

1 SB418
2 168068-1
3 By Senator Ward
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 28-APR-15

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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
10 A BILL
11 TO BE ENTITLED
12 AN ACT

13
14 Relating to certain homeowners' associations; to
15 define terms; to require certain associations to organize
16 under the Alabama Nonprofit Corporation Act; to require the
17 filing of certain association documents with the Secretary of
18 State; and to require the Secretary of State to implement and
19 maintain a public searchable electronic database of
20 association filings; to provide for the election of a board of
21 directors; to require the declarant to deliver certain
22 information to the board upon election; to provide for notice
23 of meetings to members of the association; to authorize a
24 homeowners' association to adopt and enforce rules regarding
25 the use of the common areas; to provide for the enforcement of
26 rules against tenants of a member of the association; to
27 authorize the association to assess charges for certain

1 violations of the declaration and association rules; to
2 provide for liens on a lot for unpaid assessments; to provide
3 for judgments enforcing liens and releases for satisfaction of
4 liens; and to provide for dissolution of the nonprofit
5 corporation and the liquidation of assets.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

11 (1) ASSOCIATION. A homeowners' association.

12 (2) BOARD OF DIRECTORS. The group of persons vested
13 with the management of the association irrespective of the
14 name by which the group is designated.

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

20 (4) DECLARANT. The person or entity who submits
21 property to a declaration.

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

1 a. Imposes on the association maintenance or
2 operational responsibilities for the common areas, and

3 b. Creates the authority in the association to levy
4 an assessment on lots, the owners or occupants of the lots, or
5 other entities to provide for maintenance or services for the
6 benefit of some or all of the lots in the development, the
7 owners or occupants of the lots, or the common area.

8 c. Is a covenant running with the land enforceable
9 by and against successors and assigns.

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

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

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

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

23 (10) MEMBER. An owner or occupant of a lot in a
24 development subject to a declaration having membership rights
25 as defined in the declaration or other governing documents of
26 the association.

1 (11) POTENTIAL PURCHASER. A person having a
2 contractual right or option to acquire a lot or a person or
3 entity who intends to execute a mortgage to secure an
4 indebtedness.

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, but not limited to, the law of nonprofit
21 corporations in Chapter 3, Title 10A, Code of Alabama 1975,
22 the law of real estate, and the law relative to the capacity
23 to contract, principal and agent, eminent domain, estoppel,
24 negligence, fraud, misrepresentation, duress, coercion,
25 mistake, receivership, substantial performance, or other
26 validating or invalidating cause supplement this act, except
27 to the extent inconsistent with 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.

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

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

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

21 a. Articles of incorporation.

22 b. Bylaws, resolutions, or other governing documents
23 of the association.

24 c. The original covenants, conditions, or
25 restrictions adopted by the association.

26 (3) The Secretary of State shall implement and
27 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.

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

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

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

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

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

13 (1) Indemnification and insurance for the
14 association, its officers, and directors.

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

17 (3) Periodic audits of the financial records of the
18 association.

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

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

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

26 Section 7. A declaration or the governing documents
27 of a homeowners' association may provide for a period in which

1 the declarant will maintain control of the election of
2 directors and officers of the association and a right to
3 reasonably alter, amend, or modify the declaration.

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

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

15 (b) In addition to the notice required under Section
16 10A-3-2.03, Code of Alabama 1975, the notice under subsection
17 (a) shall also satisfy the following:

18 (1) State that the purpose of the meeting is the
19 election of a board of directors pursuant to the declaration
20 and the governing documents of the association.

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

25 (3) State the names of all existing directors and
26 the names of the directors who may continue to serve as
27 directors.

1 Section 10. Within 90 days of the selection of the
2 board of directors of the association as provided in Section
3 7, the declarant, or his or her designee, shall deliver to the
4 board of directors all of the following:

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

8 (2) All records of any outstanding and unpaid
9 assessments.

10 (3) Any contracts of the association with any third
11 parties respecting the operation of the association or the
12 maintenance and upkeep of any property of the association.

13 (4) Any insurance policies currently in force.

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

16 (6) Any written unexpired warranties of any
17 contractor or subcontractors, suppliers, or manufacturers
18 relative to the common area or any improvements to the common
19 area.

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

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

1 (2) Assess reasonable penalties against a member for
2 any violation of the declaration or rules adopted by the board
3 of directors after the member is afforded the opportunity to
4 be heard and represented by counsel before the board of
5 directors.

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

10 (1) Exercise any of the actions authorized in
11 subdivision (1) of subsection (a) directly against a tenant of
12 a member.

13 (2) Assess a penalty authorized in subdivision (2)
14 of subsection (a) directly against a tenant after giving
15 notice to the tenant and member and an opportunity to be heard
16 before the board of directors.

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

21 (c) The amount of any penalty assessed under this
22 section shall be considered an assessment for purposes of
23 Section 12.

24 Section 12. (a) Except as may be otherwise provided
25 in the declaration or the governing documents of an
26 association, an association shall have, and there is declared,
27 a lien on every lot for unpaid assessments levied against that

1 lot arising on and from the date the assessment is due as
2 fixed and determined by the board of directors at an annual
3 meeting after giving notice as provided in Chapter 3, Title
4 10A, Code of Alabama 1975. The lien may be enforced or
5 foreclosed as provided in the declaration or governing
6 documents or as provided in this section. Written notice of
7 the assessment and lien shall be given to the owner of any lot
8 on which the assessment and lien is claimed by personal
9 delivery or first class United States mail, postage prepaid.

10 (b) A lien declared by this section shall have
11 priority, except as may be otherwise provided in Chapters 4
12 and 11, Title 35, Code of Alabama 1975, over all other
13 subsequent liens and encumbrances except state and county ad
14 valorem taxes, municipal improvement assessments, UCC fixture
15 filings, mortgages, and deeds of trust securing an
16 indebtedness.

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

23 (1) A description of the lot on which the lien is
24 claimed.

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

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

1 (4) The amount of any unpaid assessments together
2 with the date of the assessments.

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

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

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

18 (f) The court in which the action is pending may
19 enforce the lien by a sale of the property after the giving of
20 notice. Notice of a sale shall be given in the county where
21 the lot is located. Notice of all sales under this subsection
22 shall be given by publication once a week for three successive
23 weeks in a newspaper published in the county or counties in
24 which the lot is located. If the lot is located in more than
25 one county, publication shall be made in all counties where
26 the lot is located. The notice of sale must give the time,
27 place, and terms of the sale, together with the description of

1 the lot. If no newspaper is published in the county where the
2 lot is located, the notice must be placed in a newspaper
3 published in an adjoining county for three successive weeks.

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

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

18 (1) Documents reflecting the most recent assessments
19 or any mandatory dues and charges with the amounts, including
20 dates due and payable.

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

24 (3) A copy of the current operating budget and
25 reserve funds, if any, and a statement of financial condition
26 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 14. 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.

26 Section 15. This act shall become effective on
27 January 1, 2016, or its otherwise becoming law.

