

1 HB241
2 164808-2
3 By Representatives McCutcheon, Daniels, Hill (M), Fridy,
4 Faust, Davis, Rich, Sanderford, Johnson (K), Ball, Wood,
5 Drake, Patterson, Ainsworth, Ledbetter, Williams (P)
6 and Collins
7 RFD: State Government
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8 SYNOPSIS: This bill would create the Alabama
9 Homeowners' Association Act to govern homeowners'
10 associations responsible for the maintenance of
11 common areas of a residential development and with
12 the authority to levy assessments that are
13 enforceable as liens against real property.

14 This bill would require that any association
15 formed after January 1, 2016, to organize under the
16 Alabama Nonprofit Corporation Act, including all
17 duties, requirements, obligations, rights, and
18 privileges under the act and would require the
19 filing of certain association documents with the
20 Secretary of State.

21 This bill would require the Secretary of
22 State to implement and maintain an electronic
23 database, organized by association name, accessible
24 by the public through the Secretary of State's
25 website which provides the capability to search and
26 retrieve association filings.

1 This bill would authorize a homeowners'
2 association to adopt and enforce reasonable rules
3 regarding the use of the common areas.

4 This bill would provide that an association
5 will have a lien on every lot for unpaid
6 assessments levied against that lot provided that
7 the lien is properly recorded and notice is
8 afforded to the owner of the lot.

9 This bill would also provide for an award of
10 attorney's fees to prevailing parties in civil
11 actions commenced to enforce rights under the act,
12 including the enforcement of a lien.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 Relating to certain homeowners' associations; to
19 define terms; to require certain associations to organize
20 under the Alabama Nonprofit Corporation Act; to require the
21 filing of certain association documents with the Secretary of
22 State; and to require the Secretary of State to implement and
23 maintain a public searchable electronic database of
24 association filings; to provide for the election of a board of
25 directors; to require the declarant to deliver certain
26 information to the board upon election; to provide for notice
27 of meetings to members of the association; to authorize a

1 homeowners' association to adopt and enforce rules regarding
2 the use of the common areas; to provide for the enforcement of
3 rules against tenants of a member of the association; to
4 authorize the association to assess charges for certain
5 violations of the declaration and association rules; to
6 provide for liens on a lot for unpaid assessments; to provide
7 for judgments enforcing liens and releases for satisfaction of
8 liens; to provide for an award of attorney's fees to
9 prevailing parties in certain actions to enforce certain
10 rights; and to provide for dissolution of the nonprofit
11 corporation and the liquidation of assets.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

17 (1) ASSOCIATION. A homeowners' association.

18 (2) BOARD OF DIRECTORS. The group of persons vested
19 with the management of the association irrespective of the
20 name by which the group is designated.

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

26 (4) DECLARANT. The person or entity who submits
27 property to a declaration.

1 (5) DECLARATION. Any instrument, however
2 denominated, including any amendment, modification,
3 restatement, or supplement, recorded in the office of the
4 judge of probate in the county in which the development or any
5 part thereof is located which satisfies both of the following:

6 a. Imposes on the association maintenance or
7 operational responsibilities for the common area.

8 b. Creates the authority in the association to levy
9 an assessment on lots, the owners or occupants of the lots, or
10 other entities to provide for maintenance or services for the
11 benefit of some or all of the lots in the development, the
12 owners or occupants of the lots, or the common area.

13 c. Is a covenant running with the land enforceable
14 by and against successors and assigns.

15 (6) DEVELOPMENT. Real property subject to a
16 declaration that contains lots for residential use and common
17 areas in which any owner is a member of an association and the
18 owner's lot is subject to assessments pursuant to a
19 declaration.

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

22 (7) HOMEOWNERS' ASSOCIATION. An entity incorporated
23 as a nonprofit corporation pursuant to Chapter 3, Title 10A,
24 Code of Alabama 1975.

25 (8) LOT. Any parcel of land within a development
26 designated for separate ownership and shown on a recorded
27 subdivision map or plat, other than a common area.

1 (9) MEMBER. An owner or occupant of a lot in a
2 development subject to a declaration having membership rights
3 as defined in the declaration or other governing documents of
4 the association.

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

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

13 (1) A development for commercial, industrial, or
14 other nonresidential use.

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

17 (3) A real estate cooperative, time-share
18 development, or campground.

