

1 HB374
2 182171-1
3 By Representative England
4 RFD: Commerce and Small Business
5 First Read: 07-MAR-17

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8 SYNOPSIS: Under existing law, Alabama has adopted the
9 Uniform Condominium Act, which provides provisions
10 for the creation, management, and termination of a
11 condominium association.

12 This bill would make modifications to the
13 Uniform Condominium Act. This bill would specify
14 further the rights of the developer and rights of
15 the unit owner with regard to a condominium that is
16 part of a condominium association.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to the Uniform Condominium Act; to amend
23 Sections 35-8A-102, 35-8A-103, 35-8A-105, 35-8A-106,
24 35-8A-107, 35-8A-201, 35-8A-205, 35-8A-208, 35-8A-209,
25 35-8A-210, 35-8A-211, 35-8A-214, 35-8A-215, 35-8A-218,
26 35-8A-220, 35-8A-302, 35-8A-303, 35-8A-304, 35-8A-305,
27 35-8A-307, 35-8A-310, 35-8A-311, 35-8A-312, 35-8A-313,

1 35-8A-314, 35-8A-315, 35-8A-316, 35-8A-317, 35-8A-318,
2 35-8A-401, 35-8A-402, 35-8A-403, 35-8A-404, 35-8A-406,
3 35-8A-407, 35-8A-408, 35-8A-409, 35-8A-411, 35-8A-412,
4 35-8A-413, 35-8A-415, and 35-8A-417 of the Code of Alabama
5 1975; to provide further for the creation, management, and
6 termination of a condominium association; and to specify
7 further the rights of the developer and rights of the unit
8 owner with regard to a condominium that is part of a
9 condominium association.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 35-8A-102, 35-8A-103, 35-8A-105,
12 35-8A-106, 35-8A-107, 35-8A-201, 35-8A-205, 35-8A-208,
13 35-8A-209, 35-8A-210, 35-8A-211, 35-8A-214, 35-8A-215,
14 35-8A-218, 35-8A-220, 35-8A-302, 35-8A-303, 35-8A-304,
15 35-8A-305, 35-8A-307, 35-8A-310, 35-8A-311, 35-8A-312,
16 35-8A-313, 35-8A-314, 35-8A-315, 35-8A-316, 35-8A-317,
17 35-8A-318, 35-8A-401, 35-8A-402, 35-8A-403, 35-8A-404,
18 35-8A-406, 35-8A-407, 35-8A-408, 35-8A-409, 35-8A-411,
19 35-8A-412, 35-8A-413, 35-8A-415, and 35-8A-417 of the Code of
20 Alabama 1975, are amended to read as follows:

21 "§35-8A-102.

22 "(a) This chapter applies to all condominiums
23 created within this state after January 1, 1991. Sections
24 35-8A-104 (Variation by agreement), 35-8A-105 (Separate titles
25 and taxation), 35-8A-106 (Applicability of local ordinances,
26 regulations, and building codes), 35-8A-107 (Eminent domain),
27 35-8A-203 (Construction and validity of declaration and

1 bylaws), 35-8A-204 (Description of units), 35-8A-302(a)(1)
2 through (a)(6) and (a)(11) through (a)(16) (Powers of unit
3 owners' association), 35-8A-311 (Tort and contract liability),
4 35-8A-316 (Lien for assessments), 35-8A-318 (Association
5 records), 35-8A-409 (Resales of units), and 35-8A-417
6 (Substantial completion of units), and Section 35-8A-103
7 (Definitions), to the extent necessary in construing any of
8 those sections, apply to all condominiums created in this
9 state before January 1, 1991; but those sections apply only
10 with respect to events and circumstances occurring after
11 January 1, 1991, and do not invalidate existing provisions of
12 the declaration, bylaws, plats or plans of those condominiums.

13 "(b) The provisions of Sections 35-8-1 through
14 35-8-22 do not apply to condominiums created after January 1,
15 1991, unless the declaration so provides in the case of a
16 condominium containing four or fewer units and do not
17 invalidate any amendment to the declaration, bylaws, plats, or
18 plans of any condominium created before January 1, 1991, if
19 the amendment would be permitted by this chapter. The
20 amendment must be adopted in conformity with the procedures
21 and requirements specified by those instruments and by
22 Sections 35-8-1 through 35-8-22. If the amendment grants to
23 any person any rights, powers, or privileges permitted by this
24 chapter, all correlative obligations, liabilities, and
25 restrictions in this chapter also apply to that person.

26 "(c) This chapter does not apply to condominiums or
27 units located outside this state, but the offering statement

1 provisions (Sections 35-8A-402 through 35-8A-408) apply to all
2 contracts for the disposition thereof signed ~~in~~ by a resident
3 of this state by any party unless: (i) the transaction is
4 exempt under Section 35-8A-401(b); (ii) the transaction is
5 exempt pursuant to Section 35-8A-407; or (iii) the state in
6 which the condominium is located has statutory disclosure
7 requirements and all terms thereof have been met.

8 " (d) ~~This chapter does not apply if~~ If a condominium
9 contains no more than four units and is not subject to any
10 development rights, ~~unless the declaration provides that the~~
11 ~~entire chapter is applicable~~ the condominium may be created
12 pursuant to this chapter or pursuant to Sections 35-8-1 to
13 35-8-22, inclusive, and the declaration of condominium shall
14 declare the chapter that shall govern the condominium.

15 "§35-8A-103.

16 "In the declaration and bylaws, unless specifically
17 provided otherwise or the context otherwise requires, and in
18 this chapter, the following terms are defined as set forth
19 below:

20 "(1) AFFILIATE OF A DECLARANT. Any person who
21 controls, is controlled by, or is under common control with a
22 declarant. A person "controls" a declarant if the person (i)
23 is a general partner, officer, director, or employer of the
24 declarant, (ii) directly or indirectly or acting in concert
25 with one or more other persons, or through one or more
26 subsidiaries, owns, controls, holds with power to vote, or
27 holds proxies representing more than 20 percent of the voting

1 interest in the declarant, (iii) controls in any manner the
2 election of a majority of the directors of the declarant, or
3 (iv) has contributed more than 20 percent of the capital of
4 the declarant. A person "is controlled by" a declarant if the
5 declarant (i) is a general partner, officer, director, or
6 employer of the person, (ii) directly or indirectly or acting
7 in concert with one or more other persons, or through one or
8 more subsidiaries, owns, controls, holds with power to vote,
9 or holds proxies representing more than 20 percent of the
10 voting interest in the person, (iii) controls in any manner
11 the election of a majority of the directors of the person, or
12 (iv) has contributed more than 20 percent of the capital of
13 the person. Control does not exist if the powers described in
14 this paragraph are held solely as security for an obligation
15 and are not exercised.

