not retrieved all the stored personal property, the owner may dispose of the stored personal property.

C. Where the rental agreement terminates by a writ of restitution, the owner shall have no obligation to store any personal property left on the premises after three days following execution of writ of restitution, unless otherwise agreed by the owner and resident. The owner may thereafter dispose of the personal property in any manner without further notice or liability.

D. Where the property has a market value of less than one hundred dollars ($100), the owner has the right to dispose of the property in any manner.

E. Where the property has a market value of more than one hundred dollars ($100), the owner may:

(1) sell the personal property under any provisions herein, and the proceeds of the sale, if in excess of money due and owing to the owner, shall be mailed to the resident at his last known address along with an itemized statement of the amounts received and amounts allocated to other costs, within fifteen days of the sale; or

(2) retain the property for his own use or the use of others, in which case the owner shall credit the account of the resident for the fair market value of the property against any money due and owing to the owner, and any value in excess of money due and owing shall be mailed to the resident at his last known address along with an itemized statement of the value allocated to the property and the amount allocated to costs within fifteen days of the retention of the property.

F. If the last known address is the dwelling unit, the owner shall also mail at least one copy of the accounting and notice of the sums for distribution, to the other address, if provided to the owner by the resident, such as, place of employment, family members, or emergency contact on record with the owner.

G. An owner may charge the resident reasonable storage fees for any time that the owner provided storage for the resident's personal property and the prevailing rate of moving fees. The owner may require payment of storage and moving costs prior to the release of the property.

H. The owner may not hold the property for any other debts claimed due or owning or for judgments for which an application for writ of execution has not previously been filed. The owner may not retain exempt property where an application for a writ of execution has been granted.

History: 1978 Comp., § 47-8-34.1, enacted by Laws 1995, ch. 195, § 15.

47-8-34.2. Personal property and security deposit of deceased resident; contact person.

A. As used in this section, "contact person" means the person designated by a resident in writing as the person to contact and release property to in the event of the resident's death.

B. The owner may request in writing, including by a requirement in the rental agreement, that the resident:

(1) provide the owner with the name, address and telephone number of a contact person; and

(2) sign a statement authorizing the owner in the event of the resident's death to:

(a) grant the contact person access to the dwelling unit at a reasonable time and in the presence of the owner or the owner's agent;

(b) allow the contact person to remove the resident's property from the dwelling unit; and

(c) refund the resident's security deposit, less lawful deductions, to the contact person.

C. A resident may, without request from the owner, provide the owner with the name, address and telephone number of a contact person.

D. Except as provided in Subsection E of this section, in the event of the death of a resident who is the sole occupant of a rental dwelling, the owner:

(1) shall turn over possession of property in the dwelling unit to the contact person or to any other person lawfully entitled to the property if the request is made prior to the property being discarded pursuant to Paragraph (5) of this subsection;

(2) shall refund the resident's security deposit, less lawful deductions, including the cost of removing and storing the property, to the contact person or to any other person lawfully entitled to the refund;

(3) may remove and store all property found in the dwelling unit;

(4) may require any person who removes property from the resident's dwelling unit to sign an inventory of the property being removed; and

(5) may discard property removed by the owner from the resident's dwelling unit if:

(a) the owner has mailed a written request by certified mail, return receipt requested, to the contact person, requesting that the property be removed;

(b) the contact person failed to remove the property within thirty days after the request is mailed; and

(c) the owner, prior to the date of discarding the property, has not been contacted by anyone claiming the property.

E. An owner and a resident may agree to a procedure different than the procedure in this section for removing, storing or disposing of property in the dwelling unit of a deceased resident in a written rental agreement or other agreement.

F. If, after a written request by an owner, a resident does not provide the owner with the name, address and telephone number of a contact person, the owner shall have no responsibility after the resident's death for removal, storage, disappearance, damage or disposition of property in the resident's dwelling.

G. An owner who violates Subsection D of this section shall be liable to the estate of the deceased resident for actual damages.

History: Laws 2007, ch. 169, § 1.

47-8-35. Claim for rent and damages.

If the rental agreement is terminated, the owner is entitled to possession and may have a claim for rent and a separate claim for damages for breach of the rental agreement and reasonable attorney's fees as provided in Subsection C of Section 33 [47-8-33 NMSA 1978] of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-35, enacted by Laws 1975, ch. 38, § 35.

47-8-36. Unlawful removal and diminution of services prohibited.

A. Except in case of abandonment, surrender or as otherwise permitted in the Uniform Owner-Resident Relations Act, an owner or any person acting on behalf of the owner shall not knowingly exclude the resident, remove, threaten or attempt to remove or dispossess a resident from the dwelling unit without a court order by:

(1) fraud;

(2) plugging, changing, adding or removing any lock or latching device;

(3) blocking any entrance into the dwelling unit;

(4) interfering with services or normal and necessary utilities to the unit pursuant to Section 47-8-32 NMSA 1978, including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service, provided that this section shall not impose a duty upon the owner to make utility payments or otherwise prevent utility interruptions resulting from nonpayment of utility charges by the resident;

(5) removing the resident's personal property from the dwelling unit or its premises;

(6) removing or incapacitating appliances or fixtures, except for making necessary and legitimate repairs; or

(7) any willful act rendering a dwelling unit or any personal property located in the dwelling unit or on the premises inaccessible or uninhabitable.

B. The provisions of Subsection A of this section shall not apply if an owner temporarily interferes with possession while making legitimate repairs or inspections as provided for in the Uniform Owner-Resident Relations Act.

C. If an owner commits any of the acts stated in Subsection A of this section, the resident may:

(1) abate one hundred percent of the rent for each day in which the resident is denied possession of the premises for any portion of the day or each day where the owner caused termination or diminishment of any service for any portion of the day;

(2) be entitled to civil penalties as provided in Subsection B of Section 47-8-48 NMSA 1978;

(3) seek restitution of the premises pursuant to Sections 47-8-41 and Section 47-8-42 NMSA 1978 or terminate the rental agreement; and

(4) be entitled to damages.

History: 1953 Comp., § 70-7-36, enacted by Laws 1975, ch. 38, § 36; 1995, ch. 195, § 16.

47-8-36.1. Landlord lien.

A. There shall be no landlord's lien arising out of the rental of a dwelling unit to which the Uniform Owner-Resident [Relations] Act applies.

B. Nothing in this section shall prohibit the owner from levy and execution on a judgment arising out of a claim for rent or damages.

History: 1978 Comp., § 47-8-36.1, enacted by Laws 1995, ch. 195, § 17.

47-8-37. Notice of termination and damages.

A. The owner or the resident may terminate a week-to-week residency by a written notice given to the other at least seven days prior to the termination date specified in the notice.

B. The owner or the resident may terminate a month-to-month residency by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

C. If the resident remains in possession without the owner's consent after expiration of the term of the rental agreement or its termination, the owner may bring an action for possession and if the resident's holdover is willful and not in good faith the owner, in addition, may recover the damages sustained by him and reasonable attorney's fees. If the owner consents to the resident's continued occupancy, Subsection C of Section 15 [47-8-15 NMSA 1978] of the Uniform Owner-Resident Relations Act applies.

History: 1953 Comp., § 70-7-37, enacted by Laws 1975, ch. 38, § 37.

47-8-38. Injunctive relief.

A. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages, reasonable attorney's fees and court costs.

B. If the owner makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the resident, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages and reasonable attorney's fees.

History: 1953 Comp., § 70-7-38, enacted by Laws 1975, ch. 38, § 38.

47-8-39. Owner retaliation prohibited.

A. An owner may not retaliate against a resident who is in compliance with the rental agreement and not otherwise in violation of any provision of the Uniform Owner-Resident Relations Act by increasing rent, decreasing services or by bringing or threatening to bring an action for possession because the resident has within the previous six months:

(1) complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety;

(2) organized or become a member of a residents' union, association or similar organization;

(3) acted in good faith to exercise his rights provided under the Uniform Owner-Resident Relations Act, including when the resident makes a written request or complaint to the owner to make repairs to comply with the owner's obligations under Section 47-8-20 NMSA 1978;

(4) made a fair housing complaint to a government agency charged with authority for enforcement of laws or regulations prohibiting discrimination in rental housing;

(5) prevailed in a lawsuit as either plaintiff or defendant or has a lawsuit pending against the owner relating to the residency;

(6) testified on behalf of another resident; or

(7) abated rent in accordance with the provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978.

B. If the owner acts in violation of Subsection A of this section, the resident is entitled to the remedies provided in Section 47-8-48 NMSA 1978 and the violation shall be a defense in any action against him for possession.

C. Notwithstanding the provisions of Subsection A of this section, the owner may increase the rent or change services upon appropriate notice at the end of the term of the rental agreement or as provided under the terms of the rental agreement if the owner can establish that the increased rent or changes in services are consistent with those imposed on other residents of similar rental units and are not directed at the particular resident, but are uniform.

History: 1953 Comp., § 70-7-39, enacted by Laws 1975, ch. 38, § 39; 1989, ch. 253, § 1; 1995, ch. 195, § 18; 1999, ch. 91, § 6.

47-8-40. Action for possession by owner.

A. Notwithstanding Subsections A and B of Section 47-8-39 NMSA 1978, an owner may bring an action for possession if:

(1) the violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the resident or other person in his household or upon the premises with the resident's consent;

(2) the resident is in default in rent;

(3) there is a material noncompliance with the rental agreement that would otherwise give rise to the owner's right to terminate the rental agreement;

(4) a resident knowingly commits or consents to any other person in the dwelling unit or on the premises knowingly committing a substantial violation; or

(5) compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the resident of use of the dwelling unit.

B. The maintenance of an action under Subsection A of this section does not release the owner from liability under Section 47-8-20 NMSA 1978.

History: 1953 Comp., § 70-7-40, enacted by Laws 1975, ch. 38, § 40; 1995, ch. 195, § 19.

47-8-41. Action for possession by owner or resident.

An action for possession of any premises subject to the provisions of the Uniform Owner-Resident Relations Act shall be commenced in the manner prescribed by the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-41, enacted by Laws 1975, ch. 38, § 41.

47-8-42. Petition for restitution.

The person seeking possession shall file a petition for restitution with the clerk of the district or magistrate court. The petition shall contain:

A. the facts, with particularity, on which he seeks to recover;

B. a reasonably accurate description of the premises; and

C. the requisite compliance with the notice provisions of the Uniform Owner-Resident Relations Act.

The petition may also contain other causes of action relating to the residency, but such causes of action shall be answered and tried separately, if requested by either party in writing.

History: 1953 Comp., § 70-7-42, enacted by Laws 1975, ch. 38, § 42.

47-8-43. Issuance of summons.

A. The summons shall be issued and directed, with a copy of the petition attached to the summons, and shall state the cause of the complaint, the answer day for other

causes of action and notice that if the defendant fails to appear, judgment shall be entered against him. The summons may be served pursuant to the New Mexico rules of civil procedure and returned as in other cases. Trial of the action for possession shall be set as follows:

(1) for any matter brought by the owner for possession, not less than seven or more than ten days after the service of summons; or

(2) for any matter brought by the resident for possession, not less than three or more than five days after the service of summons.

B. Upon finding of good cause, the court may continue the date of hearing on the action for possession for up to seven days from the date of the initial hearing.

History: 1953 Comp., § 70-7-43, enacted by Laws 1975, ch. 38, § 43; 1995, ch. 195, § 20.

47-8-44. Absence from court of defendant.

If the defendant shall not appear in response to the summons, and it shall have been properly served, the court shall try the cause as though he were present.

History: 1953 Comp., § 70-7-44, enacted by Laws 1975, ch. 38, § 44.

47-8-45. Legal or equitable defense.

On or before the day fixed for his appearance, the defendant may appear and answer and assert any legal or equitable defense, setoff or counterclaim.

History: 1953 Comp., § 70-7-45, enacted by Laws 1975, ch. 38, § 45.

47-8-46. Writ of restitution.

A. Upon petition for restitution filed by the owner if judgment is rendered against the defendant for restitution of the premises, the court shall declare the forfeiture of the rental agreement and shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff on a specified date not less than three nor more than seven days after entry of judgment.

B. Upon a petition for restitution filed by the resident, if judgment is rendered against the defendant for restitution of the premises, the court shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff within twenty-four hours after entry of judgment.

History: 1953 Comp., § 70-7-46, enacted by Laws 1975, ch. 38, § 46; 1995, ch. 195, § 21.

47-8-47. Appeal stays execution.

A. If either party feels aggrieved by the judgment, that party may appeal as in other civil actions. An appeal by the defendant shall stay the execution of any writ of restitution; provided that in cases in which the resident is the appellant, the execution of the writ of restitution shall not be stayed unless the resident, within five days of the filing of the notice of appeal, pays to the owner or into an escrow account with a professional escrow agent an amount equal to the rental amount that shall come due from the day following the judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, on a monthly basis on the date rent would otherwise become due. Payments pursuant to this subsection by a subsidized resident shall not exceed the actual amount of monthly rent paid by that resident. When the resident pays the owner directly, the owner shall immediately provide a written receipt to the resident upon demand. When the resident pays into an escrow account the resident shall cause such amounts to be paid over to the owner immediately upon receipt unless otherwise ordered by the court. Upon the failure of the resident or the escrow agent to make a monthly rent payment on the first day rent would otherwise be due, the owner may serve a three-day written notice on the resident pursuant to Subsection D of Section 47-8-33 NMSA 1978. If the resident or the resident's escrow agent fails to pay the rent within the three days, a hearing on the issue shall be scheduled within ten days from the date the court is notified of the failure to pay rent. In the case of an appeal de novo, the hearing shall be in the court in which the appeal will be heard. If, at the hearing, the court finds that rent has not been paid, the court shall immediately lift the stay and issue the writ of restitution unless the resident demonstrates a legal justification for failing to comply with the rent payment requirement.

B. In order to stay the execution of a money judgment, the trial court, within its discretion, may require an appellant to deposit with the clerk of the trial court the amount of judgment and costs or to give a supersedeas bond in the amount of judgment and costs with or without surety. Any bond or deposit shall not be refundable during the pendency of any appeal.

History: 1953 Comp., § 70-7-47, enacted by Laws 1975, ch. 38, § 47; 1989, ch. 253, § 2; 1995, ch. 195, § 22; 1999, ch. 91, § 7.

47-8-48. Prevailing party rights in law suit; civil penalties.

A. If suit is brought by any party to the rental agreement to enforce the terms and conditions of the rental agreement or to enforce any provisions of the Uniform Owner-Resident Relations Act, the prevailing party shall be entitled to reasonable attorneys' fees and court costs to be assessed by the court.