19 Section 4. (a) The principles of law and equity,
20 including the law of nonprofit corporations in Chapter 3,
21 Title 10A, Code of Alabama 1975, the law of real estate, and
22 the law relative to the capacity to contract, principal and
23 agent, eminent domain, estoppel, fraud, misrepresentation,
24 duress, coercion, mistake, receivership, substantial
25 performance, or other validating or invalidating cause
26 supplement this act, except to the extent inconsistent with
27 this act.

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

3 (c) The remedies provided in this act shall be
4 liberally administered so that the aggrieved party is put in
5 as good as a position as if the other party had fully
6 performed. However, consequential, special, or punitive
7 damages may not be awarded, except as specifically provided by
8 this act or by other law.

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

14 (b) (1) A homeowners' association, its members, and
15 directors shall be subject to all of the obligations, duties,
16 and responsibilities of and shall have all of the rights and
17 benefits provided in Chapter 3 of Title 10A, Code of Alabama
18 1975.

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

23 a. Articles of incorporation.

24 b. Bylaws, resolutions, or other governing documents
25 of the association.

26 c. Covenants, conditions, or restrictions adopted by
27 the association.

1 (3) An association shall also file any amendments,
2 redactions, or additions to the organizational documents
3 listed in subdivision (2) with the Secretary of State within
4 60 days of adoption of the amendment, redaction, or addition.

5 (4) The Secretary of State shall implement and
6 maintain an electronic database, organized by association
7 name, accessible by the public through the Secretary of
8 State's website which provides the capability to search and
9 retrieve the documents listed in subdivisions (2) and (3).

10 (5) 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.

24 (4) Reasonable rules and regulations for the use,
25 maintenance, repair, replacement, or modification of any
26 common areas, including penalties for violations.

1 (5) Power to grant easements, leases, licenses, and
2 concessions through or over the common areas.

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

6 (7) Indemnification and insurance for the
7 association, its officers, and directors.

8 (8) Fidelity bonds for any person or entity having
9 custody or control of any funds of an association.

10 (9) Periodic audits of the financial records of the
11 association.

12 (10) Preparation and submission of the annual
13 budgets of the association to the members.

14 (11) Power to acquire real and personal property for
15 the benefit of the association and its members.

16 (12) Power to hire and discharge managing agents and
17 other employees, agents, and independent contractors.

18 (13) Any other act a nonprofit corporation is
19 authorized to do under law.

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

23 Section 7. A declaration or the governing documents
24 of a homeowners' association may provide for a period in which
25 the declarant will maintain control of the election of
26 directors and officers of the association and a right to
27 reasonably alter, amend, or modify the declaration.

1 Section 8. If a conflict exists between the
2 declaration and the governing documents of a homeowners'
3 association, the declaration prevails, except to the extent
4 that the declaration is inconsistent with this act.

5 Section 9. (a) Within 120 days of the date the
6 members have the right to elect a board of directors pursuant
7 to the declaration or other governing documents of the
8 association to elect a board of directors, the declarant shall
9 give written notice pursuant to Section 10A-3-2.03, Code of
10 Alabama 1975, of a special meeting of the membership for the
11 purpose of electing a board of directors.

12 (b) In addition to the notice required under Section
13 10A-3-2.03, Code of Alabama 1975, the notice under subsection
14 (a) shall also satisfy the following:

15 (1) State that the purpose of the meeting is the
16 election of a board of directors pursuant to the declaration
17 and the governing documents of the association.

18 (2) Provide for nominations of candidates for
19 election to the board of directors at the meeting on the
20 written consent of at least 10 percent of the membership.

21 (3) State the names of all existing directors and
22 the names of the directors who may continue to serve as
23 directors.

24 Section 10. Within 90 days of the selection of the
25 board of directors of the association as provided in Section
26 7, the declarant, or his or her designee, shall deliver to the
27 board of directors all of the following:

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

4 (2) All records of any outstanding and unpaid
5 assessments.

6 (3) Any contracts of the association with any third
7 parties respecting the operation of the association or the
8 maintenance and upkeep of any property of the association.

9 (4) Any insurance policies currently in force.

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

12 (6) Any written unexpired warranties of any
13 contractor or subcontractors, suppliers, or manufacturers
14 relative to the common area or any improvements to the common
15 area.