16 "(2) ALLOCATED INTERESTS. The undivided interest in
17 the common elements, the common expense liability, and votes
18 in the association allocated to each unit.

19 "(3) ASSOCIATION ~~or UNIT OWNERS'~~ ASSOCIATION. The
20 corporation organized under Section 35-8A-301.

21 "(4) COMMON ELEMENTS. All portions of a condominium
22 other than the units, and any other interests in real estate
23 for the benefit of the unit owners which are declared to be
24 subject to the declaration.

25 "(5) COMMON EXPENSES. Expenditures made by or
26 financial liabilities of the association, together with any
27 allocations to reserves.

1 "(6) COMMON EXPENSE LIABILITY. The liability for
2 common expenses allocated to each unit pursuant to Section
3 35-8A-207.

4 "(7) CONDOMINIUM. Real estate, portions of which are
5 designated for separate ownership and the remainder of which
6 is designated for common ownership solely by the owners of
7 those portions. Real estate is not a condominium unless the
8 undivided interests in the common elements are vested in the
9 unit owners.

10 "(8) CONVERSION BUILDING. A building that at any
11 time before creation of the condominium was occupied wholly or
12 partially by persons other than purchasers and persons who
13 occupy with the consent of purchasers.

14 "(9) DECLARANT. Any person ~~or group of persons~~
15 ~~acting in concert who (i) as part of a common promotional~~
16 ~~plan, who~~ offers to dispose of his ~~or its~~ an interest in a
17 condominium unit not previously disposed of, ~~or (ii) reserves~~
18 or who succeeds to any special declarant right.

19 "(10) DECLARATION. Any ~~instruments~~ instrument,
20 however denominated, that ~~create~~ creates a condominium, and
21 any amendments to ~~those instruments~~ that instrument.

22 "(11) DEVELOPMENT RIGHTS. Any right or combination
23 of rights reserved by a declarant in the declaration to: (i)
24 add real estate to a condominium; (ii) ~~to~~ create units, common
25 elements, or limited common elements within a condominium;
26 (iii) ~~to~~ subdivide units or convert units into common elements

1 or common elements into units; or (iv) ~~to~~ withdraw real estate
2 from a condominium.

3 "(12) DISPOSE or DISPOSITION. A ~~voluntary~~ transfer
4 to a purchaser of ~~any legal or equitable interest~~ title to in
5 a unit, but does not include the transfer or release of a
6 security interest.

7 "(13) BOARD. The body, ~~regardless of name,~~
8 ~~designated in the declaration to act on behalf of~~ governing
9 the association.

10 "(14) IDENTIFYING NUMBER. A ~~symbol or address~~
11 number, letter, or combination thereof that identifies only
12 one unit in a condominium.

13 "(15) LEASEHOLD CONDOMINIUM. A condominium in which
14 all or a portion of the real estate is subject to a lease, the
15 expiration or termination of which will terminate the
16 condominium or reduce its size.

17 "(16) LIMITED COMMON ~~ELEMENT~~ ELEMENTS. A portion of
18 the common elements allocated by the declaration or by
19 operation of Section 35-8A-202(2) or (4) for the exclusive use
20 ~~of~~ by one or more but fewer than all of the units.

21 "(17) MASTER ASSOCIATION. An organization described
22 in Section 35-8A-220, whether ~~or not~~ it is also an association
23 described in Section 35-8A-301.

24 "(18) OFFERING. Any advertisement, inducement,
25 solicitation, or attempt to encourage any person to acquire
26 any interest in a unit, other than as security for an
27 obligation. ~~An advertisement in a newspaper or other~~

1 ~~periodical of general circulation, or in any broadcast medium~~
2 ~~to the general public, of a condominium not located in this~~
3 ~~state, is not an offering if the advertisement states that an~~
4 ~~offering may be made only in compliance with the law of the~~
5 ~~jurisdiction in which the condominium is located.~~

6 "(19) PERSON. A natural person, corporation,
7 business trust, estate, trust, partnership, association, joint
8 venture, government, governmental subdivision or agency, or
9 other legal or commercial entity.

10 "(20) PURCHASER. Any person, other than a declarant
11 or a person in the business of selling real estate for his or
12 her own account, who by means of a voluntary transfer acquires
13 a legal or equitable interest in a unit other than: (i) a
14 leasehold interest (including renewal options) of less than 20
15 years, or (ii) as security for an obligation.

16 "(21) REAL ESTATE. Any leasehold or other estate or
17 interest in, over, or under land, including structures,
18 fixtures, and other improvements and interests which by
19 custom, usage, or law pass with a conveyance of land though
20 not described in the contract of sale or instrument of
21 conveyance. "Real estate" includes parcels with or without
22 upper or lower boundaries, and spaces that may be filled with
23 air or water.

24 "(22) RESIDENTIAL PURPOSES. Use for dwelling or
25 recreational purposes, or both.

26 "(23) SECURITY INTEREST. An interest in real estate
27 or personal property created by contract or conveyance, which

1 secures payment or performance of an obligation. The term
2 includes a lien created by a mortgage, vendor's lien, deed of
3 trust, contract for deed, land sales contract, lease intended
4 as security, assignment of lease, rents intended as security,
5 or any similar security device, pledge of an ownership
6 interest in an association, and any other consensual lien or
7 title retention contract intended as security for an
8 obligation.

9 "(24) SPECIAL DECLARANT RIGHTS. Rights reserved for
10 the benefit of a declarant (i) to complete improvements
11 indicated on plats and plans filed with the declaration
12 (Section 35-8A-209); (ii) to exercise any development right
13 (Section 35-8A-210); (iii) to maintain sales offices,
14 management offices, signs advertising the condominium, and
15 models (Section 35-8A-215); (iv) to use easements through the
16 common elements for the purpose of making improvements within
17 the condominium or within real estate which may be added to
18 the condominium (Section 35-8A-216); (v) to make the
19 condominium subject to a master association (Section
20 35-8A-220); (vi) or to appoint or remove any officer of the
21 association or any master association or any board member
22 during any period of declarant control (Section 35-8A-303(d)).

23 "(25) TIME SHARE. A right to occupy a unit or any of
24 several units during five or more separated time periods over
25 a period of at least five years, including renewal options,
26 whether or not coupled with an estate or interest in a
27 condominium or a specified portion thereof.

1 "(26) UNIT. A physical portion of the condominium
2 designated for separate ownership or occupancy, the boundaries
3 of which are described pursuant to Section 35-8A-205(a) (5).

