

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 259

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

AN ACT

RELATING TO HOMEOWNER ASSOCIATIONS; CREATING THE UNFAIR OR
DECEPTIVE TRADE PRACTICE OF ABUSIVE HOMEOWNER ASSOCIATION
PRACTICES; REQUIRING THAT CERTAIN PROVISIONS OF THE HOMEOWNER
ASSOCIATION ACT COMPLY WITH THE UNFAIR PRACTICES ACT.

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

SECTION 1. Section 47-16-6 NMSA 1978 (being Laws 2013,
Chapter 122, Section 6) is amended to read:

"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

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underscored material = new
[bracketed material] = delete

1 full amount of the assessment shall be a lien from the time the
2 first installment becomes due. The association's lien may be
3 foreclosed in like manner as a mortgage on real estate.

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

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

14 E. The provisions of Subsection B of this section
15 shall comply with Section 3 of this 2020 act."

16 SECTION 2. Section 47-16-18 NMSA 1978 (being Laws 2019,
17 Chapter 30, Section 10) is amended to read:

18 "47-16-18. ENFORCEMENT OF COVENANTS--DISPUTE
19 RESOLUTION.--

20 A. Each association and each lot owner and the
21 owner's tenants, guests and invitees shall comply with the
22 [~~Homeowners~~] Homeowner Association Act and the association's
23 community documents.

24 B. Unless otherwise provided for in the community
25 documents or Section 3 of this 2020 act, the association may,

1 after providing written notice and an opportunity to dispute an
2 alleged violation other than failure to pay assessments:

3 (1) levy reasonable fines for violations of or
4 failure to comply with any provision of the community
5 documents; and

6 (2) suspend, for a reasonable period of time,
7 the right of a lot owner or the lot owner's tenant, guest or
8 invitee to use common areas and facilities of the association.

9 C. Prior to imposition of a fine or suspension, the
10 board shall provide an opportunity to submit a written
11 statement or for a hearing before the board or a committee
12 appointed by the board by providing written notice to the
13 person sought to be fined or suspended fourteen days prior to
14 the hearing. Following the hearing or review of the written
15 statement, if the board or committee, by a majority vote, does
16 not approve a proposed fine or suspension, neither the fine nor
17 the suspension may be imposed. Notice and a hearing are not
18 required for violations that pose an imminent threat to public
19 health or safety.

20 D. If a person against whom a violation has been
21 alleged fails to request a hearing or submit a written
22 statement as provided for in Subsection C of this section, the
23 fine or suspension may be imposed, calculated from the date of
24 violation.

25 E. A lot owner or the association may use a process

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1 other than litigation used to prevent or resolve disputes,
2 including mediation, facilitation, regulatory negotiation,
3 settlement conferences, binding and nonbinding arbitration,
4 fact-finding, conciliation, early neutral evaluation and policy
5 dialogues, for complaints between the lot owner and the
6 association or if such services are required by the community
7 documents.

8 F. In addition to the provisions of this section,
9 an association shall comply at a minimum with the provisions of
10 Section 3 of this 2020 act."

11 SECTION 3. A new section of the Unfair Practices Act is
12 enacted to read:

13 "[NEW MATERIAL] ABUSIVE HOMEOWNER ASSOCIATION PRACTICES--
14 PROHIBITION.--

15 A. Abusive homeowner association practices shall
16 constitute an unfair or deceptive trade practice consisting of:

17 (1) failing to provide timely notice of a fee,
18 fine, assessment or penalty; or

19 (2) assessing an unconscionable fee, fine,
20 assessment or penalty.

21 B. Failing to provide timely notice of a fee, fine,
22 assessment or penalty consists of not providing actual notice
23 of the fee, fine, assessment or penalty within thirty days of
24 its imposition. If a homeowner association fails to provide
25 notice of a fee, fine, assessment or penalty pursuant to this

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1 subsection, the homeowner association shall:

2 (1) not be able to pursue collection of the
3 fee, fine, assessment or penalty; and

4 (2) remove the imposed fee, fine, assessment
5 or penalty from a lot owner's balance.

6 C. As used in this section:

7 (1) "homeowner association" means an
8 incorporated or unincorporated entity upon which maintenance
9 and operational responsibilities are imposed and to which
10 authority is granted in the declaration; and

11 (2) "lot owner" means a person or group of
12 persons holding title to a lot, including a declarant."