B. Any owner who violates a provision of Section 47-8-36 or 47-8-39 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent.

C. Any resident who intentionally violates a provision of Subsection F of Section 47-8-22 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent.

History: 1953 Comp., § 70-7-48, enacted by Laws 1975, ch. 38, § 48; 1995, ch. 195, § 23.

47-8-49. Unlawful and forcible entry.

The laws and procedures of New Mexico pertaining to complaints of unlawful and forcible entry shall apply to actions for possession of any premises not subject to the provisions of the Uniform Owner-Resident Relations Act or the Mobile Home Park Act [Chapter 47, Article 10 NMSA 1978].

History: 1953 Comp., § 70-7-49, enacted by Laws 1975, ch. 38, § 49; 1995, ch. 195, § 24.

47-8-50. Prior transactions valid.

Transactions entered into before the effective date of the Uniform Owner-Resident Relations Act, and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated or enforced as required or permitted prior to the effective date of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-50, enacted by Laws 1975, ch. 38, § 50.

47-8-51. Applicability.

The provisions of the Uniform Owner-Resident Relations Act are applicable to rental agreements entered into or extended or renewed after the effective date and shall not be applicable to any agreements or conditions entered into between the owner and resident which provisions may alter agreements or conditions existing prior to the effective date of the provisions of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-51, enacted by Laws 1975, ch. 38, § 51.

47-8-52. Conflicts; applicability of law.

Unless a provision of the Mobile Home Park Act [Chapter 47, Article 10 NMSA 1978] directly conflicts with the provisions of the Uniform Owner-Resident Relations Act, the provisions of the Uniform Owner-Resident Relations Act shall apply to mobile home park owners and residents.

History: Laws 1989, ch. 253, § 3.

ARTICLE 8A
Rent Control Prohibition

47-8A-1. Rent control prohibition.

A. No political subdivision or any home rule municipality shall enact an ordinance or resolution that controls or would have the effect of controlling rental rates for privately owned real property.

B. This section does not impair the right of a state agency, county or municipality to otherwise manage or control its property.

C. The provisions of Subsection A of this section do not apply to privately owned real property for which benefits or funding have been provided under contract by federal, state or local governments or a governmental instrumentality for the express purpose of providing reduced rents to low- or moderate-income tenants.

History: Laws 1991, ch. 23, § 1.

ARTICLE 9
Right to Farm

47-9-1. Short title.

Sections 47-9-1 through 47-9-7 NMSA 1978 may be cited as the "Right to Farm Act".

History: Laws 1981, ch. 287, § 1; 1991, ch. 129, § 1.

47-9-2. Purpose of act.

The purpose of the Right to Farm Act is to conserve, protect, encourage, develop and improve agricultural land for the production of agricultural products and to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance.

History: Laws 1981, ch. 287, § 2.

47-9-3. Agricultural operations deemed not a nuisance.

A. Any agricultural operation or agricultural facility is not, nor shall it become, a private or public nuisance by any changed condition in or about the locality of the agricultural operation or agricultural facility if the operation was not a nuisance at the

time the operation began and has been in existence for more than one year; except that the provisions of this section shall not apply whenever an agricultural operation or agricultural facility is operated negligently or illegally such that the operation or facility is a nuisance.

B. Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation or agricultural facility a nuisance or provides for abatement of it as a nuisance under the circumstances set forth in this section shall not apply when an agricultural operation is located within the corporate limits of any municipality as of April 8, 1981.

C. The established date of operation is the date on which an agricultural operation commenced or an agricultural facility was originally constructed. If an agricultural operation or agricultural facility is subsequently expanded or a new technology is adopted, the established date of operation does not change.

D. No cause of action based upon nuisance may be brought by a person whose claim arose following the purchase, lease, rental, or occupancy of property proximate to a previously established agricultural operation or agricultural facility, except when such previously established agricultural operation or agricultural facility has substantially changed in the nature and scope of its operations.

History: Laws 1981, ch. 287, § 3; 1991, ch. 129, § 2; 2014, ch. 22, § 1; 2016, ch. 44, § 1.

47-9-4. Contracts; agreements.

The Right to Farm Act shall not invalidate any contracts made prior to the enactment of that act but shall be applicable only to contracts and agreements after the effective date of that act. This section shall not be construed to invalidate or supercede land uses and related powers of counties and municipalities.

History: Laws 1981, ch. 287, § 4.

47-9-5. Definitions.

As used in the Right To Farm Act:

A. "agricultural facility" includes but is not limited to any land, building, structure, pond, impoundment, appurtenance, machinery or equipment that is used for the commercial production or processing of crops, livestock, animals, poultry, honey bees, honey bee products, livestock products, poultry products or products that are used in commercial agriculture;

B. "agricultural operation" means:

(1) the plowing, tilling or preparation of soil at an agricultural facility;

(2) the planting, growing, fertilizing or harvesting of crops;

(3) the application of pesticides, herbicides, or other chemicals, compounds or substances to crops, weeds or soil in the connection with production of crops, livestock, animals or poultry;

(4) the breeding, hatching, raising, producing, feeding, keeping, slaughtering or processing of livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits or similar farm animals for commercial purposes;

(5) the production and keeping of honey bees, production of honey bee products and honey bee processing facilities;

(6) the production, processing or packaging of eggs or egg products;

(7) the manufacturing of feed for poultry or livestock;

(8) the rotation of crops;

(9) commercial agriculture;

(10) the application of existing, changed or new technology, practices, processes or products to an agricultural operation; or

(11) the operation of a roadside market.

History: 1978 Comp., § 47-9-5, enacted by Laws 1991, ch. 129, § 3.

47-9-6. Damages.

The provisions of the Right to Farm Act do not affect or defeat the right of a person to recover damages from injuries or damages sustained by him because of the pollution of, or change in the condition of, waters of a stream or because of an overflow on his lands.

History: 1978 Comp., § 47-9-6, enacted by Laws 1991, ch. 129, § 4.

47-9-7. Frivolous lawsuits.

If a court determines that any action alleging that an agricultural operation is a nuisance is frivolous, the court may award reasonable costs and attorneys' fees to the defendant.

History: 1978 Comp., § 47-9-7, enacted by Laws 1991, ch. 129, § 5.

ARTICLE 10
Mobile Home Parks

47-10-1. Short title.

Chapter 47, Article 10 NMSA 1978 may be cited as the "Mobile Home Park Act".

History: Laws 1983, ch. 122, § 1; 1993, ch. 147, § 1.

47-10-2. Definitions.

As used in the Mobile Home Park Act:

A. "landlord" or "management" means the owner or any person responsible for operating and managing a mobile home park or an agent, employee or representative authorized to act on the management's behalf in connection with matters relating to tenancy in the park;

B. "mobile home" means a single-family dwelling built on a permanent chassis designed for long-term residential occupancy and containing complete electrical, plumbing and sanitary facilities designed to be installed in a permanent or semipermanent manner with or without a permanent foundation, which dwelling is capable of being drawn over public highways as a unit or in sections by special permit. "Mobile home" does not include a recreational travel trailer or a recreational vehicle, as those terms are defined in Section 66-1-4.15 NMSA 1978;

C. "mobile home park", "trailer park" or "park" means a parcel of land used for the continuous accommodation of twelve or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees or assignees. "Mobile home park" does not include mobile home subdivisions or property zoned for manufactured home subdivisions;

D. "mobile home space", "space", "mobile home lot" or "lot" means a parcel of land within a mobile home park designated by the management to accommodate one mobile home and its accessory buildings and to which the required sewer and utility connections are provided by the mobile home park;

E. "premises" means a mobile home park and existing facilities and appurtenances therein, including furniture and utilities where applicable, and grounds, areas and existing facilities held out for the use of the residents generally or the use of which is promised to the resident;

F. "rent" means any money or other consideration to be paid to the management for the right of use, possession and occupation of the premises;

G. "rental agreement" means a written agreement, including those conditions implied by law, between the management and the resident establishing the terms and conditions of a tenancy, including reasonable rules and regulations promulgated by the park management. A lease is a rental agreement;

H. "resident" means any person or family of such person owning a mobile home that is subject to a tenancy in a mobile home park under a rental agreement;

I. "tenancy" means the right of a resident to use a space or lot within a park on which to locate, maintain and occupy a mobile home, lot improvements and accessory structures for human habitation, including the use of services and facilities of the park;

J. "utility services" means electric, gas, water or sewer services, but does not include refuse services;

K. "first lienholder" means a person or his successor in interest who has a security interest in a mobile home, whose interest has been perfected pursuant to the provisions of Section 66-3-201 NMSA 1978 and whose interest is prior to any other security interest in the mobile home; and

L. "abandoned" means absence of the resident from the mobile home, without notice to the landlord, in excess of seven continuous days, providing such absence occurs after the mobile home lot rent is delinquent.

History: Laws 1983, ch. 122, § 2; 1993, ch. 147, § 2; 1997, ch. 39, § 2.

47-10-3. Tenancy; requirements; notice to quit.

A. No tenancy or other lease or rental occupancy of space in a mobile home park shall commence without a written lease or rental agreement, and no tenancy in a mobile home park shall be terminated until a notice to quit has been served upon the mobile home resident. The notice to quit shall be in writing directed to the resident and in the form specified in this section. The form of notice shall be deemed legally sufficient if it states:

(1) the name of the landlord or of the mobile home park;

(2) the mailing address of the property;

(3) the location or space number upon which the mobile home is situated;

(4) the county in which the mobile home is situate; and

(5) the reason for the termination of the tenancy and the date, place and circumstances of any acts allegedly justifying the termination.

B. The notice to quit shall be served by delivering the notice to the mobile home tenant personally or by posting the notice at the main entrance of the mobile home. If service is made by posting the notice, a copy of the notice shall also be sent by certified mail to the mobile home tenant, return receipt requested. The date of a posting shall be included on the posted notice and on the copy mailed to the mobile home tenant and shall constitute the effective date of the notice.

C. The tenant shall be given a period of not less than thirty days from the end of the rental period during which the termination notice was served to remove any mobile home from the premises, but which is automatically extended to sixty days where the tenant must remove a multisection mobile home. In those situations where a multisection mobile home is being leased to or occupied by a person other than its owner and in a manner contrary to the rules and regulations of the landlord, then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice instead of a sixty-day notice.

D. No lease shall contain any provision by which the tenant waives his rights under the Mobile Home Park Act, and any such waiver shall be deemed to be contrary to public policy and shall be unenforceable and void. Any lease, however, may provide for the termination of the tenancy in accordance with the provisions of Subsection C of this section.

E. No tenancy shall be terminated by a mobile home park owner solely because of the size or age of the mobile home.

History: Laws 1983, ch. 122, § 3; 1997, ch. 186, § 1.

47-10-4. Action for termination.

A. The action for termination shall be commenced and prosecuted in the manner described in the Uniform Owner-Resident Relations Act [47-8-1 to 47-8-52 NMSA 1978]. The property description shall be deemed legally sufficient if it states:

(1) the name of the landlord or of the mobile home park;

(2) the mailing address of the property;

(3) the location or space number upon which the mobile home is situated; and

(4) the county in which the mobile home is situate.

B. Service of the summons shall be as specified in Section 47-8-43 NMSA 1978. Service by posting shall be deemed legally sufficient within the meaning of Section 47-

8-43 NMSA 1978 if the summons is conspicuously affixed to the main entrance of the mobile home.

C. Jurisdiction of courts in cases of forcible entry, forcible detainer or unlawful detainer shall be as specified in Section 47-8-49 NMSA 1978.

D. After commencement of the action and before judgment, any person not already a party to the action who is discovered to have a property interest in the mobile home shall be allowed to enter into a stipulation with the landlord and be bound thereby.

History: Laws 1983, ch. 122, § 4.

47-10-5. Reasons for termination.

A tenancy shall be terminated pursuant to the Mobile Home Park Act only for one or more of the following reasons:

A. failure of the tenant to comply with local ordinances and state laws and regulations concerning mobile homes;

B. conduct of the tenant on the premises which constitutes an annoyance to other tenants or interference with park management;

C. failure of the tenant to comply with written rules and regulations of the mobile home park either established by the management in the rental agreement at the inception of the tenancy, amended subsequently thereto with the consent of the tenant, or amended subsequently thereto without the consent of the tenant on thirty days' written notice if the amended rules and regulations are reasonable, except when local ordinances and state laws and regulations or emergency situations require immediate compliance. However, regulations applicable to recreational facilities may be amended at the discretion of the management;

D. condemnation or change of use of the mobile home park. When the owner of a mobile home park is formally notified by an appropriate governmental agency that his mobile home park is the subject of a condemnation proceeding, the landlord shall, within seventeen days, notify his tenants in writing of the terms of the condemnation notice which he receives; or

E. in those cases where the zoning law allows the landlord to change the use of his land without obtaining the consent of the zoning authority and where such change of use would result in eviction of inhabited mobile homes, the landlord shall first give the owner of each mobile home subject to such eviction a written notice of his intent to evict not less than six months prior to such change of use of the land, notice to be mailed to each tenant.

History: Laws 1983, ch. 122, § 5.

47-10-6. Nonpayment of rent.

Any tenancy or other estate at will or lease in a mobile home park may be terminated upon the landlord's written notice to the tenant requiring, in the alternative, payment of rent and utility charges or the removal of the tenant's unit from the premises, within a period of not less than three days after the date notice is served or posted, for failure to pay rent when due. Rent shall not be increased without sixty days' written notice to the tenant.

History: Laws 1983, ch. 122, § 6; 1993, ch. 147, § 3.

47-10-7. Common areas; tenant meetings.

Common areas of a mobile home park shall be open to all residents of the mobile home park at all reasonable times subject to such conditions and limitations as are imposed by written regulations of the mobile home park owner or management. Meetings of tenants relating to mobile home living and affairs held in their park community hall or recreation hall, if such facility or similar facility exists, shall not be subject to prohibition by the park management if the hall is reserved according to park rules and such meetings are held at reasonable hours and when the facility is not otherwise in use.

History: Laws 1983, ch. 122, § 7.

47-10-8. Security deposits.

The owner of a mobile home park or his agents may charge a security deposit not greater than the amount of one month's rent or two months' rent for multiwide units.

History: Laws 1983, ch. 122, § 8.

47-10-9. Remedies.

A. Upon granting judgment for possession by the landlord in a forcible entry and detainer action, the court shall issue the writ of restitution as provided in Section 47-8-46 NMSA 1978.

B. The notice of judgment shall state that at a specified time, not less than forty-eight hours from the entry of judgment, the sheriff will return to serve a writ of restitution and superintend the peaceful and orderly removal of the mobile home under that order of court. The notice of judgment shall also advise the mobile home owner to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires and otherwise making the mobile home safe and ready for highway travel.

