

1 HB241
2 167172-5
3 By Representatives McCutcheon, Daniels, Hill (M), Fridy,
4 Faust, Davis, Rich, Sanderford, Johnson (K), Ball, Wood,
5 Drake, Patterson, Ainsworth, Ledbetter, Williams (P) and
6 Collins
7 RFD: State Government
8 First Read: 11-MAR-15

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ENROLLED, An Act,

Relating to certain homeowners' associations; to define terms; to require certain associations to organize under the Alabama Nonprofit Corporation Act; to require the filing of certain association documents with the Secretary of State; and to require the Secretary of State to implement and maintain a public searchable electronic database of association filings; to provide for the election of a board of directors; to require the declarant to deliver certain information to the board upon election; to provide for notice of meetings to members of the association; to authorize a homeowners' association to adopt and enforce rules regarding the use of the common areas; to provide for the enforcement of rules against tenants of a member of the association; to authorize the association to assess charges for certain violations of the declaration and association rules; to provide for liens on a lot for unpaid assessments; to provide for judgments enforcing liens and releases for satisfaction of liens; to provide for an award of attorney's fees to prevailing parties in certain actions to enforce certain rights; and to provide for dissolution of the nonprofit corporation and the liquidation of assets.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Alabama Homeowners' Association Act.

3 Section 2. For the purposes of this act, the
4 following terms shall have the following meanings:

5 (1) ASSOCIATION. A homeowners' association.

6 (2) BOARD OF DIRECTORS. The group of persons vested
7 with the management of the association irrespective of the
8 name by which the group is designated.

9 (3) COMMON AREA. Property within a development which
10 is owned, leased, or required by the declaration to be
11 maintained or operated by a homeowners' association for the
12 use of its members and designated as common area in the
13 declaration or on a recorded subdivision map or plat.

14 (4) DECLARANT. The person or entity who submits
15 property to a declaration.

16 (5) DECLARATION. Any instrument, however
17 denominated, including any amendment, modification,
18 restatement, or supplement, recorded in the office of the
19 judge of probate in the county in which the development or any
20 part thereof is located which satisfies the following:

21 a. Imposes on the association maintenance or
22 operational responsibilities for the common areas, and

23 b. Creates the authority in the association to levy
24 an assessment on lots, the owners or occupants of the lots, or
25 other entities to provide for maintenance or services for the

1 benefit of some or all of the lots in the development, the
2 owners or occupants of the lots, or the common area.

3 c. Is a covenant running with the land enforceable
4 by and against successors and assigns.

5 (6) DEVELOPMENT. Real property subject to a
6 declaration that contains lots for residential use and common
7 areas in which any owner is a member of an association and the
8 owner's lot is subject to assessments pursuant to a
9 declaration.

10 (7) DIRECTOR. A duly elected or appointed member of
11 the board of directors of an association.

12 (8) HOMEOWNERS' ASSOCIATION. An entity incorporated
13 as a nonprofit corporation pursuant to Chapter 3, Title 10A,
14 Code of Alabama 1975, and provided for in a declaration.

15 (9) LOT. Any parcel of land within a development
16 designated for separate ownership and shown on a recorded
17 subdivision map or plat, other than a common area.

18 (10) MEMBER. An owner or occupant of a lot in a
19 development subject to a declaration having membership rights
20 as defined in the declaration or other governing documents of
21 the association.

22 (11) POTENTIAL PURCHASER. A person having a
23 contractual right or option to acquire a lot or a person or
24 entity who intends to execute a mortgage to secure an
25 indebtedness.

1 Section 3. (a) This act applies to all developments
2 subject to a declaration providing for a homeowners'
3 association recorded in the office of the judge of probate in
4 the county in which the development, or any part thereof, is
5 located on or after January 1, 2016, and any association
6 formed prior to that time, provided the association, by a
7 majority of its members, elects to be governed by this act.

8 (b) This act does not apply to any of the following:

9 (1) A development for commercial, industrial, or
10 other nonresidential use.

11 (2) Any association that is subject to regulation
12 under Chapters 8 or 8A, Title 35, Code of Alabama 1975.

13 (3) A real estate cooperative, time-share
14 development, or campground.

