

# SANTA FE NEW MEXICAN

MY VIEW

## Making sense of HOA act

By Suzanne Star

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A multiyear lawsuit over a fundamental issue of homeowner association property owner's rights to records inspections reached the New Mexico Supreme Court for review on July 22. I am the plaintiff in the case against the Sierra Los Pinos Property Owners Association board of directors.

The first of its kind in New Mexico, the Homeowner Association Act affects approximately 275,000 New Mexico HOA property owners, and the dispute is over what records can be inspected. The outcome will turn on whether the definition of the word "includes" restricts or does not.

The word "includes" used in the record disclosure section of the statute, from legislative definition, implies that records disclosure is not limited; however, the courts interpret the definition as restrictive. The restrictive interpretation by the courts harms a property owner's right to examine "one's own records." HOA members own the corporation, and the business records are not the private property of the directors.

The argument in the case is to ensure fair and open access to all financial records and documents to protect an HOA member's proprietary right to safeguard their interests and thwart embezzlement, fraud and board abuse of power.

Having been a part of the creation of this legislation, I disagree with the court's restrictive claim. It was not the intent of the Legislature. I believe that by misinterpreting the language, the courts are rewriting the law — that's not within their authority. If the state Supreme Court doesn't intervene, a serious injustice will go uncorrected and thousands of property owners will be divested of their inspection rights regardless of the contractual provision of their governing documents and statutory and common law rights.

HOAs are required to register as corporations, and their members and shareholders are entitled to a broad mandate of records disclosure that has been settled in statute and corporation laws. When you are a shareholder in a corporation, the actions and behaviors of that corporation can adversely impact your pocketbook. If mistakes are made or misbehavior is condoned, you can lose your entire investment.

We need a legal precedent on the issue of records inspection rights for HOA property owners, and the final arbiter is the state Supreme Court. Will the court ensure HOA

property owners the promise of equal justice under law and protect their records inspection rights?

We'll see.

*Suzanne Star is a resident and member of Sierra Los Pinos Property Owners Association in Jemez Springs. She is the plaintiff in the above-mentioned petition filed to the New Mexico Supreme Court for a writ of certiorari on July 22.*