

1 HB241
2 167172-4
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

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to certain homeowners' associations; to
9 define terms; to require certain associations to organize
10 under the Alabama Nonprofit Corporation Act; to require the
11 filing of certain association documents with the Secretary of
12 State; and to require the Secretary of State to implement and
13 maintain a public searchable electronic database of
14 association filings; to provide for the election of a board of
15 directors; to require the declarant to deliver certain
16 information to the board upon election; to provide for notice
17 of meetings to members of the association; to authorize a
18 homeowners' association to adopt and enforce rules regarding
19 the use of the common areas; to provide for the enforcement of
20 rules against tenants of a member of the association; to
21 authorize the association to assess charges for certain
22 violations of the declaration and association rules; to
23 provide for liens on a lot for unpaid assessments; to provide
24 for judgments enforcing liens and releases for satisfaction of
25 liens; to provide for an award of attorney's fees to
26 prevailing parties in certain actions to enforce certain

1 rights; and to provide for dissolution of the nonprofit
2 corporation and the liquidation of assets.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

8 (1) ASSOCIATION. A homeowners' association.

9 (2) BOARD OF DIRECTORS. The group of persons vested
10 with the management of the association irrespective of the
11 name by which the group is designated.

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

17 (4) DECLARANT. The person or entity who submits
18 property to a declaration.

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

24 a. Imposes on the association maintenance or
25 operational responsibilities for the common areas, and

26 b. Creates the authority in the association to levy
27 an assessment on lots, the owners or occupants of the lots, or

1 other entities to provide for maintenance or services for the
2 benefit of some or all of the lots in the development, the
3 owners or occupants of the lots, or the common area.

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

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

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

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

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

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

23 (11) POTENTIAL PURCHASER. A person having a
24 contractual right or option to acquire a lot or a person or
25 entity who intends to execute a mortgage to secure an
26 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.

26 (c) The remedies provided in this act shall be
27 liberally administered so that the aggrieved party is put in

1 as good as a position as if the other party had fully
2 performed.

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

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

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

17 a. Articles of incorporation.

18 b. Bylaws, resolutions, or other governing documents
19 of the association.

20 c. The original covenants, conditions, or
21 restrictions adopted by the association.

22 (3) The Secretary of State shall implement and
23 maintain an electronic database, organized by association
24 name, accessible by the public through the Secretary of
25 State's website which provides the capability to search and
26 retrieve the documents listed in subdivision (2). Any
27 documents filed with the Secretary of State shall be filed in

1 accordance with Division 4, Article 3, Chapter 4, Title 35,
2 Code of Alabama 1975, provided such documents filed with the
3 Secretary of State pursuant to this act shall not be deemed to
4 provide notice pursuant to Chapter 4, Title 35 of Code of
5 Alabama 1975.

6 (4) The Secretary of State may adopt rules necessary
7 for the implementation of this section, including reasonable
8 fees for the filing of documents.

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

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

14 (2) Rules and regulations for the conduct of any
15 meetings of the association.

16 (3) The compilation, organization, and maintenance
17 of full and complete financial records of the association
18 available to any member at a reasonable time and place upon
19 the payment of reasonable associated costs.

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

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

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

1 (7) Preparation and submission of the annual budgets
2 of the association to the members.

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

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

8 (1) Indemnification and insurance for the
9 association, its officers, and directors.

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

12 (3) Periodic audits of the financial records of the
13 association.

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

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

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

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

26 Section 8. If a conflict exists between the
27 declaration and the governing documents of a homeowners'

1 association, the declaration prevails, except to the extent
2 that the declaration is inconsistent with this act.

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

10 (b) In addition to the notice required under Section
11 10A-3-2.03, Code of Alabama 1975, the notice under subsection
12 (a) shall also satisfy the following:

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

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

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

23 Section 10. Within 90 days of the selection of the
24 board of directors of the association as provided in Section
25 7, the declarant, or his or her designee, shall deliver to the
26 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 reasonable penalties against a member for
24 any violation of the declaration or rules adopted by the board
25 of directors after the member is afforded the opportunity to
26 be 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 enforced or
27 foreclosed as provided in the declaration or governing

1 documents or as provided in this section. Written notice of
2 the assessment and lien shall be given to the owner of any lot
3 on which the assessment and lien is claimed by personal
4 delivery or first 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 Chapters 4
7 and 11, Title 35, Code of Alabama 1975, over all other
8 subsequent liens and encumbrances except state and county ad
9 valorem taxes, municipal improvement assessments, UCC fixture
10 filings, mortgages, and deeds of trust securing an
11 indebtedness.

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

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

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

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

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

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

1 (d) At least 30 days prior to recording a statement
2 of lien, the association shall give written notice by
3 certified mail to the owner of the lot or other person
4 obligated for the lien, as shown on the books and records of
5 the association, that the statement will be recorded in the
6 office of the judge of probate.

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

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

1 Section 13. In any action brought by an association,
2 director, the board of directors, or a member to enforce this
3 act or a declaration subject to this act, including the
4 enforcement of a lien, the court in which the action is
5 pending, in its discretion and as part of a judgment, shall
6 award reasonable attorney's fees, costs, and interest, as may
7 be applicable, to the prevailing party.

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

17 (b) Upon written request by a member or potential
18 purchaser and upon payment of reasonable costs, the
19 homeowners' association, as specified in subsection (a), shall
20 provide or direct the member or potential purchaser to the
21 location of the public record containing the following:

22 (1) Documents reflecting the most recent
23 assessments, any pending homeowners' association assessments
24 approved by the Board but not yet in effect, or any mandatory
25 dues and charges with the amounts, including dates due and
26 payable.

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

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

7 (4) Documents evidencing any insurance coverage
8 provided for all lot owners by the association, including any
9 fidelity bond.

10 (5) Documents evidencing any loans against the
11 association and any collateral provided by the association for
12 the loans.

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

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

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

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

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

1 Section 15. Upon the termination of a declaration,
2 or at such other time as required by law, the board of
3 directors shall take those steps necessary for the immediate
4 dissolution and liquidation of the association and any
5 remaining assets.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on State Government
..... 11-MAR-15

Read for the second time and placed
on the calendar with 1 substitute
and 2 amendments..... 16-APR-15

Read for the third time and passed
as amended..... 05-MAY-15

Yeas 102, Nays 0, Abstains 1

Jeff Woodard
Clerk