15 Section 4. (a) The principles of law and equity,
16 including, but not limited to, the law of nonprofit
17 corporations in Chapter 3, Title 10A, Code of Alabama 1975,
18 the law of real estate, and the law relative to the capacity
19 to contract, principal and agent, eminent domain, estoppel,
20 negligence, fraud, misrepresentation, duress, coercion,
21 mistake, receivership, substantial performance, or other
22 validating or invalidating cause supplement this act, except
23 to the extent inconsistent with this act.

24 (b) Every duty governed by this act imposes an
25 obligation of good faith in its performance or enforcement.

1 (c) The remedies provided in this act shall be
 2 liberally administered so that the aggrieved party is put in
 3 as good as a position as if the other party had fully
 4 performed.

5 Section 5. (a) On or after January 1, 2016, a
 6 homeowners' association created pursuant to a declaration
 7 shall be organized as a nonprofit corporation pursuant to
 8 Chapter 3, Title 10A, Code of Alabama 1975, and shall be
 9 governed in all respects as a nonprofit corporation.

10 (b) (1) A homeowners' association, its members, and
 11 directors shall be subject to all of the obligations, duties,
 12 and responsibilities of and shall have all of the rights and
 13 benefits provided in Chapter 3 of Title 10A, Code of Alabama
 14 1975.

15 (2) In addition or supplemental to any other filing
 16 required in Chapter 3, Title 10A, Code of Alabama 1975, a
 17 homeowners' association shall file the following documents
 18 with the Secretary of State:

19 a. Articles of incorporation.

20 b. Bylaws, resolutions, or other governing documents
 21 of the association.

22 c. The original covenants, conditions, or
 23 restrictions adopted by the association.

24 (3) The Secretary of State shall implement and
 25 maintain an electronic database, organized by association

1 name, accessible by the public through the Secretary of
2 State's website which provides the capability to search and
3 retrieve the documents listed in subdivision (2). Any
4 documents filed with the Secretary of State shall be filed in
5 accordance with Division 4, Article 3, Chapter 4, Title 35,
6 Code of Alabama 1975, provided such documents filed with the
7 Secretary of State pursuant to this act shall not be deemed to
8 provide notice pursuant to Chapter 4, Title 35 of Code of
9 Alabama 1975.

10 (4) The Secretary of State may adopt rules necessary
11 for the implementation of this section, including reasonable
12 fees for the filing of documents.

13 (c) The organizational documents of a homeowners'
14 association shall provide for all of the following:

15 (1) Methods of efficient communications with the
16 members of the association unless a different method is
17 required by Chapter 3, Title 10A, Code of Alabama 1975.

18 (2) Rules and regulations for the conduct of any
19 meetings of the association.

20 (3) The compilation, organization, and maintenance
21 of full and complete financial records of the association
22 available to any member at a reasonable time and place upon
23 the payment of reasonable associated costs.

1 (4) Reasonable rules and regulations for the use,
2 maintenance, repair, replacement, or modification of any
3 common areas, if any, including penalties for violations.

4 (5) Power to grant easements, leases, licenses, and
5 concessions through or over the common areas, if any.

6 (6) Statements regarding the payment of dues and
7 assessments to be provided to any person having an interest,
8 upon the payment of reasonable associated costs.

9 (7) Preparation and submission of the annual budgets
10 of the association to the members.

11 (8) Any other act a nonprofit corporation is
12 required to do under law.

13 (d) In addition to the requirements set forth in
14 subsection (c), the organizational documents of a homeowners'
15 association may provide for the following:

16 (1) Indemnification and insurance for the
17 association, its officers, and directors.

18 (2) Fidelity bonds for any person or entity having
19 custody or control of any funds of the association.

20 (3) Periodic audits of the financial records of the
21 association.

22 (4) Power to acquire real and personal property for
23 the benefit of the association and its members.

24 (5) Power to hire and discharge managing agents and
25 other employees, agents, and independent contractors.

1 Section 6. A homeowners' association provided for in
 2 a declaration and subject to this act shall be formed prior to
 3 the conveyance of any lot in the development by the declarant.

4 Section 7. A declaration or the governing documents
 5 of a homeowners' association may provide for a period in which
 6 the declarant will maintain control of the election of
 7 directors and officers of the association and a right to
 8 reasonably alter, amend, or modify the declaration.

9 Section 8. If a conflict exists between the
 10 declaration and the governing documents of a homeowners'
 11 association, the declaration prevails, except to the extent
 12 that the declaration is inconsistent with this act.