C. Should the mobile home owner fail to have the mobile home safe and ready for physical removal from the premises or should inclement weather or other unforeseen problems occur at the time specified in the notice of judgment, the landlord and the sheriff may by written agreement extend the time for the execution of the writ of restitution to allow time for the landlord to arrange to have the necessary work done or to permit the sheriff's execution of the writ of restitution at a time when weather or other conditions will make removal less hazardous to the mobile home.

D. If the mobile home is not removed from the landlord's land on behalf of the mobile home owner within the time permitted by the writ of restitution, the landlord and the sheriff shall have the right to take possession of the mobile home for the purposes of removal and storage. The liability of the landlord and the sheriff in that event shall be limited to gross negligence or willful and wanton disregard of the property rights of the mobile home owner. The responsibility to prevent freezing and to prevent wind and weather damage to the mobile home lies exclusively with those persons who have a property interest in the mobile home.

E. Utility charges, other charges incurred by the landlord for which the resident is liable to the landlord pursuant to the provisions of a rental agreement, including amounts awarded to the landlord in an action brought pursuant to this section, rents and reasonable removal and storage charges may be paid by any party in interest. Those charges constitute a lien that will run with the mobile home. The lien may be foreclosed in the same manner as a landlord's lien created pursuant to Section 48-3-5 NSMA [sic] 1978.

F. Prior to the issuance of the writ of restitution, the court shall make a finding of fact that the mobile home is or is not subject to the security interest of a first lienholder. A written statement on the mobile home resident's owner's application for tenancy identifying a lienholder by name and address shall be prima facie evidence of the existence of the interest of the lienholder. If the application for tenancy contains no information or states that no liens exist, the landlord shall obtain a written title search statement from the motor vehicle division of the taxation and revenue department and the matter contained in that document shall be conclusive evidence of the existence or nonexistence of security interests in the mobile home.

G. If the court finds there is a security interest in favor of a first lienholder on the mobile home subject to the writ of restitution or if the mobile home has been abandoned by the resident or possession of the mobile home has been surrendered to the landlord by the resident, then, upon receipt of the writ of restitution, the landlord shall notify the first lienholder in writing that the landlord has obtained a writ of restitution for the mobile home park space where the mobile home is located or that the mobile home has been abandoned or surrendered by the resident. The notice shall be provided in accordance with the provisions of Subsection J of this section and shall:

(1) state that an action for restitution has been filed against the resident and the effective date of a writ of restitution, if issued, or the date the mobile home was abandoned or voluntarily surrendered by the resident;

(2) disclose the amount of the utility charges, other charges incurred by the landlord as provided in the rental agreement, rents and reasonable removal and storage charges, accruing daily rent calculated pursuant to this section, and the date upon which the resident is required to make regular payments to the landlord; and

(3) attach a copy of the lease and the landlord's rules and regulations that apply to the resident.

H. Notwithstanding the provisions of the [sic] Subsection E of this section, the landlord shall be entitled to collect from the first lienholder only the utility charges, other charges incurred by the landlord as provided in the rental agreement and rents and reasonable removal and storage charges accruing from and after the date the landlord provides the first lienholder the written notice prescribed under Subsection G of this section. The first lienholder shall notify the landlord within thirty days of receipt of the notice whether it intends to pay the rents and charges collectible under this subsection or remove the mobile home. The rents and charges due under this subsection shall be prorated to the date the mobile home is removed or the date a new lease with a new resident becomes effective, and the first lienholder shall not be liable for any rents and charges thereafter. The maximum rent payable to the landlord under this subsection is a daily rate equal to one-thirtieth of the then-current lot rental amount that would have been payable by the resident under the lease. The maximum daily rent may be increased over time in accordance with the notice requirements under the applicable provisions of the Mobile Home Park Act. The first lienholder shall have thirty days from the date notice is provided by the landlord to pay the rent and charges accruing to the notice date. Thereafter, the first lienholder shall pay the rent and charges in accordance with the resident's lease. If the first lienholder desires to remove the mobile home prior to a payment due date, the first lienholder shall pay the rent and charges accrued to the date of removal prior to removing the mobile home.

I. If the first lienholder fails to pay the rent and charges due as provided in Subsection H of this section, the landlord may give the first lienholder notice of the nonpayment in accordance with Section 47-10-6 NMSA 1978. If the first lienholder fails to make payment within the time period specified in the notice, the landlord may proceed against the first lienholder by exercising the remedies granted it under the Mobile Home Park Act. The landlord may also seek any other remedies to which it is entitled by law. The prevailing party in any action brought in an event to seek relief under this section, including an action for damages, is entitled to an award for reasonable attorney fees and costs incurred in the suit. Notwithstanding anything in this section to the contrary, the judgment obtained in such an action, if in favor of the landlord, constitutes a lien against the mobile home having priority over the lien of the first lienholder. The lien may be foreclosed pursuant to the procedures pertaining to a landlord's lien created in Section 48-3-5 NMSA 1978.

J. Any notice required by this section between the first lienholder and landlord shall be in writing and either hand delivered or mailed by certified mail, return receipt requested. The notice shall be effective the date of delivery or mailing. If hand delivered, the notice shall be delivered at the principal office or place of business of the addressee during regular business hours to the person in charge of the office or place of business.

K. If the mobile home is sold to third parties who intend to remain in the park, they will not be allowed to reside in the mobile home unless the parties have been qualified by the landlord as residents. Until the purchasers and the landlord enter into a written lease agreement, the landlord may refuse to recognize the sale and treat any persons living in the mobile home as trespassers.

L. If the first lienholder has paid in full all money due under Subsection H of this section, it shall be unlawful for the landlord to refuse to allow the first lienholder to remove the mobile home. If the landlord refuses to allow the first lienholder to remove the mobile home, the landlord is liable to the first lienholder for each day the landlord unlawfully maintains possession of the mobile home, at a daily rate equal to one-thirtieth of the monthly payment required by a contract between the first lienholder and resident. In all disputes between the landlord and the first lienholder, the court shall award reasonable attorney fees and costs to the prevailing party. In the event the mobile home has not been resold within six months of the landlord providing notice pursuant to Subsection G of this section, the landlord may request the first lienholder to remove the mobile home within thirty days of the request. Notice of the request shall be given to the first lienholder in accordance with Subsection J of this section.

History: Laws 1983, ch. 122, § 9; 1997, ch. 39, § 3.

47-10-10. Entry fees prohibited; entry fee defined; security deposit; court costs.

A. The owner of a mobile home park or the agent of such owner shall neither pay to nor receive from an owner or a seller of a mobile home an entry fee of any type as a condition of tenancy in a mobile home park.

B. As used in this section, "entry fee" means any fee paid to or received by an owner of a mobile home park or his agent, except for:

(1) rent;

(2) a security deposit against actual damages to the premises or to secure rental payments, which deposit shall not be greater than the amount allowed under Section 9 [8] [47-10-8 NMSA 1978] of the Mobile Home Park Act. Security deposits shall remain the property of the tenant, and they shall be deposited into a separate trust account by the landlord to be administered by the landlord as a private trustee. For the purpose of preserving the corpus, the landlord shall not commingle the trust funds with

other money, but he is permitted to keep the interest and profits thereon as his compensation for administering the trust;

(3) a fee charged by any state, municipal or county governmental agency;

(4) utilities; or

(5) incidental charges for services actually performed by the mobile home park owner or his agent or agreed to in writing by the tenant.

C. The trial judge may award court costs and reasonable attorney fees in any court action brought pursuant to the Mobile Home Park Act to the prevailing party upon a finding that the prevailing party undertook the court action and legal representation for a legally sufficient reason and not for a dilatory or unfounded cause.

D. The management or the resident may bring a civil action for violation of the rental agreement or any violation of the Mobile Home Park Act in the appropriate court of the county in which the mobile home park is located. Either party may recover actual damages, or, the court may in its discretion award such equitable relief as it deems necessary, including the enjoining of either party from further violations.

History: Laws 1983, ch. 122, § 10.

47-10-11. Closed parks prohibited.

A. The management shall not require, as a condition of tenancy in a mobile home park, that the prospective tenant purchase a mobile home from a particular seller or from any one of a particular group of sellers and shall not require that the management act as agent in the future sale of the mobile home.

B. The management shall not give any special preference in renting to a prospective tenant who has purchased a mobile home from a particular seller.

C. A seller of mobile homes shall not require as a condition of sale that a purchaser locate in a particular mobile home park or in any one of a particular group of mobile home parks.

D. The management shall not prohibit the listing or sale of a mobile home within the park by the owner of the mobile home or the owner's agent. The management shall not require as a condition of sale that the management serve as the selling agent.

E. The management shall treat all persons equally in evaluating credit or renting or leasing available space, except that a park may be designated for housing for older persons after a six months' notice to the residents, provided that the management complies with all applicable procedures of state and federal antidiscrimination laws, including the federal Fair Housing Act, 42 U.S.C. Sections 3601-3619.

History: Laws 1983, ch. 122, § 11; 1997, ch. 186, § 2; 2007, ch. 194, § 1.

47-10-12. Selling fees prohibited.

The owner of a mobile home park or his agent shall not require payment of any type of selling fee or transfer fee by either a tenant in the park wishing to sell his mobile home to another party or by any party wishing to buy a mobile home from a tenant in the park as a condition of tenancy in a mobile home park for the prospective buyer. This section shall in no way prevent the owner of a mobile home park or his agent from applying the normal park standards to prospective buyers before granting or denying tenancy or from charging a reasonable selling fee or transfer fee for services actually performed and agreed to in writing by the tenant. Nothing in this section shall be construed to affect the rent charged.

History: Laws 1983, ch. 122, § 12.

47-10-13. Certain types of landlord-seller agreements prohibited.

A seller of mobile homes shall not pay or offer cash or other consideration other than rent to the owner of a mobile home park or his agent for the purpose of reserving spaces or otherwise inducing acceptance of one or more mobile homes in a mobile home park.

History: Laws 1983, ch. 122, § 13.

47-10-14. Rental agreement; disclosure of terms in writing.

A. The terms and conditions of a tenancy shall be adequately disclosed in writing in a rental agreement by the management to any prospective resident prior to the rental or occupancy of a mobile home space or lot. The disclosures shall include:

(1) the term of the tenancy, the amount of the rent and the dollar amount of any rent increases for each of the preceding two years;

(2) the day the rental payment is due;

(3) the day when unpaid rent shall be considered in default;

(4) the rules and regulations of the park then in effect;

(5) the zoning applicable to the property upon which the park is located;

(6) the name and mailing address where a manager's decision may be appealed;

(7) the name and mailing address of the owner of the park;

(8) all charges to the tenant other than rent; and

(9) A statement explaining the resident's right to request alternative dispute resolution of any disputes with the mobile home park owner or management, except for disputes over nonpayment of rent or utility charges or in the case of public safety emergencies.

B. The rental agreement shall be signed by both the management and the resident, and each party shall receive a copy of it.

C. The management and the resident may include in a rental agreement terms and conditions not prohibited under the provisions of the Mobile Home Park Act.

D. If an owner deliberately uses a rental agreement containing provisions known by him to be prohibited by law or by the provisions of Section 47-10-11, 47-10-12 or 47-10-13 NMSA 1978, the resident may recover damages sustained by him resulting from application of the illegal provision and reasonable attorney fees.

History: Laws 1983, ch. 122, § 14; 1993, ch. 147, § 4; 1997, ch. 186, § 3.

47-10-15. Rules and regulations.

The management shall adopt rules and regulations concerning all residents' use and occupancy of the premises. The rules and regulations are enforceable against a resident only if:

A. they are submitted to tenants for their comment sixty days prior to the rules being implemented;

B. their purpose is to promote the convenience, safety or welfare of the residents, protect and preserve the premises from abusive use or make a fair distribution of services and facilities held out for the residents generally;

C. they are reasonably related to the purpose for which they are adopted;

D. they are not retaliatory or discriminatory in nature, except that all or any portion of the park may be designated for adult-only occupancy after a six-months' notice to the residents; and

E. they are sufficiently explicit in prohibition, direction or limitation of the resident's conduct to fairly inform him of what he shall or shall not do to comply.

History: Laws 1983, ch. 122, § 15; 1997, ch. 186, § 4.

47-10-15.1. New or amended rules; notification; open meeting; pets; physical improvements.

A. The management shall notify mobile home park residents of proposed new rules or amendments to existing rules at least sixty days prior to the effective date of the new or amended rules. The management shall allow residents a thirty-day comment period on proposed rule changes. Comments from residents to management on proposed rule changes shall be in writing and signed by the author. Once all comments have been received, the management shall post all comments and the responses to the comments in a conspicuous place. The new rules or amended rules shall not take effect before sixty days after the notification date.

B. Existing pets that are in compliance with the mobile home park rules or regulations shall be exempt from any provision of new rules or regulations that would prohibit those pets provided those are not a nuisance violating the public peace, health or safety.

C. The mobile home park management shall not require existing residents to comply with changes in rules or regulations that require physical improvements to the existing resident's mobile home or lot unless the mobile home is in violation of a local municipal or county ordinance or the physical condition of the resident's mobile home or lot constitutes a public nuisance or threat to the public peace, health or safety.

History: Laws 1997, ch. 186, § 5.

47-10-16. New developments and parks; rental of sites to dealers authorized.

A. The management of a new mobile park or manufactured housing community development may require as a condition of leasing a mobile home site or manufactured home site for the first time such site is offered for lease that the prospective lessee has purchased a mobile home or manufactured home from a particular seller or from any one of a particular group of sellers.

B. A licensed mobile home dealer or a manufactured home dealer may, by contract with the management of a new mobile home park or manufactured housing community development, be granted the exclusive right to first-time rental of one or more mobile home sites or manufactured home sites.

History: Laws 1983, ch. 122, § 16.

47-10-17. Alternative dispute resolution; when permitted; court actions.

A. In any civil dispute between the management and a resident of a mobile home park arising out of the provisions of the Mobile Home Park Act, except for nonpayment of rent or utility charges or in cases in which the health or safety of other residents is in imminent danger, the controversy may be submitted to alternative dispute resolution by

request of either party prior to the filing of a court action or a forcible entry and detainer action. The cost of the alternative dispute resolution services shall be divided equally among the disputing parties.

B. The agreement, if one is reached, shall be presented to the court as a stipulation. Either party to the dispute resolution process may terminate the process at any time without prejudice.

C. If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

D. Any alternative dispute resolution pursuant to this section shall be performed by a professionally certified mediator approved by all disputing parties.