4 "(27) UNIT OWNER. A ~~declarant or other~~ person who
5 owns a unit, or ~~a lessee of~~ the owner of the right to use a
6 unit in a leasehold condominium whose ~~lease~~ interest expires
7 simultaneously with any ~~lease~~ interest the expiration or
8 termination of which will remove the unit from the
9 condominium, but does not include a person having an interest
10 in a unit solely as security for an obligation. ~~In a~~
11 ~~condominium, the~~ The declarant is the initial unit owner of
12 any unit created ~~by~~ in the condominium.

13 "§35-8A-105.

14 "(a) If there is any unit owner other than a
15 declarant, each unit that has been created, together with its
16 interest in the common elements, constitutes for all purposes
17 a separate parcel of real estate.

18 "~~(b) In a condominium where~~ If there is any unit
19 owner other than a declarant~~;~~,

20 "~~(1) Each unit that has been created together with~~
21 ~~its interest in the common elements, constitutes for all~~
22 ~~purposes a separate parcel of real estate; and~~

23 "~~(2) Each~~ each unit must be separately taxed and
24 assessed, and no separate tax or assessment may be rendered
25 against any common elements for which a declarant has reserved
26 no development rights.

1 "(c) Any portion of the common elements for which
2 the declarant has reserved any development right ~~must~~ may be
3 separately taxed and assessed against the declarant, and, if
4 separately taxed and assessed, the declarant alone ~~is~~ would be
5 liable for payment of those taxes.

6 "(d) If there is no unit owner other than a
7 declarant, the real estate comprising the condominium may be
8 taxed and assessed in any manner provided by law.

9 "(e) All laws authorizing exemptions or deductions
10 from taxation shall be applicable to each individual unit to
11 the same extent they are applicable to other property.

12 "§35-8A-106.

13 "(a) A building code may not impose any requirements
14 upon any structure in a condominium which it would not impose
15 upon a physically identical ~~development~~ structure under a
16 different form of ownership.

17 "(b) No zoning, subdivision, or other real estate
18 use law, ordinance, or regulation may prohibit the condominium
19 form of ownership or impose any requirement upon a condominium
20 which it would not impose upon a physically identical
21 development under a different form of ownership.

22 "(c) Except as provided in subsections (a) and (b),
23 the provisions of this chapter do not invalidate or modify any
24 provision of any zoning, subdivision, building code, or other
25 real estate use law, ordinance, rule, or regulation governing
26 the use of real estate.

27 "§35-8A-107.

1 "(a) If a unit is acquired by eminent domain, or if
2 part of a unit is acquired by eminent domain leaving the unit
3 owner with a remnant which may not practically or lawfully be
4 used for any purpose permitted by the declaration, the award
5 must compensate the unit owner for the unit and its interest
6 in the common elements, whether or not any common elements are
7 acquired. Upon acquisition, unless the decree otherwise
8 provides, that unit's allocated interests are automatically
9 reallocated to the remaining units in proportion to the
10 respective allocated interests of those units before the
11 taking, and the association shall promptly prepare, execute,
12 and record an amendment to the declaration reflecting the
13 reallocations. Any remnant of a unit remaining after part of a
14 unit is taken under this subsection is thereafter a common
15 element.

16 "(b) Except as provided in subsection (a), if part
17 of a unit is acquired by eminent domain, the award must
18 compensate the unit owner for the reduction in value of the
19 unit and its interest in the common elements, whether or not
20 any common elements are acquired. Upon acquisition, unless the
21 decree otherwise provides, (i) that unit's allocated interests
22 are reduced in proportion to the reduction in the size of the
23 unit, or on any other basis specified in the declaration, and
24 (ii) the portion of the allocated interests divested from the
25 partially acquired unit are automatically reallocated to that
26 unit and the remaining units in proportion to the respective
27 allocated interests of those units before the taking, with the

1 partially acquired unit participating in the reallocation on
2 the basis of its reduced allocated interests.

3 "(c) If part of the common elements is acquired by
4 eminent domain the portion of the award attributable to the
5 common elements taken must be paid to the association. Unless
6 the declaration provides otherwise, any portion of the award
7 attributable to the acquisition of a limited common element
8 must be ~~equally~~ divided among the owners of the units in
9 accordance with the value of the interest assigned to the unit
10 in that particular limited common element to which that
11 limited common element was allocated at the time of
12 acquisition.

13 "(d) The court decree shall be recorded in every
14 county in which any portion of the condominium is located.

15 "§35-8A-201.

16 "(a) A condominium may be created pursuant to this
17 chapter only by filing a declaration executed in the same
18 manner as a deed with the judge of probate in every county in
19 which any portion of the condominium is located. ~~A duplicate~~
20 ~~of the declaration may be presented to the filing officer~~
21 ~~simultaneously for proper validation as to the date filed.~~
22 ~~Said duplicate shall be returned to the person who presented~~
23 ~~it.~~

24 "(b) The judge of probate shall index the
25 declaration of condominium in the grantee's index in the name
26 of the condominium and the association and in the grantor's
27 index in the name of each person executing the declaration. ~~A~~

1 ~~well-bound book of suitable size for each condominium to be~~
2 ~~known as "Condominium Book No." shall be maintained by the~~
3 ~~judge of probate. Such book shall contain a copy of the~~
4 ~~declaration of condominium, all drawings, amendments,~~
5 ~~certificate of completion, certificate of termination, or~~
6 ~~other like instruments.~~

7 "(c) A declaration or an amendment to a declaration
8 adding units to a condominium, ~~may not be recorded~~ is not
9 effective unless all structural components and mechanical
10 systems of all buildings containing or comprising any units
11 thereby created are substantially ~~completed in accordance with~~
12 ~~the plans~~ complete, as evidenced by a recorded certificate of
13 substantial completion of structural and mechanical systems
14 executed by an independent registered engineer or independent
15 registered architect.

16 "§35-8A-205.

17 "(a) The declaration for a condominium must contain:

18 "(1) The name of the condominium, which must include
19 the word "condominium" or be followed by the words "a
20 condominium," and the name of the association;

21 "(2) The name of every county in which any part of
22 the condominium is situated;

23 "(3) A legally sufficient description of the real
24 estate included in the condominium;

25 "(4) A statement of the maximum number of units
26 which the declarant reserves the right to create;

1 "(5) A description of the boundaries of each unit
2 created by the declaration, including the unit's identifying
3 number;

4 "(6) A description of any limited common elements,
5 other than those specified in Section 35-8A-202(2) and (4), as
6 provided in Section 35-8A-209(b)(10);

7 "(7) A description of any ~~real estate~~ common
8 elements (except real estate subject to development rights)
9 which may be allocated subsequently as limited common
10 elements, other than limited common elements specified in
11 Section 35-8A-202(2) and (4), together with a statement that
12 they may be so allocated;