13 Section 9. (a) Within 120 days of the date the
 14 members have the right to elect a board of directors pursuant
 15 to the declaration or other governing documents of the
 16 association to elect a board of directors, the declarant shall
 17 give written notice pursuant to Section 10A-3-2.03, Code of
 18 Alabama 1975, of a special meeting of the membership for the
 19 purpose of electing a board of directors.

20 (b) In addition to the notice required under Section
 21 10A-3-2.03, Code of Alabama 1975, the notice under subsection
 22 (a) shall also satisfy the following:

23 (1) State that the purpose of the meeting is the
 24 election of a board of directors pursuant to the declaration
 25 and the governing documents of the association.

1 (2) Provide for nominations of candidates for
2 election to the board of directors at the meeting on the
3 written consent of at least 10 percent of the membership,
4 unless otherwise provided in the governing documents.

5 (3) State the names of all existing directors and
6 the names of the directors who may continue to serve as
7 directors.

8 Section 10. Within 90 days of the selection of the
9 board of directors of the association as provided in Section
10 7, the declarant, or his or her designee, shall deliver to the
11 board of directors all of the following:

12 (1) All books, records, and governing documents of
13 the association in the possession of the declarant, or any
14 person or entity under the declarant's control.

15 (2) All records of any outstanding and unpaid
16 assessments.

17 (3) Any contracts of the association with any third
18 parties respecting the operation of the association or the
19 maintenance and upkeep of any property of the association.

20 (4) Any insurance policies currently in force.

21 (5) A list of the names and addresses of the members
22 of the association as shown on its records.

23 (6) Any written unexpired warranties of any
24 contractor or subcontractors, suppliers, or manufacturers

1 relative to the common area or any improvements to the common
2 area.

3 Section 11. (a) The board of directors, to the
4 extent authorized by the declaration and governing documents,
5 may do the following:

6 (1) Suspend a member's right to use facilities or
7 services provided directly through the association for
8 nonpayment of assessments under subdivision (2), to the extent
9 that access to the member's lot is not denied.

10 (2) Assess reasonable penalties against a member for
11 any violation of the declaration or rules adopted by the board
12 of directors after the member is afforded the opportunity to
13 be heard and represented by counsel before the board of
14 directors.

15 (b) If a tenant of a member violates the declaration
16 or rules adopted by the board of directors, in addition to
17 exercising any of its powers and rights against the member,
18 the board of directors may do any of the following:

19 (1) Exercise any of the actions authorized in
20 subdivision (1) of subsection (a) directly against a tenant of
21 a member.

22 (2) Assess a penalty authorized in subdivision (2)
23 of subsection (a) directly against a tenant after giving
24 notice to the tenant and member and an opportunity to be heard
25 before the board of directors.

1 (3) Enforce any other rights against the tenant for
2 the violation with the member as landlord could lawfully have
3 exercised under the lease or which the board of directors
4 could have exercised against the unit owner.

5 (c) The amount of any penalty assessed under this
6 section shall be considered an assessment for purposes of
7 Section 12.

8 Section 12. (a) Except as may be otherwise provided
9 in the declaration or the governing documents of an
10 association, an association shall have, and there is declared,
11 a lien on every lot for unpaid assessments levied against that
12 lot arising on and from the date the assessment is due as
13 fixed and determined by the board of directors at an annual
14 meeting after giving notice as provided in Chapter 3, Title
15 10A, Code of Alabama 1975. The lien may be enforced or
16 foreclosed as provided in the declaration or governing
17 documents or as provided in this section. Written notice of
18 the assessment and lien shall be given to the owner of any lot
19 on which the assessment and lien is claimed by personal
20 delivery or first class United States mail, postage prepaid.

21 (b) A lien declared by this section shall have
22 priority, except as may be otherwise provided in Chapters 4
23 and 11, Title 35, Code of Alabama 1975, over all other
24 subsequent liens and encumbrances except state and county ad
25 valorem taxes, municipal improvement assessments, UCC fixture

1 filings, mortgages, and deeds of trust securing an
2 indebtedness.

3 (c) The association, within 12 months from the date
4 any assessment becomes due, shall record a statement of lien
5 verified by an officer or director of the association having
6 personal knowledge of the facts in the office of the judge of
7 probate of the county in which a lot subject to the assessment
8 is located, which shall contain all of the following:

9 (1) A description of the lot on which the lien is
10 claimed.