History: Laws 1983, ch. 122, § 17; 1997, ch. 186, § 6.

47-10-18. Conflicts; applicability of law.

Unless a provision of the Mobile Home Park Act directly conflicts with the provisions of the Uniform Owner-Resident Relations Act [47-8-1 to 47-8-52 NMSA 1978], the provisions of the Uniform Owner-Resident Relations Act shall apply to mobile home park owners and residents.

History: Laws 1989, ch. 253, § 4.

47-10-19. Rent increase; disclosure requirement.

A. A landlord shall fully and accurately disclose in writing to a resident an increase in rent. The disclosure shall be provided to a resident at least sixty days prior to implementation of an increase in rent.

B. Upon receiving a written request from a resident or prospective resident, a landlord shall fully and accurately disclose in writing a current schedule of the range of rental rates in the mobile home park. The landlord shall include the date of preparation on the face of the schedule of rental rates.

History: 1978 Comp., § 47-10-19, enacted by Laws 1993, ch. 147, § 5.

47-10-20. Cost of utility services; access to records.

A. Mobile home park owners shall be responsible for maintaining all park-owned exterior utility lines from the mobile home hookups to the main lines in the park, except lines that are damaged by a resident.

B. When a landlord purchases utility services for residents, the charge for utility services billed to residents shall not exceed the cost per unit amount paid by the landlord to the suppliers of the utility services.

C. A landlord shall provide a resident with reasonable access to records of meter readings, if any, taken at the resident's mobile home space.

History: 1978 Comp., § 47-10-20, enacted by Laws 1993, ch. 147, § 6; 1997, ch. 186, § 7.

47-10-21. Provision of utility services; administrative fee; disclosure requirement.

A. A landlord may charge residents a reasonable fee to offset the cost of administration incurred by a landlord when he provides utility services to residents.

B. The amount of the administrative fee for utility services shall be fully and accurately disclosed in writing in a rental agreement, pursuant to the provisions of Paragraph (6) [the introductory language] of Subsection A of Section 47-10-14 NMSA 1978.

C. A landlord shall fully and accurately disclose in writing to a resident any increase in the administrative fee. The disclosure shall be provided to a resident at least sixty days prior to implementation of an increase in the administrative fee.

History: 1978 Comp., § 47-10-21, enacted by Laws 1993, ch. 147, § 7.

47-10-22. Itemized bill; utility services; administrative fees.

When a landlord purchases utility services for residents, he shall provide residents with a monthly itemized bill that includes:

A. a separate listing of charges for each utility service;

B. the amount consumed and the cost per unit for each utility service; provided, that when individual cost per unit figures for utility services are not available, the landlord shall provide residents with the total cost of utility services and the formula used to determine the individual charges for utility services; and

C. if applicable, the amount of the administrative fee for providing utility services to residents.

History: 1978 Comp., § 47-10-22, enacted by Laws 1993, ch. 147, § 8.

47-10-23. Civil penalties.

A. For each violation by a landlord of the provisions of Sections 47-10-19 through 47-10-22 NMSA 1978 a landlord may be charged a civil penalty not to exceed five hundred dollars ($500).

B. The remedies provided in this section are not exclusive and do not limit the rights or remedies that are otherwise available to a resident under any other law.

History: 1978 Comp., § 47-10-23, enacted by Laws 1993, ch. 147, § 9.

ARTICLE 11
Time Shares

47-11-1. Short title.

This act [47-11-1 to 47-11-13 NMSA 1978] may be cited as the "New Mexico Time Share Act".

History: Laws 1986, ch. 97, § 1.

47-11-2. Definitions.

As used in the New Mexico Time Share Act:

A. "commission" means the New Mexico real estate commission;

B. "developer" means any person creating or engaged in the business of selling ten or more of its own time shares and includes any person who controls, is controlled by or is in common control with the developer and who is engaged in creating or selling time shares for the developer;

C. "enrolled" means having a paid membership in an exchange program or a membership in an exchange program evidenced by written acceptance or confirmation of membership;

D. "exchange company" means any person operating an exchange program;

E. "exchange program" means any opportunity or procedure for the assignment or exchange of time shares among purchasers in the same or another time share project;

F. "managing agent" means a person who undertakes the duties, responsibilities and obligations of the management of a time share program;

G. "person" means one or more natural persons, corporations, partnerships, associations, trusts, other entities or any combination thereof;

H. "purchaser" means any person, other than a developer or lender, who owns or acquires an interest or proposes to acquire an interest in a time share;

I. "time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership interest or vacation bond;

J. "time share program" means any arrangement for time shares whereby real property has been made subject to a time share;

K. "time share project" means any real property that is subject to a time share program;

L. "time share salesperson" means a person, other than a person who has at least a fifteen percent interest in the developer, who sells or offers to sell on behalf of a developer a time share to a purchaser; and

M. "time share unit" or "unit" means a living space in a time share project that is divided into time shares and designated for separate occupancy or use.

History: Laws 1986, ch. 97, § 3.

47-11-2.1. Registration required of time share projects; real estate salesperson license required.

A. It shall be unlawful for any person in this state to engage or attempt to engage in the business of a time share salesperson without first obtaining a real estate broker or salesperson license issued by the New Mexico real estate commission under the provisions of Section 61-29-1 NMSA 1978.

B. It shall be unlawful for a time share developer to sell or offer to sell time shares located in this state without first obtaining a certificate of registration for the time share project to be offered for sale issued by the New Mexico real estate commission under the provisions of the New Mexico Time Share Act.

History: Laws 1986, ch. 97, § 2; 1978 Comp., § 61-29-1.1, recompiled as 1978 Comp., § 47-11-2.1.

47-11-3. Time shares deemed real estate; partition.

A. A time share is deemed to be an interest in real estate and shall be governed by the law of this state relating to real estate.

B. A purchaser of a time share may, in accordance with Section 14-9-1 NMSA 1978, record the instrument by which he acquired his interest and upon such recordation shall be entitled to the protection provided by Section 14-9-2 NMSA 1978 for the recordation of other real property instruments.

C. A document transferring or encumbering a time share shall not be rejected for recordation because of the nature or duration of that estate, provided all other requirements necessary to make an instrument recordable are complied with.

D. When a time share is owned by two or more persons as tenants in common or as joint tenants, either may seek a partition by sale of that interest but no purchaser of a time share may maintain an action for partition from the time share project of the unit in which such time share is held.

History: Laws 1986, ch. 97, § 4.

47-11-4. Disclosure statement.

Each developer shall fully and conspicuously disclose to each purchaser in a disclosure statement at least the following information:

A. the total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject;

B. any person who has or may have the right to alter, amend or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed;

C. the nature and duration of each agreement between the developer and the person managing the time share program or its facilities;

D. the date of availability of each amenity and facility of the time share program which is not completed at the time of sale of a time share;

E. the specific term of the time share;

F. the purchaser's right to cancel within seven days of execution of the contract and how that right may be exercised under the New Mexico Time Share Act; and

G. a statement that under New Mexico law an instrument conveying a time share must be recorded in the office of the clerk of the county where the real property is located to protect that interest.

History: Laws 1986, ch. 97, § 5.

47-11-5. Purchaser's right to cancel; escrow; violation.

A. A developer shall, before conveyance of a time share and not later than the execution of any contract of sale, provide a purchaser with a copy of a disclosure statement containing the information required by the New Mexico Time Share Act. The contract of sale is voidable by the purchaser within seven days after execution of the contract of sale. The contract shall conspicuously disclose the purchaser's right to cancel under this subsection and how that right may be exercised. An instrument transferring a time share shall not be recorded until seven days after the execution of the contract of sale.

B. A purchaser may elect to cancel within the time period set out in Subsection A of this section by hand-delivering or by mailing notice to the developer or to his agent for service of process. Cancellation under this section is without penalty and upon receipt of the notice all payments made prior to cancellation shall be refunded within thirty days.

C. Any payments received by a time share developer or real estate licensee in connection with the sale of a time share shall be handled in accordance with Subsections E, H and I of Section 61-29-12 NMSA 1978 and applicable rules and regulations of the commission. These payments shall be held in such manner until:

(1) delivered to the developer at closing;

(2) delivered to the developer because of the purchaser's default under a contract of sale; or

(3) refunded to purchaser.

D. The commission may waive the requirements of Subsection C of this section for a time share project if:

(1) the time share developer submits to the commission information sufficient to allow the commission to determine the total cost of completing the time share project; and

(2) the time share developer delivers to the commission a performance bond, with a surety acceptable to the commission, in an amount sufficient to complete the time share project. If the developer does not complete the project, the commission may use funds received from the bond to complete the project.

History: Laws 1986, ch. 97, § 6.

47-11-6. Prizes.

An advertisement or promotion of a time share which includes the offer of a prize or other inducement shall fully comply with the provisions of the Unfair Practices Act.

History: Laws 1986, ch. 97, § 7.

47-11-7. Time share proxy.

No proxy, power of attorney or similar device given by the purchaser of a time share regarding the management of the time share program or its facilities shall exceed one year in duration, but the same may be renewed from year to year.

History: Laws 1986, ch. 97, § 8.

47-11-8. Exchange programs.

A. If a purchaser is offered the opportunity to subscribe to an exchange program, the developer shall, except as provided in Subsection C of this section, deliver to the purchaser, prior to the execution of the sales contract or any contract between the purchaser and the exchange company, at least the following information regarding such exchange program:

(1) the name and address of the exchange company;

(2) the names of all officers, directors and share holders owning five percent or more of the outstanding stock of the exchange company;

(3) whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing agent for any time share project participating in the exchange program and, if so, the name and location of the time share project and the nature of the interest;

(4) unless the exchange company is also the developer, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the sales contract;

(5) whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time share project with the exchange program;

(6) whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;

(7) a complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes thereto may be made;

(8) a complete and accurate description of the procedure to qualify for and effectuate exchanges;

(9) a complete and accurate description, expressed in boldfaced type, of all limitations, restrictions or priorities employed in the operation of the exchange program,

including but not limited to limitations on exchanges based on seasonality, unit size or levels of occupancy and, in the event that such limitations, restrictions or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;

(10) whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

(11) whether and under what circumstances an owner, in dealing with the exchange company, may lose the use and occupancy of his time share in any properly applied-for exchange without substitute accommodations being provided or arranged for by the exchange company;

(12) the expenses, fees or range of fees for participation by owners in the exchange program, whether any such fees may be altered by the exchange company and the circumstances under which alterations may be made;

(13) the name and address of the site of each time share project or other property which is participating in the exchange program;

(14) the number of units in each project or other property participating in the exchange program which are available for occupancy and qualify for participation in the exchange program, expressed within the following numerical groupings, 1-5, 6-10, 11-20, 21-50 and 51 and over;

(15) the number of owners with respect to each time share project or other property which are eligible to participate in the exchange program expressed within the following numerical groupings, 1-100, 101-249, 250-499, 500-999 and 1,000 and over, and the criteria used to determine those owners who are currently eligible to participate in the exchange program;

(16) the disposition made by the exchange company of time shares deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges;

(17) the following information which, except as provided in Subparagraph (b) of this paragraph, shall be independently audited by a certified public accountant in accordance with the standards of the accounting standards board of the American institute of certified public accountants and reported for each year no later than July 1 of the succeeding year:

(a) the number of owners enrolled in the exchange program and the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;

(b) the number of time share projects or other properties eligible to participate in the exchange program indicating those having a contractual relationship between the developer or the association and the exchange company and those having solely a contractual relationship between the exchange company and owners directly;

(c) the percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

(d) the number of time shares or other intervals for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time share or interval during the year in exchange for a time share or interval in any future year; and

(e) the number of exchanges confirmed by the exchange company during the year; and

(18) a statement in boldfaced type to the effect that the percentage described in Subparagraph (c) of Paragraph (17) of this subsection is a summary of the exchanges properly applied for in the period reported and that the percentage does not indicate the likelihood of confirmation of a purchaser's specific choice or range of choices, since availability at individual locations may vary.

The developer shall obtain the purchaser's written certification of receipt of the information required by this subsection.

B. The information required by Paragraphs (2), (3), (13), (14), (15) and (17) of Subsection A of this section shall be accurate as of December 31 of the year preceding the year in which the information is delivered, except for information delivered within the first one hundred eighty days of any calendar year which shall be accurate as of December 31 of the year two years preceding the year in which the information is delivered to the purchaser. The remaining information required by Subsection A of this section shall be accurate as of a date which is no more than thirty days prior to the date on which the information is delivered to the purchaser.

C. In the event an exchange company offers an exchange program directly to the purchaser, the exchange company shall deliver to each purchaser, concurrently with the offering and prior to the execution of any contract between the purchaser and the exchange company, the information set forth in Subsection A of this section. The requirements of this subsection shall not apply to any renewal of a contract between a purchaser and an exchange company.

D. All promotional brochures, pamphlets, advertisements or other materials disseminated by the exchange company to purchasers in this state which contain the percentage of confirmed exchanges described in Subparagraph (c) of Paragraph (17) of

Subsection A of this section must include the statement set forth in Paragraph (18) of Subsection A of this section.

History: Laws 1986, ch. 97, § 9.

47-11-9. Service of process on exchange company.

Any exchange company offering an exchange program to a purchaser shall be deemed to have made an irrevocable appointment of the commission to receive service of lawful process in any proceeding against the exchange company arising under the New Mexico Time Share Act.

History: Laws 1986, ch. 97, § 10.

47-11-10. Securities laws apply.

The Securities Act of New Mexico shall apply to time shares deemed to be investment contracts or to other securities offered with or incident to a time share.

History: Laws 1986, ch. 97, § 11.

47-11-11. Application for registration of time share project; denial of registration; renewal; reinstatement; termination of developer's interest.

A. Prior to the offering in this state of any time share located in this state, the developer of the time share project shall make written application to the commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the commission, based upon the number of time shares to be offered for sale, but not to exceed one thousand five hundred dollars ($1,500). The application shall include a description of the project, copies of proposed time share instruments including disclosure statements, sale contracts and deeds, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in the time share project or for the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the commission to receive service of any lawful process in any proceeding against the developer or the developer's salespersons arising under the New Mexico Time Share Act and any other information or documentation required by the commission.

Upon receipt of a properly completed application and fee and upon a determination by the commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The commission shall, within

fifteen days after receipt of an incomplete application, notify the developer by mail that the commission has found deficiencies, which shall be specified in the notice, and shall, within forty-five days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of or otherwise terminates its interest in a time share project, the developer shall certify to the commission in writing that its interest in the time share project is terminated and shall return the certificate of registration to the commission for cancellation.