13 "(8) A description of any development rights
14 specified in Section 35-8A-103(11) and other special declarant
15 rights specified in Section 35-8A-103(24) reserved by the
16 declarant, together with a legally sufficient description of
17 the real estate to which each of those rights applies, and a
18 time limit within which each of those rights must be
19 exercised;

20 "(9) If any development right may be exercised with
21 respect to different parcels of real estate at different
22 times, a statement to that effect together with (i) either a
23 statement fixing the boundaries of those portions and
24 regulating the order in which those portions may be subjected
25 to the exercise of each development right, or a statement that
26 no assurances are made in those regards, and (ii) a statement
27 as to whether, if any development right is exercised in any

1 portion of the real estate subject to that development right,
2 that development right must be exercised in all or in any
3 other portion of the remainder of that real estate;

4 "(10) Any other conditions or limitations under
5 which the rights described in subdivision (8) may be exercised
6 or will lapse;

7 "(11) An allocation to each unit of the allocated
8 interests in the manner described in Section 35-8A-207;

9 "(12) Any restrictions on (i) use, occupancy,
10 leasing, or alienation of the units, provided that reasonable
11 rules and regulations related to conduct by unit owners or
12 ~~esthetic~~ aesthetic considerations which are adopted by the
13 association from time to time need not be included in the
14 declaration, and (ii) the amount for which a unit may be sold
15 or the amount that may be received by a unit owner on sale,
16 condemnation, casualty loss to the unit or to the condominium,
17 or on the termination of the condominium;

18 "(13) The recording data for recorded easements and
19 licenses appurtenant to or included in the condominium or to
20 which any portion of the condominium is or may become subject
21 by virtue of a reservation in the declaration;

22 "(14) A statement of the number and identity of
23 units which the declarant reserves the right to dispose of in
24 time shares; and

25 "(15) All matters required by Sections 35-8A-206
26 through 35-8A-209, 35-8A-215, 35-8A-216, and 35-8A-303(d).

1 "(b) The declaration may contain any other matters
2 the declarant deems appropriate.

3 "§35-8A-208.

4 "(a) Except for the limited common elements
5 described in Section 35-8A-202(2) and (4), the declaration
6 must specify to which unit or units each limited common
7 element is allocated. An allocation may not be altered without
8 the consent of the association and the unit owners whose units
9 are affected by the amendment.

10 "(b) Except as the declaration otherwise provides, a
11 limited common element may be reallocated by an amendment to
12 the declaration executed by the unit owners between or among
13 whose units the reallocation is made. ~~The persons executing~~
14 ~~the amendment shall provide it to the association, which shall~~
15 prepare, execute, and record it the amendment which is subject
16 to Section 35-8A-217(e), and the cost shall be borne by the
17 ~~persons~~ unit owners executing the amendment. The amendment
18 shall be recorded and indexed in the names of the ~~parties and~~
19 unit owners executing the amendment, the condominium, and the
20 association.

21 "(c) A common element not previously allocated as a
22 limited common element may not be so allocated except pursuant
23 to provisions in the declaration made in accordance with
24 Section 35-8A-205(a) (7). The allocations must be made by
25 amendments to the declaration.

26 "§35-8A-209.

1 ~~"(a) Plats and plans are a part of the declaration.~~
2 ~~Separate plats and plans are not required by this chapter if~~
3 ~~all the information required by this section is contained in~~
4 ~~either a plat or plan. Each plat and plan must be clear and~~
5 ~~legible and~~ A clear and legible plat of the condominium
6 property and plans, if required under subsection (d), shall be
7 recorded in the office of the judge of probate in every county
8 in which any portion of the condominium is located and shall
9 contain a certification that the plat or plan and plans, if
10 any contain all information required by this section. If the
11 plat contains all of the information required by this section
12 described in subsections (b), (c), (d), and (g), plans are not
13 required. The recorded plan and plans are part of the
14 declaration.

15 "(b) Each plat must show:

16 "(1) The name of the condominium and a survey ~~or~~
17 ~~general schematic map of the entire~~ of the real property
18 included in the condominium;

19 "(2) ~~The location and dimensions of all real estate~~
20 ~~not subject to development rights, or subject only to the~~
21 ~~development right to withdraw, and the location and dimensions~~
22 of all existing improvements ~~within that real estate~~ located
23 on the condominium property;

24 "(3) ~~A legally sufficient description~~ The location
25 and dimensions of any real estate subject to development
26 rights reserved over any part of the condominium property,
27 labeled to identify the rights applicable to each ~~parcel~~

1 identified portion, but the plat need not designate or label
2 which development rights are applicable if that information is
3 clearly described in the declaration;

4 "(4) The extent of any encroachments by or upon any
5 portion of the condominium property;

6 "(5) To the extent ~~feasible, a legally sufficient~~
7 ~~description~~ any easements can be shown on the plat, the
8 location and dimensions of all easements serving or burdening
9 any portion of the condominium property;

10 "(6) ~~The~~ To the extent they can be shown on the
11 plat, the location and dimensions of any vertical unit
12 boundaries ~~not shown or projected on plans recorded pursuant~~
13 ~~to subsection (d) and that unit's~~ and the identifying number
14 of each unit;

15 "(7) ~~The location~~ To the extent they can be shown on
16 the plat, any horizontal unit boundaries with reference to an
17 established datum ~~of any horizontal unit boundaries not shown~~
18 ~~or projected on plans recorded pursuant to subsection (d) and~~
19 ~~that unit's~~ and the identifying number of each unit;

20 "(8) To the extent they can be shown on the plat,
21 the location and dimensions of any limited common elements
22 other than parking spaces and the limited common elements
23 described in subdivisions (2) and (4) of Section 35-8A-202;

24 "~~(8)~~ (9) A legally sufficient description of any
25 real estate in which the unit owners will own only an estate
26 for years, labeled as "leasehold real estate";

1 "~~(9)~~ (10) The distance between noncontiguous parcels
2 of real ~~estate comprising~~ property included in the
3 condominium;

4 "~~(10)~~ The location and dimensions of limited common
5 elements, including porches, balconies, and patios, other than
6 parking spaces and the other limited common elements described
7 in Section 35-8A-202(2) and (4);

8 "~~(11)~~ In the case of real estate not subject to
9 development rights, all other matters customarily shown on
10 land surveys.

11 "~~(12)~~ (11) A certification as to whether any portion
12 of the real property ~~subject to~~ contained in the condominium
13 is located within a flood zone as determined by the ~~United~~
14 ~~States Department of Housing and Urban Development~~ federal
15 agency charged with implementation of the National Flood
16 Insurance Act and, if so, the flood zone classification. When
17 any portion of the condominium property is located within a
18 flood zone, the flood zone boundary shall be shown on the
19 plat, together with the elevations and locations of all
20 ~~proposed~~ existing structures ~~to be~~ located within the flood
21 zone area;

22 "~~(c)~~ A plat may also show the (12) The intended
23 location and dimensions of any contemplated ~~improvement~~ or
24 proposed improvements to be constructed ~~anywhere within~~ on the
25 condominium property pursuant to any development right. Any
26 ~~contemplated improvement shown,~~ which must be clearly labeled
27 either "MUST BE BUILT" or "NEED NOT BE BUILT"; and"

1 "(13) All other matters customarily shown on land
2 surveys.