11 (2) The name of the association claiming the lien.

12 (3) The name of the owner or owners of the lot on
13 which the lien is claimed.

14 (4) The amount of any unpaid assessments together
15 with the date of the assessments.

16 (5) The amount of any other interests and costs
17 claimed by the association.

18 (d) At least 30 days prior to recording a statement
19 of lien, the association shall give written notice by
20 certified mail to the owner of the lot or other person
21 obligated for the lien, as shown on the books and records of
22 the association, that the statement will be recorded in the
23 office of the judge of probate.

24 (e) An association may bring an action in a court
25 having jurisdiction to enforce a lien declared in this section

1 in the county where the lot is located by filing a verified
2 complaint, attaching a copy of the statement of the lien,
3 alleging those facts showing it is entitled to a lien for the
4 claimed unpaid assessment in accordance with the Alabama Rules
5 of Civil Procedure.

6 (f) The court in which the action is pending may
7 enforce the lien by a sale of the property after the giving of
8 notice. Notice of a sale shall be given in the county where
9 the lot is located. Notice of all sales under this subsection
10 shall be given by publication once a week for three successive
11 weeks in a newspaper published in the county or counties in
12 which the lot is located. If the lot is located in more than
13 one county, publication shall be made in all counties where
14 the lot is located. The notice of sale must give the time,
15 place, and terms of the sale, together with the description of
16 the lot. If no newspaper is published in the county where the
17 lot is located, the notice must be placed in a newspaper
18 published in an adjoining county for three successive weeks.

19 ~~Section 13. In any action brought by an association,~~
20 ~~director, the board of directors, or a member to enforce this~~
21 ~~act or a declaration subject to this act, including the~~
22 ~~enforcement of a lien, the court in which the action is~~
23 ~~pending, in its discretion and as part of a judgment, shall~~
24 ~~award reasonable attorney's fees, costs, and interest, as may~~
25 ~~be applicable, to the prevailing party.~~

1 Section 14. (a) A homeowners' association subject to
2 this act shall maintain records and information to be made
3 available to each member or potential purchaser, upon written
4 request, within a reasonable time not to exceed 30 days from
5 the date of the request, and upon the payment of reasonable
6 associated costs. Any homeowners' association may provide the
7 records and information in paper or electronic form or direct
8 the member or potential purchaser to the location of any
9 public record containing the records or information.

10 (b) Upon written request by a member or potential
11 purchaser and upon payment of reasonable costs, the
12 homeowners' association, as specified in subsection (a), shall
13 provide or direct the member or potential purchaser to the
14 location of the public record containing the following:

15 (1) Documents reflecting the most recent
16 assessments, any pending homeowners' association assessments
17 approved by the Board but not yet in effect, or any mandatory
18 dues and charges with the amounts, including dates due and
19 payable.

20 (2) Common areas owned by the association and those
21 common areas not owned by the association but which HOA dues
22 go to pay.

23 (3) A copy of the current operating budget and
24 reserve funds, if any, and a statement of financial condition
25 for the last fiscal year.

1 (4) Documents evidencing any insurance coverage
2 provided for all lot owners by the association, including any
3 fidelity bond.

4 (5) Documents evidencing any loans against the
5 association and any collateral provided by the association for
6 the loans.

7 (6) The official name of the association with
8 current contact information of the current officers and agent,
9 if any.

10 (7) A copy of the current covenants, conditions, and
11 restrictions adopted by the association along with any
12 amendments, modifications, restatement, or supplement and
13 current architectural control regulations.

14 (8) Any association initiation or transfer fees
15 which may be due at the time of the real estate closing.

16 (9) A list of all existing common areas.

17 (10) The case number or other identifying
18 information of any pending lawsuits, judgments, liens,
19 arbitration, or any other dispute resolution process to which
20 the association is a party and contained in a public record.

21 Section 15. Upon the termination of a declaration,
22 or at such other time as required by law, the board of
23 directors shall take those steps necessary for the immediate
24 dissolution and liquidation of the association and any
25 remaining assets.

1 Section 16. This act shall become effective on
2 January 1, 2016, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 05-MAY-15, as amended.

Jeff Woodard
Clerk

Senate	21-MAY-15	Amended and Passed
House	26-MAY-15	Concurred in Senate Amendment