B. In the event the commission finds that there is substantial reason to deny the application for registration as a time share project, the commission shall notify the applicant that such application has been denied and shall afford the applicant an opportunity for a hearing before the commission to show cause why the application should not be denied. The provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall apply in all proceedings to deny a certificate of registration.

C. The acceptance by the commission of an application for registration shall not constitute the approval of its contents or waive the authority of the commission to take disciplinary action as provided by the New Mexico Time Share Act.

History: Laws 1986, ch. 97, § 12.

47-11-11.1. Register of applicants; roster of registrants; registered projects; financial report to secretary of state.

A. The executive secretary of the commission shall keep a register of all applicants for certificates of registration, showing for each the date of application, name, business address and whether the certificate was granted or refused.

B. The executive secretary of the commission shall also keep a current roster showing the name and address of all time share projects registered with the commission. The roster shall be kept on file in the office of the commission and be open to public inspection.

C. On or before the first day of September of each year, the commission shall file with the secretary of state a copy of the roster of time share projects registered with the commission and a report containing a complete statement of income received by the commission in connection with the registration of time share projects for the preceding

fiscal year ending June 30 attested by the affidavit of the executive secretary of the commission.

History: Laws 1986, ch. 97, § 13; 1978 Comp., § 61-29-5.1, recompiled as 1978 Comp., § 47-11-11.1.

47-11-11.2. Disciplinary action by commission.

A. The commission shall have power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the commission may investigate the actions of any time share broker or salesperson or any developer of a time share project registered under the New Mexico Time Share Act or any other person or entity who shall assume to act in such capacity. If the commission finds probable cause that a time share broker, salesperson or developer has violated any of the provisions of this act, the commission may hold a hearing on the allegations of misconduct. All such hearings shall be conducted in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

The commission shall have power to suspend or revoke a real estate license issued to a time share broker or salesperson, suspend or revoke a certificate of registration of a time share project issued, reprimand or censure such broker, salesperson or developer, or fine such developer in the amount of five hundred dollars ($500) for each violation of the New Mexico Time Share Act, if, after a hearing, the commission adjudges that broker, salesperson or developer to be guilty of:

(1) making any willful or negligent misrepresentation or any willful or negligent omission of material fact about any time share or time share project;

(2) making any false promise of a character likely to influence, persuade or induce;

(3) pursuing a course of misrepresentation or making of false promises through agents, salespersons, advertising or otherwise;

(4) failing, within a reasonable time, to account for all money received from others in a time share transaction and failing to remit such money as may be required in Section 6 [47-11-5 NMSA 1978] of the New Mexico Time Share Act;

(5) paying a commission, salary or other valuable consideration to any person for acts or services performed in violation of the New Mexico Time Share Act;

(6) any other conduct which constitutes improper, fraudulent or dishonest dealing;

(7) performing or undertaking to perform the practice of law as set forth in Section 36-2-27 NMSA 1978;

(8) failing to deposit and maintain in a trust or escrow account in an insured bank or savings and loan association in New Mexico all money received from others in a time share transaction as may be required in Section 6 [47-11-5 NMSA 1978] of the New Mexico Time Share Act;

(9) failing to deliver to a purchaser a disclosure statement containing the information required by Section 5 [47-11-4 NMSA 1978] of the New Mexico Time Share Act and any other disclosures that the commission may by regulation require;

(10) failing to comply with the provisions of Section 7 [47-11-6 NMSA 1978] of this act in the advertising or promotion of time shares for sale or failing to assure such compliance by persons engaged on behalf of a developer;

(11) failing to comply with the provisions of Section 9 [47-11-8 NMSA 1978] of this act in furnishing complete and accurate information to a purchaser concerning any exchange program which may be offered to such purchaser; or

(12) making any false or fraudulent representation on an application for registration.

B. Following a hearing, the commission shall also have power to suspend or revoke any certificate of registration issued under the provisions of the New Mexico Time Share Act or to reprimand or censure any developer when the registrant has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this state, or any other state, of any felony or any one or more of the criminal offenses of embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud or other offense involving moral turpitude which would reasonably affect the developer's performance in the time share business.

C. The commission may appear in its own name in district court in actions for injunctive relief to prevent any person or entity from violating the provisions of the New Mexico Time Share Act or rules promulgated by the commission. The district court shall have the power to grant an injunction even if criminal prosecution has been or may be instituted as a result of the violations and regardless of whether the person or entity has been registered by the commission.

D. Each developer shall maintain or cause to be maintained complete records of every time share transaction including records pertaining to the deposit, maintenance and withdrawal of money required to be held in a trust or escrow account pursuant to Section 6 [47-11-5 NMSA 1978] of the New Mexico Time Share Act, or as otherwise required by the commission. The commission may inspect these records periodically without prior notice and may also inspect these records whenever the commission determines that they are pertinent to an investigation of any specific complaint against a time share project.

E. Nothing in the New Mexico Time Share Act precludes any enforcement authority provided pursuant to the Unfair Practices Act [Chapter 57, Article 12 NMSA 1978] or other enforcement authority provided by law.

History: Laws 1986, ch. 97, § 14; 1978 Comp., § 61-29-17.1, recompiled as 1978 Comp., § 47-11-11.2.

47-11-12. Private enforcement.

The provisions of the New Mexico Time Share Act shall not be construed to limit in any manner the right of a purchaser or other person injured by a violation of the New Mexico Time Share Act to bring a private action.

History: Laws 1986, ch. 97, § 15.

47-11-13. Release of liens.

A. Prior to the recordation of any instrument transferring a time share, the developer shall record or furnish to the purchaser a release of all liens affecting that time share or shall provide a surety bond or insurance against the lien from a company acceptable to the commission as provided for liens on real estate in this state, and such underlying lien document shall contain a provision wherein the lienholder subordinates its rights to that of a time share purchaser who fully complies with all of the provisions and terms of the contract of sale.

B. Unless a time share purchaser or a time share purchaser's predecessor in title has agreed otherwise with the lienholder, if a lien other than a mortgage or deed of trust becomes effective against more than one time share in a time share project, any time share purchaser is entitled to a release of his time share from a lien upon payment of the amount of the lien attributable to his time share. The amount of the payment shall be proportionate to the ratio that the time share purchaser's liability bears to the liabilities of all time share purchasers whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time share purchaser a release of the lien covering that time share. After payment, the managing agent may not assess or have a lien against that time share for any portion of the expenses incurred in connection with that lien.

History: Laws 1986, ch. 97, § 16.

ARTICLE 12
Land Use Easements

47-12-1. Short title.

This act [47-12-1 to 47-12-6 NMSA 1978] may be cited as the "Land Use Easement Act".

History: Laws 1991, ch. 15, § 1.

47-12-2. Definitions.

As used in the Land Use Easement Act:

A. "holder" means any nonprofit corporation, nonprofit association or nonprofit trust, the purposes or powers of which include retaining or protecting the natural or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources or maintaining production uses of real property;

B. "land use easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use or protecting natural resources; and

C. "third-party enforcement right" means a right expressly provided by the parties to a land use easement empowering a specifically identified nonprofit corporation, nonprofit association or nonprofit trust that, although eligible to be a holder, is not a holder, to enforce any term of the easement. No party shall have any third-party enforcement right unless that right is expressly provided for in a land use easement.

History: Laws 1991, ch. 15, § 2.

47-12-3. Creation, conveyance, recording, acceptance and duration.

A. Except as otherwise provided in the Land Use Easement Act, a land use easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as any other easement.

B. A land use easement is not effective and creates no rights or obligations until it is recorded in the office of the county clerk of the county or counties in which any part of the real property subject to the land use easement is located.

C. No right or duty in favor of or against a holder and no right in favor of a person having a third-party enforcement right arises under a land use easement prior to its acceptance by that holder and recordation of that acceptance in the office of the county clerk of the county where the real property subject to a land use easement is located, in whole or in part.

D. Except as provided in Subsection B of Section 4 [47-12-4 NMSA 1978] of the Land Use Easement Act, the term of a land use easement shall be the term stated in the easement.

E. No land use easement may impair an interest in real property existing at the time the land use easement is created, unless the owner of that interest is a party to the land use easement and consents to it.

F. The rights, obligations and duties created by a land use easement shall only be enforceable upon and impact the land located within that easement.

History: Laws 1991, ch. 15, § 3.

47-12-4. Actions.

A. An action affecting a land use easement may be brought by any of the following:

(1) an owner of an interest in the real property burdened by the land use easement;

(2) a holder of a land use easement; or

(3) a person having a third-party enforcement right.

B. This section does not affect the power of a court to modify or terminate a land use easement in accordance with any principle of law or equity.

History: Laws 1991, ch. 15, § 4.

47-12-5. Validity of land use easement.

A land use easement is valid even though the land use easement:

A. is not appurtenant to an interest in real property;

B. imposes a negative covenant that is a restriction on the use of the land that is subject to the terms of the easement;

C. imposes affirmative obligations upon the owner of any interest in the burdened property or upon the holder;

D. does not touch or concern real property; or

E. does not establish any privity of estate or of contract.

History: Laws 1991, ch. 15, § 5.

47-12-6. Effect on enforceable interests.

A. Nothing in the Land Use Easement Act invalidates any interest, whether designated as a land use easement, covenant, equitable servitude, restriction or easement that is enforceable under the laws of this state.

B. No interest benefiting or encumbering real property cognizable under the statutes or common law in effect in this state prior to the enactment of the Land Use Easement Act, nor any application or permit for a change of a point of diversion place or purpose of use of a water right at any time shall be impaired, invalidated or in any way adversely affected by reason of any provision of that act.

C. Nothing in the Land Use Easement Act shall be construed to diminish or impair the rights of any person authorized by the laws of this state to acquire rights-of-way, easements or other property rights through the exercise of eminent domain. Nothing in that act shall be construed to authorize a governmental body or any charitable corporation or trust to acquire a conservation or preservation restriction through the exercise of eminent domain.

D. Nothing in the Land Use Easement Act shall be deemed to constitute a denial of surface owner consent for the surface mining of coal under the Surface Mining Act [Chapter 69, Article 25A NMSA 1978] or the federal Surface Mining Control and Reclamation Act of 1977 or to restrict, condition or affect the alienability, commercial development or extraction of leasable or locatable minerals under federal laws.

History: Laws 1991, ch. 15, § 6.

ARTICLE 12A
Cultural Properties Preservation Easements

47-12A-1. Short title.

This act [47-12A-1 to 47-12A-6 NMSA 1978] may be cited as the "Cultural Properties Preservation Easement Act".

History: Laws 1995, ch. 137, § 1.

47-12A-2. Definitions.

As used in the Cultural Properties Preservation Easement Act:

A. "cultural property" means a structure, place, site or object having historical, archaeological, scientific, architectural or other cultural significance deemed potentially eligible for inclusion in the national register of historic places;

B. "holder" means any nonprofit corporation, nonprofit association or nonprofit trust, the purposes or powers of which include retaining or protecting structures or sites significant for their history, architecture, archaeology, paleontology or other prehistorical or other values;

C. "cultural properties preservation easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation, the purpose of which includes preserving the historical, architectural, archaeological or cultural significance of real property; and

D. "third-party enforcement right" means a right empowering a nonprofit corporation, nonprofit association or nonprofit trust to enforce any term of the easement.

History: Laws 1995, ch. 137, § 2.

47-12A-3. Cultural properties preservation easement created; dispositions.

A. Except as otherwise provided in the Cultural Properties Preservation Easement Act, a cultural properties preservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as any other easement.

B. A cultural properties preservation easement is not effective and creates no rights or obligations until it is recorded in the office of the county clerk of the county or counties in which any part of the real property subject to the cultural properties preservation easement is located.

C. No right or duty in favor of or against a holder and no right in favor of a person having a third-party enforcement right arises under a cultural properties preservation easement prior to its acceptance by that holder and recordation of that acceptance in the office of the county clerk of the county where the real property subject to a cultural properties preservation easement is located, in whole or in part.

D. Except as provided in Subsection B of Section 4 [47-12A-4 NMSA 1978] of the Cultural Properties Preservation Easement Act, the term of a cultural properties preservation easement shall be the term stated in the easement.

History: Laws 1995, ch. 137, § 3.

47-12A-4. Actions.

An action affecting a cultural properties preservation easement may be brought by any of the following:

A. an owner of an interest in the real property subject to the cultural properties preservation easement;

B. a holder of a cultural properties preservation easement; or

C. a person having a third-party enforcement right.

History: Laws 1995, ch. 137, § 4.

47-12A-5. Validity of easement.

A cultural properties preservation easement is valid even though the cultural properties preservation easement:

A. is not appurtenant to an interest in real properties;

B. imposes a negative covenant that is a restriction on the use of the land that is subject to the terms of the easement;

C. imposes affirmative obligations upon the owner of any interest in the property subject to the easement or upon the holder;

D. does not touch or concern real property; or

E. does not establish any privity of estate or of contract.

History: Laws 1995, ch. 137, § 5.

47-12A-6. Enforceable interests.

A. Nothing in the Cultural Properties Preservation Easement Act invalidates any interest, whether designated as a cultural properties preservation easement, covenant, equitable servitude, restriction or easement that is enforceable under the laws of this state.

B. No interest benefiting or encumbering real property cognizable under the statutes or common law in effect in this state prior to the enactment of the Cultural Properties Preservation Easement Act, nor any application or permit for a change of a point of diversion place or purpose of use of a water right at any time shall be impaired, invalidated or in any way adversely affected by reason of any provision of that act.

C. Nothing in the Cultural Properties Preservation Easement Act shall be construed to diminish or impair the rights of any person authorized by the laws of this state to acquire rights of way, easements of other property rights through the exercise of eminent domain. Nothing in that act shall be construed to authorize any charitable

corporation, association or trust to acquire a preservation restriction through the exercise of eminent domain.

History: Laws 1995, ch. 137, § 6.

ARTICLE 13
Real Estate Disclosure

47-13-1. Short title.

Chapter 47, Article 13 NMSA 1978 may be cited as the "Real Estate Disclosure Act".

History: Laws 1991, ch. 74, § 1; 2009, ch. 165, § 1.

47-13-1.1. Definitions.

As used in the Real Estate Disclosure Act:

A. "estimated amount of property tax levy" means the product of one-third of the listed price of the residential real property being sold or otherwise transferred in the transaction multiplied by the current property tax rates applicable to the property if those tax rates have been imposed in accordance with Section 7-38-34 NMSA 1978 for the current year for the county in which the property is located or, in all other cases, by the tax rates for the prior year;

B. "listed price" means the current price at which the residential property is being marketed;

C. "seller's broker" means a real estate broker acting on behalf of a residential property seller; and

D. "buyer's broker" means a real estate broker acting on behalf of a prospective residential property purchaser.

History: 1978 Comp., § 47-13-1.1, enacted by Laws 2009, ch. 165, § 2.