3 "(c) A general schematic map or a legal description
4 of any real property that may be added to the condominium in
5 the future pursuant to a development right reserved under
6 Section 35-8A-205(a) (8) must either be included in the
7 declaration or shown on an additional page of the plat. If the
8 additional real property is shown on the plat, it must be
9 clearly labeled that it is not part of the condominium
10 property.

11 "(d) To the extent not ~~shown or projected~~ contained
12 on the ~~plats~~ plat of the condominium property, plans of the
13 units ~~must show or project~~ condominium property improvements
14 must be prepared and recorded that show:

15 "(1) The location and dimensions of the vertical
16 boundaries of each unit, and ~~that unit's~~ the identifying
17 number for each unit;

18 "(2) Any horizontal ~~unit~~ boundaries, with reference
19 to an established datum, and ~~that unit's~~ the identifying
20 number for each unit; and

21 "(3) ~~Any~~ The location and dimensions of any limited
22 common elements other than parking spaces and the limited
23 common elements described in subdivisions (2) and (4) of
24 Section 35-8A-202; and

25 "(4) The location and dimensions of any units in
26 which the declarant has reserved the right to create
27 additional units or common elements described in Section

1 35-8A-210(c) identified appropriately, unless the development
2 rights are adequately described in the declaration.

3 "(e) Unless the declaration provides otherwise, the
4 horizontal boundaries of any part of a unit located outside of
5 a building have the same elevation as the horizontal
6 boundaries ~~of the inside part~~ the building, and need not be
7 depicted on the plats and plans.

8 "(f) Upon exercising any development right that
9 affects the condominium property, the declarant shall record
10 ~~either~~ new plats and plans necessary to conform to the
11 requirements of subsections (a), (b), and (d) above, or new
12 certifications of the plats and plans previously recorded if
13 those plats and plans otherwise conform to the requirements of
14 those subsections.

15 "(g) Any certification of a plat or plan required by
16 this section ~~or Section 35-8A-201(b)~~ must be made by ~~an~~
17 ~~independent~~ a registered engineer ~~or, a~~ registered architect,
18 or a licensed surveyor.

19 "§35-8A-210.

20 "(a) To exercise any development right reserved
21 under Section 35-8A-205(a) (8), the declarant shall prepare,
22 execute, and record an amendment to the declaration as
23 specified in Section 35-8A-217 and comply with Section
24 35-8A-209. The declarant is the unit owner of any units
25 thereby created. The amendment to the declaration must assign
26 an identifying number to each new unit created, and, except in
27 the case of subdivision or conversion of units described in

1 ~~subsection (b)~~ subdivision (2) of subsection (c), reallocate
2 the allocated interests among all units. The amendment must
3 describe any common elements and any limited common elements
4 thereby created and, in the case of limited common elements,
5 designate the unit to which each is allocated to the extent
6 required by Section 35-8A-208.

7 "(b) Development rights may be reserved within any
8 real estate added to the condominium if the amendment adding
9 that real estate includes all matters required by Section
10 35-8A-205 or 35-8A-206, as the case may be, and the plats and
11 plans include all matters required by Section 35-8A-209. This
12 provision does not extend the time limit on the exercise of
13 development rights imposed by the declaration pursuant to
14 Section 35-8A-205(a) (8).

15 "(c) Whenever a declarant exercises a development
16 right to subdivide or convert a unit previously created into
17 additional units, common elements, or both:

18 "(1) If the declarant converts the unit entirely to
19 common elements, the amendment to the declaration must
20 reallocate all the allocated interests of that unit among the
21 other units as if that unit had been taken by eminent domain;
22 and

23 "(2) If the declarant subdivides the unit into two
24 or more units, whether or not any part of the unit is
25 converted into common elements, the amendment to the
26 declaration must reallocate all the allocated interests of the

1 unit among the units created by the subdivision in any
2 reasonable manner prescribed by the declarant.

3 "(d) If the declaration provides, pursuant to
4 Section 35-8A-205(a)(8), that all or a portion of the real
5 estate is subject to the development right of withdrawal:

6 "(1) If all the real estate is subject to
7 withdrawal, and the declaration does not describe separate
8 portions of real estate subject to that right, none of the
9 real estate may be withdrawn after a unit has been conveyed to
10 a purchaser; and

11 "(2) If a portion or portions are subject to
12 withdrawal, no portion may be withdrawn after a unit in that
13 portion has been conveyed to a purchaser.

14 "§35-8A-211.

15 "Subject to the provisions of the declaration and
16 other provisions of law, a unit owner:

17 "(1) May make any improvements or alterations to his
18 or her unit that do not impair the structural integrity, or
19 mechanical systems, or lessen the support of any portion of
20 the condominium;

21 "(2) May not substantially or adversely change the
22 appearance of the common elements, or the exterior appearance
23 of a unit or any other portion of the condominium, without
24 permission of the association;

25 "(3) After acquiring an adjoining unit, or an
26 adjoining part of an adjoining unit, may remove or alter any
27 intervening partition or create apertures therein, even if the

1 partition in whole or in part is a common element, if those
2 acts do not impair the structural integrity or mechanical
3 systems or lessen the support of any portion of the
4 condominium. Removal of partitions or creation of apertures
5 under this subdivision is not an alteration of boundaries.

6 "§35-8A-214.

7 "The existing physical boundaries of a unit or the
8 physical boundaries of a unit reconstructed in substantial
9 accordance with the original plats and plans thereof become
10 its boundaries rather than the metes and bounds expressed in
11 the deed or plat or plan, regardless of settling or lateral
12 movement of the building, or minor variance between boundaries
13 shown on the plats or plans or in the deed and those of the
14 building. This section does not relieve a unit owner of
15 liability in case of his or her willful misconduct nor relieve
16 a declarant or any other person of liability for failure to
17 adhere to the plats and plans.

18 "§35-8A-215.

19 "A declarant may maintain sales offices, management
20 offices, and models in units or on common elements in the
21 condominium only if the declaration so provides and specifies
22 the rights of a declarant with regard to the number, size,
23 location, and relocation thereof. Any sales office, management
24 office, or model not designated a unit by the declaration is a
25 common element, and if a declarant ceases to be a unit owner,
26 he or she ceases to have any rights with regard thereto unless
27 it is removed promptly from the condominium in accordance with

1 a right to remove reserved in the declaration. Subject to any
2 limitations in the declaration, a declarant may maintain signs
3 on the common elements advertising the condominium. The
4 provisions of this section are subject to the provisions of
5 other state law, and to local ordinances.