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

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

23 (2) Assess penalties against a member for any
24 violation of the declaration or rules adopted by the board of
25 directors after the member is afforded the opportunity to be
26 heard and represented by counsel before the board of
27 directors.

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

5 (1) Exercise any of the actions authorized in
6 subdivision (1) of subsection (a) directly against a tenant of
7 a member.

8 (2) Assess a penalty authorized in subdivision (2)
9 of subsection (a) directly against a tenant after giving
10 notice to the tenant and member and an opportunity to be heard
11 before the board of directors.

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

16 (c) The amount of any penalty assessed under this
17 section shall be considered an assessment for purposes of
18 Section 12.

19 Section 12. (a) Except as may be otherwise provided
20 in the declaration or the governing documents of an
21 association, an association shall have, and there is declared,
22 a lien on every lot for unpaid assessments levied against that
23 lot arising on and from the date the assessment is due as
24 fixed and determined by the board of directors at an annual
25 meeting after giving notice as provided in Chapter 3, Title
26 10A, Code of Alabama 1975. The lien may be foreclosed as
27 provided in the declaration or governing documents or as

1 provided in this section. Written notice of the assessment and
2 lien shall be given to the owner of any lot on which the
3 assessment and lien is claimed by personal delivery or first
4 class United States mail, postage prepaid.

5 (b) A lien declared by this section shall have
6 priority, except as may be otherwise provided in Chapter 11,
7 Title 35, Code of Alabama 1975, over all other subsequent
8 liens and encumbrances except state and county ad valorem
9 taxes, municipal improvement assessments, UCC fixture filings,
10 mortgages, and deeds of trust securing an indebtedness.

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

17 (1) A description of the lot on which the lien is
18 claimed.

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

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

22 (4) The amount of any unpaid assessments together
23 with the date of the assessments.

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

26 (d) At least 30 days prior to recording a statement
27 of lien, the association shall give written notice by

1 certified mail to the owner of the lot or other person
2 obligated for the lien, as shown on the books and records of
3 the association, that the statement will be recorded in the
4 office of the judge of probate.

5 (e) An association may bring an action to enforce a
6 lien declared in this section in the circuit court in the
7 county where the lot is located by filing a verified
8 complaint, attaching a copy of the statement of the lien,
9 alleging those facts showing it is entitled to a lien for the
10 claimed unpaid assessment in accordance with the Alabama Rules
11 of Civil Procedure.

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

25 Section 13. In any action brought by an association,
26 director, the board of directors, or a member to enforce this
27 act or a declaration subject to this act, including the

1 enforcement of a lien, the court in which the action is
2 pending, in its discretion and as part of a judgment, shall
3 award reasonable attorney's fees, costs, and interest, as may
4 be applicable, to the prevailing party.

5 Section 14. A homeowners' association provided for
6 in a declaration and subject to this act shall maintain
7 records and information to be made available to each member,
8 potential purchaser, or other consumer upon written request,
9 within a reasonable time not to exceed 20 days from the date
10 of the request, and manner upon the payment of reasonable
11 associated costs. The records and information maintained and
12 available to be provided at the request of a member, potential
13 purchaser, or other consumer includes all of the following:

14 (1) The official name of the association with
15 current contact information of the current officers and agent,
16 if any.

17 (2) A copy of the current covenants, conditions, and
18 restrictions adopted by the association, recorded or
19 unrecorded along with any amendments, modifications,
20 restatement, or supplement and current architectural control
21 regulations.

22 (3) A statement of current or pending association
23 assessments or any mandatory dues and charges with the
24 amounts, including dates due and payable.

25 (4) Any association initiation or transfer fees
26 which may be due at the time of the real estate closing.

1 (5) A list of amenities controlled by the
2 association and who owns the common elements and facilities,
3 whether the owner is the association or the declarant.

4 (6) The current completion status of all of the
5 existing or proposed common elements or facilities.

6 (7) A copy of the current operating budget, reserve
7 funds, if any, and a statement of financial condition for the
8 last fiscal year.

9 (8) A synopsis statement of current or pending
10 association lawsuits, judgments, liens, mediation,
11 arbitration, or any other dispute resolution process involving
12 the association.

13 (9) A statement setting forth any insurance coverage
14 provided for all lot owners by the association, including any
15 fidelity bond.

16 (10) A statement of any loans against the
17 association and what property of the association is used as
18 collateral for such loans.

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

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