47-13-2. Disclosure of information not required in real estate transactions.

A seller, lessor or landlord of real property, including a participant in an exchange of real property and any agent involved in such a transaction, shall not be liable for failure to disclose and shall not have a duty to disclose to any person who acquires, by voluntary or involuntary transfer, a legal or equitable interest in the real property,

including any leasehold interest or security interest for an obligation, the fact or suspicion that the real property is or has been:

A. the site of a natural death;

B. the site of a homicide, suicide, assault, sexual assault or any other crime punishable as a felony; or

C. owned or occupied by a person who was exposed to, infected with or suspected to be infected with the human immunodeficiency virus or diagnosed to be suffering from acquired immune deficiency syndrome or any other disease that has been determined by medical evidence as highly unlikely to be transmittable to others through the occupancy of improvements to real property or that is not known to be transmitted through the occupancy of improvements located on that real property.

History: Laws 1991, ch. 74, § 2.

47-13-3. Cause of action, termination or rescission.

A. No cause of action shall arise against a seller, lessor or landlord of real property, including a participant in an exchange of real property and any agents involved in such a transaction for failure to disclose to any person who, by voluntary or involuntary transfer, acquires a legal or equitable interest in the real property, including any leasehold interest or security interest for an obligation, in any action at law or in equity because of the failure to disclose that the real property was or is suspected to have been the site of the incidents described in Section 2 [47-13-2 NMSA 1978] of the Real Estate Disclosure Act or was owned, occupied or suspected of being occupied by persons exposed to, infected with or diagnosed to be suffering from the diseases described in Section 2 of that act.

B. The failure to make a disclosure of any of the facts or suspicions as set forth in Section 2 of the Real Estate Disclosure Act shall not be deemed to be grounds for termination or rescission of any sale, lease, exchange or any transaction in which an interest in the real property has been or will be conveyed to another.

History: Laws 1991, ch. 74, § 3.

47-13-4. Finding; disclosure of information required in certain real estate transactions.

A. The legislature finds that property tax levied on a residential property for the current year can be a misleading guide to property tax levies in the years following the sale of that property and that a prospective buyer needs information regarding the property tax obligation in the year following the property's sale to properly judge the affordability of a contemplated purchase.

B. Prior to accepting an offer to purchase, the property seller or the seller's broker shall:

(1) request from the county assessor the estimated amount of property tax levy with respect to the property and shall specify the listed price as the value of the property to be used in the estimate; and

(2) provide a copy of the assessor's response pursuant to Subsection D of this section in writing to the prospective buyer or the buyer's broker.

C. A buyer's broker shall provide to the prospective buyer the county assessor's estimated amount of property tax levy immediately upon receiving it from the property seller or the seller's broker. The prospective buyer shall acknowledge in writing the receipt of the estimated amount of property tax levy.

D. Upon request, a county assessor shall furnish in writing, pursuant to the provisions of Subsection E of this section, an estimated amount of property tax levy with respect to a residential property in the county, calculated at a property value specified by the requestor. The request shall be complied with by the close of business of the business day following the day the request is received. A county may satisfy this obligation through an internet site or other automated format that allows a user to print the requested estimated amount of property tax levy. A document associated with the request or the response is not a public record or a valuation record. County assessors shall not use information provided with a request, including the specified value, to assess the valuation of the property. Neither the county nor any jurisdiction levying a tax against residential property in the county is bound in any way by the estimate given.

E. A county assessor's estimated amount of property tax levy with respect to a residential property in the county shall contain the following:

(1) the actual amount of property tax levied for the property for the current calendar year if the tax rates for the current year have been imposed in accordance with Section 7-38-34 NMSA 1978 for the county in which the property is located or, in all other cases, the amount of property tax levied with respect to the property for the prior calendar year;

(2) the estimated amount of property tax levy, as calculated by the county assessor, for the property for the calendar year following the year in which the transaction takes place; and

(3) a disclaimer substantially similar to the following:

"The estimated amount of property tax levy is calculated using the stated price and estimates of the applicable tax rates. The county assessor is required by law to value the property at its "current and correct" value, which may differ from the listed price. Further, the estimated tax rates may be higher or lower than those that will actually be

imposed. Accordingly, the actual tax levy may be higher or lower than the estimated amount. New Mexico law requires your real estate broker or agent to provide you an estimate of the property tax levy on the property on which you have submitted or intend to submit an offer to purchase. All real estate brokers and agents who have complied with these disclosure requirements shall be immune from suit and liability arising from suit relating to the estimated amount of property tax levy."

F. A prospective buyer may waive the disclosure requirements of this section by signing a written document prior to the time the offer to purchase is to be made in which the buyer acknowledges that the required estimated amount of property tax levy is not readily available and waives disclosure of the estimated amount of property tax levy.

G. All property sellers and real estate brokers and agents who have complied with the provisions of this section shall be immune from suit and liability arising from or relating to the estimated amount of property tax levy.

H. The New Mexico real estate commission shall biannually inform all New Mexico real estate licensees of the statutory requirement for disclosure of the estimated amount of property tax levy to prospective residential property purchasers.

History: 1978 Comp., § 47-13-4, enacted by Laws 2009, ch. 165, § 3.

47-13-5. Disclosure of certain distributed energy generation systems.

The requirements of the Distributed Generation Disclosure Act [57-31-1 to 57-31-5 NMSA 1978] shall not apply to a transaction involving the sale or transfer of the real property on which the distributed energy generation system is located.

History: Laws 2017, ch. 102, § 6.

ARTICLE 14
Appraisal Management Company Registration

47-14-1. Short title.

Chapter 47, Article 14 NMSA 1978 may be cited as the "Appraisal Management Company Registration Act".

History: Laws 2009, ch. 214, § 1; 2010, ch. 13, § 1.

47-14-2. Definitions.

As used in the Appraisal Management Company Registration Act:

A. "appraisal" means the act or process of developing an opinion of the value of real property in conformance with the uniform standards for professional appraisal practice published by the appraisal foundation;

B. "appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987 and to which reference is made in the Federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments;

C. "appraisal management company" means:

(1) any external third party that oversees a network or panel of certified or licensed appraisers to:

(a) recruit, select and retain appraisers;

(b) contract with appraisers to perform appraisal assignments;

(c) manage the process of having an appraisal performed; or

(d) review and verify the work of appraisers; or

(2) any external third party that contracts with a qualifying licensed real estate broker or associate broker as defined in Chapter 61, Article 29 NMSA 1978 to provide broker price opinions;

D. "appraisal management services" means the process of receiving a request for the performance of real estate appraisal services from a client, and for a fee paid by the client, entering into an agreement with one or more independent appraisers to perform the real estate appraisal services contained in the request;

E. "appraiser" means a person who provides an opinion of the market value of real property and holds a state license, registration or certified license in good standing;

F. "appraiser panel" means a group of independent appraisers that have been selected and retained by an appraisal management company to perform real estate appraisal services for the appraisal management company;

G. "automated valuation model" means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling;

H. "board" means the real estate appraisers board created pursuant to the Real Estate Appraisers Act [Chapter 61, Article 30 NMSA 1978];

I. "broker price opinion" means an opinion by a qualifying or associate broker of the price of real estate for the purpose of marketing, selling, purchasing, leasing or exchanging the real estate or any interest therein or for the purposes of providing a financial institution with a collateral assessment of any real estate in which the financial institution has an existing or potential security interest; provided that the opinion of the price shall not be referred to or construed as an appraisal or appraisal report and shall not be used as the primary basis to determine the value of real estate for the purpose of loan origination;

J. "client" means a person or entity that contracts with, or otherwise enters into an agreement with, an appraisal management company for the performance of real estate appraisal services;

K. "controlling person" means:

(1) an owner, officer or director of a corporation, partnership, limited liability company or other business entity seeking to offer appraisal management services in this state;

(2) an individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and that has the authority to enter into agreements with independent appraisers for the performance of real estate appraisal services; or

(3) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company;

L. "real estate appraisal services" means the practice of developing an opinion of the value of real property in conformance with the uniform standards of professional appraisal practice published by the appraisal foundation; and

M. "uniform standards of professional appraisal practice" means the uniform standards of professional appraisal practice promulgated by the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

History: Laws 2009, ch. 214, § 2; 2013, ch. 143, § 1.

47-14-3. Registration required.

A. It is unlawful for a person, corporation, partnership, sole proprietorship, subsidiary, limited liability company or any other business entity to, directly or indirectly, engage or attempt to engage in business as an appraisal management company, to, directly or indirectly, engage or attempt to perform appraisal management services or to advertise or hold itself out as engaging in or conducting business as an appraisal

management company without first obtaining a certificate of registration issued by the board under the provisions of the Appraisal Management Company Registration Act, regardless of the entity's use of the term "appraisal management company", "mortgage technology company" or any other name.

B. A person, corporation, partnership, sole proprietorship, subsidiary, limited liability company or any other business entity seeking the registration required by Subsection A of this section shall:

(1) register with the appraisal subcommittee or the board and be subject to supervision by the board;

(2) verify that only licensed or certified appraisers are used for federally related transactions;

(3) require that appraisals comply with the uniform standards of professional appraisal practice; and

(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established pursuant to the federal Truth in Lending Act.

C. The registration required by Subsection A of this section shall include:

(1) the name of the entity seeking registration;

(2) the business address of the entity seeking registration;

(3) telephone contact information of the entity seeking registration;

(4) if the entity seeking registration is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(5) the name, address and contact information for any individual or any corporation, partnership or other business entity that owns ten percent or more of the appraisal management company;

(6) the name, address and contact information for a controlling person;

(7) a certification that the entity seeking registration has a system and process in place to verify that an appraiser is selected and retained for the network or the appraiser panel of the appraisal management company holds a license or certification in good standing in this state pursuant to the Real Estate Appraisers Act [Chapter 61, Article 30 NMSA 1978];

(8) a certification that the entity seeking registration has a system in place to review, on a periodic basis, the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company to ensure that the real estate appraisal services are being conducted in accordance with uniform standards of professional appraisal practice;

(9) a certification that the entity maintains a detailed record of each service request that it receives and of the independent appraiser that performs the real estate appraisal services for the appraisal management company;

(10) an irrevocable consent to service of process;

(11) a bond or other equivalent means of security as required by the Appraisal Management Company Registration Act; and

(12) any other information required by the board.

D. The requirements of Subsection B of this section shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency.

History: Laws 2009, ch. 214, § 3; 2010, ch. 13, § 2; 2013, ch. 143, § 2.

47-14-3.1. Bonding requirements.

A. In order to qualify for registration or renewal of registration, an appraisal management company shall maintain a bond underwritten by a corporate surety authorized to transact business in New Mexico, or other equivalent means of security. The board shall set by rule the amount and conditions of the surety bond or other equivalent means of security required by this section, provided that the amount of the bond or security required shall not exceed twenty-five thousand dollars ($25,000).

B. The bond or other equivalent means of surety shall secure payment for any administrative or judicial penalties that may be imposed by the board or the state and for any penalties or costs required by a board disciplinary action, and also as indemnity for any loss sustained by any person damaged as a result of a violation by the appraisal management company, of any provision of the Appraisal Management Company Registration Act or of any rule of the board adopted pursuant to that act. Consumer claims shall be given priority in recovering from the bond or equivalent surety.

C. An appraisal management company shall notify the board in writing of any claim made on the appraisal management company's bond or equivalent surety.

D. A deposit of cash or security may be accepted in lieu of the surety bond.

History: Laws 2010, ch. 13, § 7.

47-14-3.2. Criminal background checks.

A. The board may adopt rules that provide for criminal background checks for all licensees to include:

(1) requiring criminal history background checks of applicants for licensure pursuant to the Appraisal Management Company Registration Act;

(2) requiring applicants for licensure to be fingerprinted;

(3) providing for an applicant who has been denied licensure to inspect or challenge the validity of the background check record;

(4) establishing a fingerprint and background check fee not to exceed the current rate as determined by the department of public safety to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

History: Laws 2013, ch. 143, § 9.

47-14-4. Exemptions.

The Appraisal Management Company Registration Act is not applicable to:

A. a corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that employs persons on an employer and employee basis exclusively for the performance of real estate appraisal services in the normal course of its business and the entity is responsible for ensuring that the real estate appraisal services being performed by its employees are being performed in accordance with uniform standards of professional appraisal practice;

B. an individual who in the normal course of the individual's business enters into an agreement, whether written or otherwise, with another independent contractor appraiser for the performance of real estate appraisal services that the hiring or contracting appraiser cannot complete for any reason, including competency, work load, schedule or geographic location; or

C. an individual, corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that in the normal course of business enters into an agreement, whether written or otherwise, with an independent contractor appraiser for the performance of real estate appraisal services and upon the completion of the appraisal, the report of the appraiser performing the real estate appraisal services is co-signed by the appraiser who subcontracted with the independent appraiser for the performance of the real estate appraisal services.

History: Laws 2009, ch. 214, § 4.

47-14-5. Forms.

An applicant for registration as an appraisal management company shall submit to the board an application on a form prescribed by the board.

History: Laws 2009, ch. 214, § 5.

47-14-6. Expiration of license.

A registration granted by the board pursuant to the Appraisal Management Company Registration Act shall expire on September 30 of each year.

History: Laws 2009, ch. 214, § 6; 2013, ch. 143, § 3.

47-14-7. Consent to service of process.

Each entity applying for registration as an appraisal management company shall complete and execute an irrevocable consent to service of process form as prescribed by the board.

History: Laws 2009, ch. 214, § 7.

47-14-8. Fee.

A. The board shall establish the fee for appraisal management company registration by rule to cover the cost of the administration of the Appraisal Management Company Registration Act, but in no case shall the fee be more than two thousand dollars ($2,000).

B. Registration fees shall be credited to the appraiser fund pursuant to Section 61-30-18 NMSA 1978.

C. An appraisal management company that either has registered with the board or operates as a subsidiary of a federally regulated financial institution shall pay to the board an annual registry as determined by the appraisal subcommittee.

History: Laws 2009, ch. 214, § 8; 2013, ch. 143, § 4.

47-14-9. Owner requirements.

A. An appraisal management company applying for registration may not be owned by a person or have any principal of the company who has had a license or certificate to act as an appraiser refused, denied, canceled or revoked in this state or in any other state.

B. Each person that owns, is an officer of or has a financial interest in an appraisal management company in this state shall:

(1) be of good moral character, as determined by the board; and

(2) submit to a background investigation, as determined by the board.