6 "§35-8A-218.

7 "(a) Except in the case of a taking of all the units
8 by eminent domain specified in Section 35-8A-107, a
9 condominium may be terminated only by agreement of unit owners
10 of units to which at least 80 percent of the votes in the
11 association are allocated, or any larger percentage the
12 declaration specifies. The declaration may specify a smaller
13 percentage only if all of the units in the condominium are
14 restricted exclusively to nonresidential uses.

15 "(b) An agreement to terminate must be evidenced by
16 the execution of a termination agreement, or ratifications
17 thereof, in the same manner as a deed, by the requisite number
18 of unit owners. The termination agreement must specify a date
19 after which the agreement will be void unless it is recorded
20 before that date. A termination agreement and all
21 ratifications thereof must be recorded in every county in
22 which a portion of the condominium is situated, and is
23 effective only upon recordation.

24 "(c) In the case of a condominium containing only
25 units having horizontal boundaries described in the
26 declaration, a termination agreement may provide that all the
27 common elements and units of the condominium shall be sold

1 following termination. If, pursuant to the agreement, any real
2 estate in the condominium is to be sold following termination,
3 the termination agreement must set forth the minimum terms of
4 the sale.

5 "(d) In the case of a condominium containing any
6 units not having horizontal boundaries described in the
7 declaration, a termination agreement may provide for sale of
8 the common elements, but may not require that the units be
9 sold following termination, unless the declaration as
10 originally recorded provided otherwise or unless all the unit
11 owners consent to the sale.

12 "(e) The association, on behalf of the unit owners,
13 may contract for the sale of real estate in the condominium,
14 but the contract is not binding on the unit owners until
15 approved pursuant to subsections (a) and (b). If any real
16 estate in the condominium is to be sold following termination,
17 title to that real estate, upon termination, vests in the
18 association as trustee for the holders of all interests in the
19 units. Thereafter, the association has all powers necessary
20 and appropriate to effect the sale. Until the sale has been
21 concluded and the proceeds thereof distributed, the
22 association continues in existence with all powers it had
23 before termination. Proceeds of the sale must be distributed
24 to unit owners and lien holders as their interests may appear,
25 in accordance with subsections (i), (j), and (k). Unless
26 otherwise specified in the termination agreement, as long as
27 the association holds title to the real estate, each unit

1 owner and his or her successors in interest have an exclusive
2 right to occupancy of the portion of the real estate that
3 formerly constituted his or her unit. During the period of
4 that occupancy, each unit owner and his or her successors in
5 interest remain liable for all assessments and other
6 obligations imposed on unit owners by this chapter or the
7 declaration.

8 "(f) If the real estate constituting the condominium
9 is not to be sold following termination, title to the common
10 elements and, in a condominium containing only units having
11 horizontal boundaries described in the declaration, title to
12 all the real estate in the condominium, vests in the unit
13 owners upon termination as tenants in common in proportion to
14 their respective interests as provided in subsection (h), and
15 liens on the units shift accordingly. While the tenancy in
16 common exists, each unit owner and his or her successors in
17 interest have an exclusive right to occupancy of the portion
18 of the real estate that formerly constituted his or her unit.

19 "(g) Following termination of the condominium, the
20 proceeds of any sale of real estate, together with the assets
21 of the association, are held by the association as trustee for
22 unit owners and holders of liens on the units as their
23 interests may appear.

24 "(h) Following termination, creditors of the
25 association holding liens on the units which were recorded
26 before termination, may enforce those liens in the same manner
27 as any lien holder. All other creditors of the association are

1 to be treated as if they had perfected liens on the units
2 immediately before termination.

3 "(i) The respective interests of unit owners
4 referred to in subsections (e), (f), (g), and (h) are as
5 follows:

6 "(1) Except as provided in subdivision (2), the
7 respective interests of unit owners are the fair market values
8 of their units, limited common elements, and common element
9 interests immediately before the termination, as determined by
10 one or more independent appraisers selected by the
11 association. The decision of the independent appraisers shall
12 be distributed to the unit owners and becomes final unless
13 disapproved within 30 days after distribution by unit owners
14 of units to which 25 percent of the votes in the association
15 are allocated. The proportion of any unit owner's interest to
16 that of all unit owners is determined by dividing the fair
17 market value of that unit and common element interest by the
18 total fair market values of all the units and common elements.

19 "(2) If any unit or any limited common element is
20 destroyed to the extent that an appraisal of the fair market
21 value thereof before destruction cannot be made, the interests
22 of all unit owners are their respective common element
23 interests immediately before the termination.

24 "(j) Except as provided in subsection (k),
25 foreclosure or enforcement of a lien or encumbrance against
26 the entire condominium does not of itself terminate the
27 condominium, and foreclosure or enforcement of a lien or

1 encumbrance against a portion of the condominium, other than
2 withdrawable real estate, does not withdraw that portion from
3 the condominium. Foreclosure or enforcement of a lien or
4 encumbrance against withdrawable real estate does not of
5 itself withdraw that real estate from the condominium, but the
6 person taking title thereto has the right to require from the
7 association, upon request, an amendment excluding the real
8 estate from the condominium.

9 "(k) If a lien or encumbrance against a portion of
10 the real estate comprising the condominium has priority over
11 the declaration, and the lien or encumbrance has not been
12 partially released, the parties foreclosing the lien or
13 encumbrance may upon foreclosure, record an instrument
14 excluding the real estate subject to that lien or encumbrance
15 from the condominium.

16 "§35-8A-220.

17 "(a) If the declaration for a condominium provides
18 that any of the powers described in Section 35-8A-302 are to
19 be exercised by or may be delegated to a profit or nonprofit
20 corporation which exercises those or other powers on behalf of
21 one or more condominiums or for the benefit of the unit owners
22 of one or more condominiums, all provisions of this chapter
23 applicable to unit owners' associations apply to any such
24 corporation with regard to such delegated power except as
25 modified by this section.

26 "(b) Unless it is acting in the capacity of an
27 association described in Section 35-8A-301, a master

1 association may exercise the powers set forth in Section
2 35-8A-302(a)(2) only to the extent expressly permitted in the
3 declarations of condominiums which are part of the master
4 association or expressly described in the delegations of power
5 from those condominiums to the master association.

6 "(c) If the declaration of any condominium provides
7 that the board may delegate certain powers to a master
8 association, the members of the board have no liability for
9 the acts or omissions of the master association with respect
10 to those powers following delegation.