C. An appraisal management company shall not be registered by the board or included on the national registry if the company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, canceled, surrendered in lieu of revocation or revoked in any state and not subsequently granted or reinstated. A person that owns more than ten percent of an appraisal management company shall be of good moral character, as determined by the board, and shall submit to a background investigation carried out by the board.

History: Laws 2009, ch. 214, § 9; 2013, ch. 143, § 5.

47-14-10. Controlling person.

Each appraisal management company applying to the board for registration in this state shall designate one controlling person that will be the main contact for all communication between the board and the appraisal management company.

History: Laws 2009, ch. 214, § 10.

47-14-11. Controlling person requirements.

In order to serve as a controlling person of an appraisal management company, a person shall:

A. certify to the board that the person has never had a certificate or a license issued by the board of this state, or the board of any other state, to act as an appraiser refused, denied, canceled or revoked;

B. be of good moral character, as determined by the board; and

C. submit to a background investigation, as determined by the board.

History: Laws 2009, ch. 214, § 11.

47-14-12. Employee requirements.

A. Any employee of the appraisal management company, or any person working on behalf of the appraisal management company, that has the responsibility of selecting independent appraisers for the performance of real estate appraisal services for the appraisal management company or the responsibility of reviewing completed appraisals shall have geographic and product competence and be appropriately trained and qualified in the performance of real estate appraisals as determined by the board by rule.

B. Any employee of the appraisal management company that has the responsibility to review the work of independent appraisers shall have demonstrated knowledge of the uniform standards of professional appraisal practice, as determined by the board by rule.

History: Laws 2009, ch. 214, § 12; 2010, ch. 13, § 3.

47-14-13. Requirements; liability.

A. An appraisal management company registered in this state pursuant to the Appraisal Management Company Registration Act shall not enter into contracts or agreements with an independent appraiser for the performance of real estate appraisal services unless that person is licensed or certified in good standing pursuant to the Real Estate Appraisers Act [Chapter 61, Article 30 NMSA 1978].

B. An appraisal management company shall not require an appraiser to indemnify the appraisal management company against liability except liability for errors and omissions by the appraiser.

History: Laws 2009, ch. 214, § 13; 2010, ch. 13, § 4.

47-14-14. Pre-engagement certification.

Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis on a form prescribed by the board that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this state pursuant to the Real Estate Appraisers Act [Chapter 61, Article 30 NMSA 1978].

History: Laws 2009, ch. 214, § 14.

47-14-15. Adherence to standards.

Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted in accordance with uniform standards of professional appraisal practice.

History: Laws 2009, ch. 214, § 15.

47-14-15.1. Automated valuation models used to estimate collateral value for mortgage lending purposes.

A. Automated valuation models shall adhere to quality control standards designed to:

(1) ensure a high level of confidence in the estimates produced by automated valuation models;

(2) protect against the manipulation of data;

(3) seek to avoid conflicts of interest;

(4) require random sample testing and reviews; and

(5) account for any other such factor that the board determines to be appropriate.

B. The board, in consultation with the staff of the appraisal subcommittee and the appraisal standards board of the appraisal foundation, shall promulgate rules to implement the quality control standards required under this section.

History: Laws 2013, ch. 143, § 8.

47-14-16. Recordkeeping.

Each appraisal management company seeking to be registered shall certify to the board on an annual basis that it maintains a detailed record of each service request that it receives and the independent appraiser that performs the real estate appraisal services for the appraisal management company.

History: Laws 2009, ch. 214, § 16.

47-14-17. Appraiser independence; prohibitions.

A. Appraisals shall be conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established pursuant to the federal Truth in Lending Act.

B. It is unlawful for any employee, director, officer or agent of an appraisal management company registered pursuant to the Appraisal Management Company Registration Act to influence or attempt to influence the development, reporting or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery or in any other manner, including:

(1) withholding or threatening to withhold timely payment for an appraisal;

(2) withholding or threatening to withhold future business for an independent appraiser or demoting or terminating, or threatening to demote or terminate, an independent appraiser;

(3) expressly or impliedly promising future business, promotions or increased compensation for an independent appraiser;

(4) conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached or on a preliminary estimate or opinion requested from an independent appraiser;

(5) requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an appraisal report or provide estimated values of comparable sales at any time prior to the independent appraiser's completion of an appraisal service;

(6) providing to an independent appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;

(7) providing to an independent appraiser, or any entity or person related to the appraiser, stock or other financial or non-financial benefits;

(8) allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to such appraiser;

(9) obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process; or

(10) engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

C. Nothing in Subsection B of this section shall be construed as prohibiting the appraisal management company from requesting that an independent appraiser:

(1) provide additional information about the basis for a valuation; or

(2) correct objective factual errors in an appraisal report.

D. In an effort to preclude discrimination, criteria shall be established by the appraisal management company and may include education achieved, experience, sample appraisals and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criterion considered, though lack of membership shall not be the sole bar against consideration for an assignment under these criteria.

History: Laws 2009, ch. 214, § 17; 2013, ch. 143, § 6.

47-14-18. Payment; limits; disclosure; nontaxable transaction certificate.

A. The fees paid to an appraiser for completion of the appraisal shall not include a fee for management of the appraisal process or any activity other than the performance of the appraisal.

B. An appraisal management company shall separately state the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services to the client, borrower and any other payor.

C. Appraisers shall not be prohibited by the appraisal management company, client or other third party from disclosing the fee paid to the appraiser for the performance of the appraisal in the appraisal report.

D. As used in this section, "payor" means any person or entity who is responsible for making payment for the appraisal.

E. An appraisal management company shall, except in cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within sixty days of the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

F. An appraisal management company shall provide an appraiser with the appropriate nontaxable transaction certificate pursuant to Section 7-9-48 NMSA 1978.

History: Laws 2009, ch. 214, § 18; 2010, ch. 13, § 5.

47-14-19. Appraisal reports; alteration; use.

An appraisal management company shall not:

A. alter, modify or otherwise change a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent; or

B. use an appraisal report submitted by an independent appraiser for any other transaction.

History: Laws 2009, ch. 214, § 19.

47-14-20. Adjudication of disputes between an appraisal management company and an independent appraiser.

A. An appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company. If the appraiser is being removed from the panel for illegal conduct, violation of the uniform standards of professional appraisal practice or a violation of state licensing standards, the appraisal management company shall provide the independent appraiser the nature of the alleged conduct or violation and provide an opportunity for the appraiser to respond.

B. An independent appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the uniform standards of professional appraisal practice or violation of state licensing standards may file a complaint with the board for a review of the decision of the appraisal management company, except that in no case shall the board make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the actions specified in Subsection A of this section.

C. If an independent appraiser files a complaint against an appraisal management company pursuant to Subsection B of this section, the board shall adjudicate the complaint within one hundred eighty days.

D. If after opportunity for hearing and review, the board determines that an independent appraiser did not commit a violation of law, a violation of the uniform standards of professional appraisal practice or a violation of state licensing standards,

the board shall order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint without prejudice.

History: Laws 2009, ch. 214, § 20; 2019, ch. 51, § 1.

47-14-21. Enforcement.

A. The board may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under the Appraisal Management Company Registration Act, levy fines or impose civil penalties not to exceed twenty-five thousand dollars ($25,000) per violation if, in the opinion of the board, an appraisal management company is attempting to perform, has performed or has attempted to perform any of the following acts:

(1) committing any act in violation of the Appraisal Management Company Registration Act;

(2) violating any rule or regulation adopted by the board in the interest of the public and consistent with the provisions of the Appraisal Management Company Registration Act;

(3) procuring a registration, license or certification by fraud, misrepresentation or deceit; or

(4) violating the Real Estate Appraisers Act [Chapter 61, Article 30 NMSA 1978] or the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

B. The board may deny an application for registration for failure to comply with the minimum requirements and criteria as set forth by the Appraisal Management Company Registration Act.

C. Board action relating to the issuance, suspension or revocation of any registration, license or certificate shall be governed by the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]; provided that the time limitations set forth in the Uniform Licensing Act shall not apply to the processing of administrative complaints filed with the board, which shall be governed by federal statute, regulation or policy.

History: Laws 2009, ch. 214, § 21; 2013, ch. 143, § 7.

47-14-22. Disciplinary hearings.

The board shall conduct adjudicatory proceedings in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]; provided that:

A. a written notice shall be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this state or by sending the notice by certified mail, return receipt requested, to the controlling person of the registrant to the registrant's address on file with the board; and

B. a hearing on the charges shall be at a time and place prescribed by the board.

History: Laws 2009, ch. 214, § 22; 2010, ch. 13, § 6.

47-14-23. Rulemaking authority.

The board may adopt rules that are reasonably necessary to implement, administer and enforce the provisions of the Appraisal Management Company Registration Act, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with the Appraisal Management Company Registration Act.

History: Laws 2009, ch. 214, § 23.

ARTICLE 15
Mortgage Foreclosure Consultant Fraud Prevention

47-15-1. Short title.

This act [47-15-1 to 47-15-8 NMSA 1978] may be cited as the "Mortgage Foreclosure Consultant Fraud Prevention Act".

History: Laws 2010, ch. 58, § 1.

47-15-2. Definitions.

As used in the Mortgage Foreclosure Consultant Fraud Prevention Act:

A. "compensation" means monetary payment, remuneration or other benefits received, including monetary donations made in conjunction with the performance of services;

B. "foreclosure consultant":

(1) means a person who, directly or indirectly, makes a solicitation or offer to an owner to perform services for compensation or who, for compensation, performs a service that the person represents will:

(a) stop or postpone a foreclosure sale;

(b) obtain any forbearance from a beneficiary or mortgagee;

(c) assist the owner to exercise the right to reinstatement;

(d) obtain an extension of the period within which the owner may reinstate the owner's obligation;

(e) obtain a waiver of an acceleration clause contained in a promissory note, deed of trust or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;

(f) assist an owner in foreclosure or loan default to obtain a loan or advance of funds;

(g) avoid or ameliorate the impairment of an owner's credit resulting from the recording of a notice of default or from a foreclosure sale; or

(h) otherwise save an owner's residence from foreclosure; and

(2) does not include:

(a) a person licensed to practice law in this state when the person renders service in the course of the person's practice as an attorney;

(b) a person licensed as a real estate broker or salesperson in this state when the person engages in acts requiring real estate licensure, unless the person is offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure;

(c) a person licensed as an accountant in this state when the person is acting in any capacity for which the person is licensed as an accountant;

(d) a person acting under the express authority or written approval of the United States department of housing and urban development or other department or agency of the United States or this state to provide services;

(e) a person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with the obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

(f) a person doing business under any law of this state or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions or insurance companies, or a mortgagee that is a United States department of housing and urban development-approved mortgagee or any subsidiary or affiliate of these persons, or any agent or employee of these persons while engaged in the business of these persons;

(g) a person licensed as a residential mortgage originator or servicer pursuant to the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 to 58-21B-24 NMSA 1978] when acting under the authority of that license;

(h) a nonprofit agency or organization registered pursuant to New Mexico law that offers counseling or advice to an owner of a home in foreclosure or loan default if the nonprofit agency or organization does not contract for services with for-profit lenders or foreclosure purchasers; or

(i) a foreclosure purchaser, including a person who purchases a home in foreclosure at, or subsequent to, a judicial sale of foreclosure property;

C. "foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding on that homeowner's home, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder;

(2) the subsequent conveyance, or offer or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or any other real property, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase or lease; or

(3) the authorization, solicitation or offer of a proposal to refinance the real estate during the foreclosure process contingent on participation in any life, term life or periodic insurance arrangement with any third party not providing private mortgage insurance;

D. "owner" means the record owner of a residence in foreclosure at the time a foreclosure notice of pendency was recorded or a summons and complaint for foreclosure was served;

E. "person" means an individual, a partnership, a corporation, a limited liability company, an association or other group, however organized;

F. "residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including contract for deed payments; and

G. "service" means and includes, but is not limited to, any of the following:

(1) debt, budget or financial counseling of any type;

(2) receiving money for the purpose of distributing it to creditors in payment or partial payment of an obligation secured by a lien on a residence in foreclosure;

(3) contacting creditors on behalf of an owner;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate the owner's obligation;

(5) arranging or attempting to arrange for a delay or postponement of the time of sale of the residence in foreclosure;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with a bankruptcy court; or

(7) giving advice, explanation or instruction to an owner, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in a mortgage.

History: Laws 2010, ch. 58, § 2.

47-15-3. Foreclosure consultant contract; requirements.

A. A foreclosure consulting contract shall:

(1) be provided to the owner for review at least twenty-four hours before being signed by the owner;

(2) be printed in at least fourteen-point type and written in the same language that was used by the owner in discussions with the foreclosure consultant to describe the consultant's services or to negotiate the contract;

(3) fully disclose the nature and extent of the foreclosure consulting services to be provided, including any foreclosure reconveyance that may be involved, and the total amount and terms of any compensation to be received by the foreclosure consultant or anyone working in association with the foreclosure consultant;

(4) disclose the names of any other corporations, businesses or entities on behalf of which the consultant does business or with which the consultant is affiliated or employed;

(5) separately itemize all costs, fees or expenses and the purpose of the costs, fees or expenses that are charged to the homeowner during the term of the contract;

(6) be dated and personally signed by the owner and the foreclosure consultant; and

(7) contain the following notice, which shall be printed in at least fourteen-point boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the owner's signature:

"NOTICE REQUIRED BY NEW MEXICO LAW

..... (Name) or anyone working for him or her CANNOT ask you to sign or have you sign any lien, mortgage or deed as part of signing this agreement unless the terms of the transfer are specified in this document and you are given a separate explanation of the nature and extent of the transaction.

..... (Name) or anyone working for him or her CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until a refinancing, if applicable, is approved. If a transfer of the deed or title to your property is involved in any way, you may rescind the transfer any time within 3 days after the date you sign the deed or other document of sale or transfer. See the attached Notice of Rescission form for an explanation of this right. As part of any rescission, you must repay any money spent on your behalf as a result of this agreement within 60 days of receiving commercially reasonable documentation of the payments.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY OR COUNSELOR BEFORE SIGNING."

B. A foreclosure consulting contract shall contain on the first page, in at least fourteen-point type:

(1) the name and address of the foreclosure consultant to which the notice of cancellation is to be mailed; and

(2) the date the owner signed the contract.