11 "(d) The rights and responsibilities of unit owners
12 with respect to the unit owners' association set forth in
13 Sections 35-8A-303, 35-8A-308 through 35-8A-310, and 35-8A-312
14 apply in the conduct of the affairs of a master association
15 only to those persons who elect the board of a master
16 association, whether or not those persons are otherwise unit
17 owners within the meaning of this chapter.

18 "(e) Even if a master association is also an
19 association described in Section 35-8A-301, the certificate of
20 incorporation or other instrument creating the master
21 association and the declaration of each condominium the powers
22 of which are assigned by the declaration or delegated to the
23 master association, may provide that the executive board of
24 the master association must be elected after the period of
25 declarant control in any of the following ways:

1 "(1) All unit owners of all condominiums subject to
2 the master association may elect all members of that executive
3 board.

4 "(2) All members of the executive boards of all
5 condominiums subject to the master association may elect all
6 members of that executive board.

7 "(3) All unit owners of each condominium subject to
8 the master association may elect specified members of that
9 executive board.

10 "(4) All members of the executive board of each
11 condominium subject to the master association may elect
12 specified members of that executive board.

13 "§35-8A-302.

14 "(a) Except as provided in subsection (b), and
15 subject to the provisions of the declaration, the association
16 may:

17 "(1) Adopt and amend bylaws and rules and
18 regulations, ~~except that an association may not adopt a bylaw~~
19 ~~or enforce an existing bylaw to restrict an owner from~~
20 ~~renovating or decorating the interior walls, ceiling, or floor~~
21 ~~of his or her unit in a manner that does not substantially~~
22 ~~alter the exterior appearance of the condominium;~~

23 "(2) Adopt and amend budgets for revenues,
24 expenditures, and reserves and impose and collect assessments
25 for common expenses from unit owners;

26 "(3) Hire and discharge managing agents and other
27 employees, agents, and independent contractors;

1 "(4) Institute, defend, or intervene in litigation
2 or administrative proceedings in its own name on behalf of
3 itself or two or more unit owners on matters affecting the
4 condominium;

5 "(5) Make contracts and incur liabilities;

6 "(6) Regulate the use, maintenance, repair,
7 replacement, and modification of common elements;

8 "(7) Cause additional improvements to be made as a
9 part of the common elements;

10 "(8) Acquire, hold, encumber, and convey in its own
11 name any right, title, or interest to real or personal
12 property, but interests in the common elements other than
13 those set forth in subdivision (9) may be conveyed or
14 subjected to a security interest only pursuant to Section
15 35-8A-312;

16 "(9) Grant easements, encroachments, leases,
17 licenses, and concessions through or over the common elements;

18 "(10) Impose and receive any payments, fees, or
19 charges for the use, rental, or operation of the common
20 elements, other than limited common elements described in
21 Section 35-8A-202(2) and (4), and for services provided to
22 unit owners;

23 "(11) Impose against owners of units charges for
24 late payment of assessments and, after notice and an
25 opportunity to be heard, levy reasonable fines for violations
26 of the declaration, bylaws, and rules and regulations of the
27 association;

1 "(12) Impose reasonable charges for the preparation
2 and recordation of amendments to the declaration, resale
3 certificates required by Section 35-8A-409, or statements of
4 unpaid assessments;

5 "(13) Provide for the indemnification of its
6 officers and board and maintain directors' and officers'
7 liability insurance;

8 "(14) Assign its right to future income, including
9 the right to receive common expense assessments, but only to
10 the extent the declaration expressly so provides, or as
11 required to secure a loan that is otherwise allowed or
12 provided for in the governing documents;

13 "(15) Exercise any other powers conferred by the
14 declaration or bylaws;

15 "(16) Exercise all other powers that may be
16 exercised in this state by legal entities of the same type as
17 the association; and

18 "(17) Exercise any other powers necessary and proper
19 for the governance and operation of the association.

20 "(b) The declaration may not impose limitations on
21 the power of the association to deal with the declarant which
22 are more restrictive than the limitations imposed on the power
23 of the association to deal with other persons.

24 "§35-8A-303.

25 "(a) Except as provided in the declaration, the
26 bylaws, the articles of incorporation in subsection (b), or
27 other provisions of this chapter, the board may act in all

1 instances on behalf of the association. In the performance of
2 their duties, the officers and members of the board are
3 required to exercise (i) if appointed by the declarant, the
4 care required of fiduciaries of the unit owners other than the
5 declarant and (ii) if elected by the unit owners other than
6 declarant, ordinary and reasonable care.

7 "(b) The board may not act on behalf of the
8 association to amend the declaration as specified in Section
9 35-8A-217, to terminate the condominium described in Section
10 35-8A-218, or to elect members of the board or to determine
11 the qualifications, powers and duties, or terms of office of
12 board members as provided in Section 35-8A-303(f), but the
13 board may fill vacancies in its membership for the unexpired
14 portion of any term.

15 "(c) Within 30 days after adoption of any proposed
16 budget for the condominium, the board shall provide a copy of
17 the budget to all the unit owners, and shall set a date for a
18 meeting of the unit owners to consider ratification of the
19 budget not less than ~~14~~ 10 nor more than ~~30~~ 50 days after
20 delivery or mailing of the budget to the unit owners. Unless
21 at that meeting a majority of all the unit owners present in
22 person or by proxy or any larger vote specified in the
23 declaration reject the budget, the budget is ratified, whether
24 or not a quorum is present. In the event the proposed budget
25 is rejected, the periodic budget last ratified by the unit
26 owners shall be continued until such time as the unit owners
27 ratify a subsequent budget proposed by the board.

1 "(d) Subject to subsection (e), the declaration may
2 provide for a period of declarant control of the association,
3 during which period a declarant, or persons designated by him
4 or her, may appoint and remove the officers and members of the
5 board. Regardless of the period provided in the declaration, a
6 period of declarant control terminates no later than the
7 earliest of (i) 60 days after conveyance of 75 percent of the
8 units which may be created to unit owners other than a
9 declarant; (ii) two years after all declarants have ceased to
10 offer units for sale in the ordinary course of business; or
11 (iii) two years after any development right to add new units
12 was last exercised. A declarant may voluntarily surrender the
13 right to appoint and remove officers and members of the board
14 before termination of that period, but in that event he or she
15 may require, for the duration of the period of declarant
16 control, that specified actions of the association or board,
17 as described in a recorded instrument executed by the
18 declarant, be approved by the declarant before they become
19 effective.

20 "(e) Not later than 90 days after conveyance of 25
21 percent of the units which may be created to unit owners other
22 than a declarant, at least one member and not less than 25
23 percent of the members of the board must be elected by unit
24 owners other than the declarant. Not later than 90 days after
25 conveyance of 50 percent of the units which may be created to
26 unit owners other than a declarant, not less than 33 1/3

1 percent of the members of the board must be elected by unit
2 owners other than the declarant.