C. A foreclosure consulting contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF RESCISSION RIGHTS", which shall:

(1) be on a separate sheet of paper attached to the contract;

(2) be easily detachable; and

(3) contain the following statement printed in at least fifteen-point type:

"NOTICE OF RESCISSION RIGHTS
(Date of Contract)

You may cancel or rescind this contract, without any penalty, at any time until midnight of the third business day after the day on which you sign this contract. If you want to end this contract, mail or deliver a signed and dated copy of this Notice of Rescission, or any other written notice indicating your intent to rescind to (name of foreclosure consultant) at (address of foreclosure consultant, including facsimile and electronic mail).

As part of any rescission, you (the homeowner) must repay any money spent on your behalf as a result of this agreement within 60 days of receiving commercially reasonable documentation of the payments.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY OR COUNSELOR BEFORE SIGNING.

RESCISSION OF CONTRACT FORM

TO: (name of foreclosure consultant)

(address of foreclosure consultant, including facsimile and electronic mail)

I hereby rescind this contract.

..... (Date)

..... (Homeowner's signature)".

D. The foreclosure consultant shall provide the owner with a signed and dated copy of the foreclosure consulting contract and the attached notice of rescission rights and rescission of contract form immediately upon execution of the contract.

E. The time during which the owner may rescind the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section and the owner has signed the contract.

History: Laws 2010, ch. 58, § 3.

47-15-4. Rescission of foreclosure consultant contract.

A. In addition to any other right under law to rescind a contract, an owner may rescind a foreclosure consulting contract until midnight of the third business day after

the day on which the owner signs a foreclosure consulting contract that complies with the Mortgage Foreclosure Consultant Fraud Prevention Act.

B. Cancellation of a foreclosure consulting contract occurs when an owner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract.

C. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

D. Notice of cancellation given by an owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

History: Laws 2010, ch. 58, § 4.

47-15-5. Violations.

It is a violation of the Mortgage Foreclosure Consultant Fraud Prevention Act for a foreclosure consultant to:

A. claim, demand, charge, collect or receive any compensation until after the foreclosure consultant has fully performed every service the foreclosure consultant contracted to perform or represented the consultant would perform;

B. claim, demand, charge, collect or receive any fee, interest or any other compensation for any reason that exceeds five percent per annum of the amount of any loan that the foreclosure consultant may make to the owner. Such a loan may not be secured by the residence in foreclosure or any other real or personal property;

C. take a wage assignment, lien of any type on real or personal property or other security to secure the payment of compensation. Any such security is void and unenforceable;

D. receive any consideration from a third party in connection with services rendered to an owner;

E. acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted;

F. take a power of attorney from an owner for any purpose, except to inspect documents as provided by law;

G. include a provision in a foreclosure consulting contract that:

(1) attempts or purports to waive an owner's rights under the Mortgage Foreclosure Consultant Fraud Prevention Act;

(2) requires an owner to consent to jurisdiction for litigation or choice of law in a state other than New Mexico;

(3) provides for venue in a county other than the county in which the residence in foreclosure is located; or

(4) imposes any costs or filing fees greater than the fees required to file an action in a district court; or

H. induce or attempt to induce an owner to enter a contract that does not comply in all respects with the Mortgage Foreclosure Consultant Fraud Prevention Act.

History: Laws 2010, ch. 58, § 5.

47-15-6. Waiver not allowed.

Any waiver by an owner of the provisions of the Mortgage Foreclosure Consultant Fraud Prevention Act is void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive the owner's rights under the Mortgage Foreclosure Consultant Fraud Prevention Act is a violation of that act.

History: Laws 2010, ch. 58, § 6.

47-15-7. Remedies.

A. A violation of the Mortgage Foreclosure Consultant Fraud Prevention Act constitutes an unfair trade practice pursuant to the Unfair Practices Act [Chapter 57, Article 12 NMSA 1978].

B. A prevailing plaintiff in a suit for violation of the Mortgage Foreclosure Consultant Fraud Prevention Act may recover actual damages, reasonable attorney fees and costs and appropriate equitable relief.

C. The rights and remedies provided in Subsection A of this section are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section must be commenced within four years from the date of the alleged violation.

D. In addition to any other damages, a court may award exemplary damages up to three times the compensation charged by the foreclosure consultant if the court finds that the foreclosure consultant violated a provision of Section 5 [47-15-5 NMSA 1978] of

the Mortgage Foreclosure Consultant Fraud Prevention Act and that the foreclosure consultant's conduct was willful or in bad faith.

E. Notwithstanding any other provision of this section, no action may be brought on the basis of a violation of the Mortgage Foreclosure Consultant Fraud Prevention Act, except by an owner against whom the violation was committed or by the attorney general.

History: Laws 2010, ch. 58, § 7.

47-15-8. Penalty.

A person who commits a violation of the provisions of Section 5 [47-15-5 NMSA 1978] of the Mortgage Foreclosure Consultant Fraud Prevention Act is guilty of a fourth degree felony and, upon conviction, shall be sentenced pursuant to Section 31-18-15 NMSA 1978. Each violation of the provisions of Section 5 of the Mortgage Foreclosure Consultant Fraud Prevention Act constitutes a distinct offense. The attorney general or the district attorney for the district in which the violation arose may prosecute any violation of Section 5 of the Mortgage Foreclosure Consultant Fraud Prevention Act. Prosecution or conviction for any violation described in Section 5 of the Mortgage Foreclosure Consultant Fraud Prevention Act does not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.

History: Laws 2010, ch. 58, § 8.

ARTICLE 16
Homeowner Association

47-16-1. Short title.

Chapter 47, Article 16 NMSA 1978 may be cited as the "Homeowner Association Act".

History: Laws 2013, ch. 122, § 1; 2015, ch. 104, § 1.

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 association;

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. "conflict of interest" means that a person accepts or is a beneficiary of a fee, brokerage, gift or other thing of value, other than a fixed salary or compensation, as consideration for an investment, loan, deposit, purchase, sale, exchange, insurance, reinsurance or other transaction made by or for the association, an officer of the board or the board; or that a person is financially interested in any capacity in a transaction for the association, except on behalf of the association, an officer of the board or the board;

I. "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;

J. "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;

K. "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;

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

M. "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;

(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) if applicable, a statement stating that the records of the association reflect alterations or improvements to the lot that violate the declaration;

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

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

N. "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;

O. "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;

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

Q. "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

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

History: Laws 2013, ch. 122, § 2; 2019, ch. 30, § 1.

47-16-3. Creation of a 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.

History: Laws 2013, ch. 122, § 3.

47-16-4. 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 [47-16-3 NMSA 1978] 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 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.

History: Laws 2013, ch. 122, § 4.

47-16-5. Record disclosure to members; updated information.

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

B. The association shall not charge a fee for making financial and other records available for review. The association may charge a fee of not more than ten cents ($.10) per page 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 and addresses 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 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 association or the board on behalf of the association;

(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; and

(12) any electronic record of action taken by the board.

D. The failure of an association to provide access to the financial and other records within ten business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with the Homeowner Association Act. A lot owner that is denied access to financial and other records is entitled to the greater of the actual damages incurred for the association's willful failure to comply with this subsection or fifty dollars ($50.00) per calendar day, starting on the eleventh business day after the association's receipt of the written request.

History: Laws 2013, ch. 122, § 5; 2019, ch. 30, § 2.

47-16-6. Duties of a 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.

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.

History: Laws 2013, ch. 122, § 6.

47-16-7. 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 free from any undisclosed conflict of interest.

B. Within ninety days after being elected or appointed to the board, each board member shall certify in writing to the secretary of the association that the member:

(1) has read the community documents;

(2) will work to uphold the community documents and policies to the best of the member's ability; and

(3) will faithfully discharge the member's duties to the association.

C. A board member who does not file the written certification pursuant to Subsection B of this section shall be suspended from the board until the member complies with Subsection B of this section.

D. The association shall retain each board member's written certification for inspection by lot owners for five years after the board member's election or appointment. The failure of an association to have a board member's written certification on file does not affect the validity of any action taken by the board or any protections provided to board members under the:

(1) Homeowner Association Act; or

(2) Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], if the association is organized under the Nonprofit Corporation Act.

E. 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 copy of the budget to all the lot owners.

F. The board shall provide to all lot owners a statement included with a copy of the annual budget listing all fees and fines that may be charged to a lot owner by the association or any management company retained by the association to act on behalf of the association, including charges for a disclosure certificate pursuant to Subsection H of Section 47-16-12 NMSA 1978.

G. Any management contract negotiated between the board and a management company retained by the association to act on behalf of the association shall include:

(1) a disclosure to the board of any existing relationships the management company has with any vendor or contractor for the association from which a conflict of interest may arise; and

(2) a list of all fees to be charged to the association or lot owners by the management company during the term of the contract.

History: Laws 2013, ch. 122, § 7; 2019, ch. 30, § 3.

47-16-8. 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 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.

History: Laws 2013, ch. 122, § 8.

47-16-8.1. Removal of board members.

Unless a process for removal of board members is provided for in the community documents, the lot owners, by a two-thirds' vote of all lot owners present and entitled to vote at a lot owner meeting at which a quorum is present, may remove a member of the board.

History: Laws 2019, ch. 30, § 8.

47-16-9. Proxy and absentee voting; ballot counting.

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.

G. Nothing in this section shall be considered in conflict with or a replacement of voting member councils or representative voting systems created by the community documents.

History: Laws 2013, ch. 122, § 9; 2019, ch. 30, § 4.

47-16-10. Financial audit.

At least every three years, the board shall provide for a financial audit, review or compilation of the association'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 thirty calendar days of its completion.

History: Laws 2013, ch. 122, § 10; 2019, ch. 30, § 5.

47-16-11. Contract disclosure statement or disclosure certificate; right of cancellation of purchase contract.

Except as provided in Section 12 [47-16-12 NMSA 1978] 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.

History: Laws 2013, ch. 122, § 11.

47-16-12. 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 or the lot owner's representative, 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;

(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. The statements contained in the disclosure certificate pursuant to Paragraphs (2) and (3) of Subsection M of Section 47-16-2 NMSA 1978 shall only be valid for sixty days from their creation. Beginning sixty-one days after the creation of the disclosure certificate, the lot owner may request that the association update any changes to statements contained in the disclosure certificate pursuant to Paragraphs (2) and (3) of Subsection M of Section 47-16-2 NMSA 1978. Upon a lot owner's request for changes to statements contained in the disclosure certificate pursuant to this subsection, the association shall provide the updated information within three business days of the lot owner's request and may impose a reasonable fee not to exceed fifty dollars ($50.00). The updated information shall only be valid for sixty days from the update.

H. Notwithstanding any local ordinance or ordinance enacted by a home rule municipality, an association may impose reasonable charges not to exceed three hundred dollars ($300) for preparation of a disclosure certificate as required by the Homeowner Association Act, to be collected at the time of closing; provided that the transaction closes.

History: Laws 2013, ch. 122, § 12; 2019, ch. 30, § 6.

47-16-13. Purchaser’s cancellation of a purchase contract.

If a purchaser elects to cancel a purchase pursuant to Section 11 [47-16-11 NMSA 1978] 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.

History: Laws 2013, ch. 122, § 13.

47-16-14. 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.

History: Laws 2013, ch. 122, § 14.

47-16-15. Applicability.

A. Except as provided in Subsection B of this section, the Homeowner Association Act shall apply to all homeowner associations created and existing within this state.

B. Sections 47-16-9, 47-16-10 and 47-16-14 NMSA 1978 do not apply to homeowner associations created before July 1, 2013 and that have fewer than thirty lots; provided that any amendment to the community documents of an association created before July 1, 2013 shall comply with the Homeowner Association Act.

C. The Homeowner Association Act does not apply to a condominium governed by the Condominium Act [47-7A-1 to 47-7D-20 NMSA 1978].

History: Laws 2013, ch. 122, § 15; 2015, ch. 104, § 3; 2019, ch. 30, § 7.

47-16-16. Flags.

An association shall not adopt or enforce a restriction related to the flying or displaying of flags that is more restrictive than the applicable federal or state law or county or municipal ordinance.

History: Laws 2015, ch. 104, § 2.

47-16-17. Meetings of association.

A. The association shall hold an annual meeting at least once every thirteen months.

B. Notwithstanding a provision to the contrary in the community documents, written notice of the meeting stating the time, date and location of the annual meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered electronically, hand-delivered or sent by mail not less than ten and no more than fifty days before the meeting. If sent by mail, the notice shall be deemed to be delivered when addressed to a lot owner at the address as it appears in the association's records and deposited in the United States mail, postage prepaid.

C. Unless a longer period of time is required by an association's community documents, notice of the time, date and location of board meetings and drafts of any proposed policy resolutions shall be provided to lot owners at least forty-eight hours in advance electronically, by conspicuous posting, posting on the association's website or social media or by any other reasonable means as determined by the board.

D. All lot owners shall have the right to attend and speak at all open meetings, but the board may place reasonable time restrictions on those persons speaking.

E. Any portion of a meeting may be closed only if that portion is limited to consideration of:

(1) legal advice from an attorney for the board or association;

(2) pending or contemplated litigation; or

(3) personal, health or financial information about an individual member of the association, an individual employee of the association or an individual contractor for the association.

F. The association shall maintain a written copy of the minutes of all association meetings, including summaries of all agenda items and formal actions taken.

History: Laws 2019, ch. 30, § 9.

47-16-18. Enforcement of covenants; dispute resolution.

A. Each association and each lot owner and the owner's tenants, guests and invitees shall comply with the Homeowners Association Act and the association's community documents.

B. Unless otherwise provided for in the community documents, the association may, after providing written notice and an opportunity to dispute an alleged violation other than failure to pay assessments:

(1) levy reasonable fines for violations of or failure to comply with any provision of the community documents; and

(2) suspend, for a reasonable period of time, the right of a lot owner or the lot owner's tenant, guest or invitee to use common areas and facilities of the association.

C. Prior to imposition of a fine or suspension, the board shall provide an opportunity to submit a written statement or for a hearing before the board or a committee appointed by the board by providing written notice to the person sought to be fined or suspended fourteen days prior to the hearing. Following the hearing or review of the written statement, if the board or committee, by a majority vote, does not approve a proposed fine or suspension, neither the fine nor the suspension may be imposed. Notice and a hearing are not required for violations that pose an imminent threat to public health or safety.

D. If a person against whom a violation has been alleged fails to request a hearing or submit a written statement as provided for in Subsection C of this section, the fine or suspension may be imposed, calculated from the date of violation.

E. A lot owner or the association may use a process other than litigation used to prevent or resolve disputes, including mediation, facilitation, regulatory negotiation, settlement conferences, binding and nonbinding arbitration, fact-finding, conciliation, early neutral evaluation and policy dialogues, for complaints between the lot owner and the association or if such services are required by the community documents.

History: Laws 2019, ch. 30, § 10.