3 "(f) Except as otherwise provided in Section
4 35-8A-220(e), not later than the termination of any period of
5 declarant control, the unit owners shall elect a board of at
6 least three members, ~~at least a majority of whom must be unit~~
7 ~~owners other than declarant. The board shall elect the~~
8 ~~officers. The board members and officers shall take office~~
9 ~~upon election.~~

10 "(g) Notwithstanding any provision of the
11 declaration or bylaws to the contrary, the unit owners, by a
12 two-thirds vote of all persons present in person and entitled
13 to vote at any meeting of the unit owners at which a quorum in
14 person is present, may remove any member of the board with or
15 without cause, other than a member appointed by the declarant.

16 "§35-8A-304.

17 "(a) No special declarant right specified in Section
18 35-8A-103(24) created or reserved under this chapter may be
19 transferred except by an instrument evidencing the transfer
20 recorded in every county in which any portion of the
21 condominium is located. The instrument is not effective unless
22 executed by the transferor and the transferee in the same
23 formality as a conveyance of real property.

24 "(b) Upon transfer of any special declarant right,
25 the liability of a transferor declarant is as follows:

26 "(1) A transferor is not relieved of any obligation
27 or liability arising before the transfer and remains liable

1 for warranty obligations imposed upon him or her by this
2 chapter. Lack of privity does not deprive any unit owner of
3 standing to maintain an action to enforce any obligation of
4 the transferor.

5 "(2) If a successor to any special declarant right
6 is an affiliate of a declarant specified in Section
7 35-8A-103(1), the transferor is jointly and severally liable
8 with the successor for any obligations or liabilities of the
9 successor relating to the condominium.

10 "(3) If a transferor retains any special declarant
11 right, but transfers other special declarant rights to a
12 successor who is not an affiliate of the declarant, the
13 transferor is liable for any obligations or liabilities
14 imposed on a declarant by this chapter or by the declaration
15 relating to the retained special declarant rights and arising
16 after the transfer.

17 "(4) A transferor has no liability for any act or
18 omission or any breach of a contractual or warranty obligation
19 arising from the exercise of a special declarant right by a
20 successor declarant who is not an affiliate of the transferor.

21 "(c) Unless otherwise provided in a mortgage
22 instrument or deed of trust or other agreement creating a
23 security interest, in case of foreclosure of a security
24 interest, sale by a trustee under an agreement creating a
25 security interest, tax sale, judicial sale, or sale under
26 federal bankruptcy law or receivership proceedings, of any
27 units owned by a declarant or real estate in a condominium

1 subject to development rights, a person acquiring title to all
2 the real estate being foreclosed or sold succeeds to all
3 special declarant rights related to that real estate held by
4 that declarant, or only to any rights reserved in the
5 declaration pursuant to Section 35-8A-215 and held by that
6 declarant to maintain models, sales offices and signs.

7 "(d) Upon foreclosure of a security interest, sale
8 by a trustee under an agreement creating a security interest,
9 tax sale, judicial sale, or sale under federal bankruptcy law
10 or receivership proceedings, of all units and other real
11 estate in a condominium owned by a declarant:

12 "(1) The declarant ceases to have any special
13 declarant rights, and

14 "(2) The period of declarant control specified in
15 Section 35-8A-303(d) terminates unless the judgment or
16 instrument conveying title provides for transfer of all
17 special declarant rights held by that declarant to a successor
18 declarant.

19 "(e) The liabilities and obligations of a person who
20 succeeds to special declarant rights are as follows:

21 "(1) A successor to any special declarant right who
22 is an affiliate of a declarant is subject to all obligations
23 and liabilities imposed on the transferor by this chapter or
24 by the declaration.

25 "(2) A successor to any special declarant right,
26 other than a successor described in subdivisions (3) or (4),
27 who is not an affiliate of a declarant, is subject to all

1 obligations and liabilities imposed by this chapter or the
2 declaration:

3 "a. On a declarant which relates to his or her
4 exercise or nonexercise of special declarant rights; or

5 "b. On his or her transferor, other than:

6 "1. Misrepresentations by any previous declarant;

7 "2. Warranty obligations on improvements made by any
8 previous declarant, or made before the condominium was
9 created;

10 "3. Breach of any fiduciary obligation by any
11 previous declarant or his or her appointees to the board; or

12 "4. Any liability or obligation imposed on the
13 transferor as a result of the transferor's acts or omissions
14 after the transfer.

15 "(3) A successor to only a right reserved in the
16 declaration to maintain models, sales offices, and signs
17 pursuant to Section 35-8A-215, may not exercise any other
18 special declarant right, and is not subject to any liability
19 or obligation as a declarant, except the obligation to provide
20 an offering statement and any liability arising as a result
21 thereof.

22 "(4) A successor to all special declarant rights
23 held by his or her transferor who is not an affiliate of that
24 declarant and who succeeded to those rights pursuant to a deed
25 in lieu of foreclosure or a judgment or instrument conveying
26 title to units under subsection (c), may declare the intention
27 in a recorded instrument to hold those rights solely for

1 transfer to another person. Thereafter, until transferring all
2 special declarant rights to any person acquiring title to any
3 unit owned by the successor, or until recording an instrument
4 permitting exercise of all those rights, that successor may
5 not exercise any of those rights other than any right held by
6 his or her transferor to control the board in accordance with
7 the provisions of Section 35-8A-303(d) for the duration of any
8 period of declarant control, and any attempted exercise of
9 those rights is void. So long as a successor declarant may not
10 exercise special declarant rights under this subsection, he or
11 she is not subject to any liability or obligation as a
12 declarant other than liability for his or her acts and
13 omissions under Section 35-8A-303(d).

14 "(f) Nothing in this section subjects any successor
15 to a special declarant right to any claims against or other
16 obligations of a transferor declarant, other than claims and
17 obligations arising under this chapter or the declaration.

18 "§35-8A-305.

19 "If entered into before the board elected by the
20 unit owners pursuant to Section 35-8A-303(f) takes office, (i)
21 any management contract, employment contract, or lease of
22 recreational or parking areas or facilities, (ii) any other
23 contract or lease between the association and a declarant or
24 an affiliate of a declarant, or (iii) any contract or lease
25 that is not bona fide or was unconscionable to the unit owners
26 at the time entered into under the circumstances then
27 prevailing, may be terminated without penalty by the

1 association ~~at any time~~ during the current term of the
2 contract or lease after the board elected by the unit owners
3 pursuant to Section 35-8A-303(f) takes office upon not less
4 than 90 days' notice to the other party. This section does not
5 apply to any lease the termination of which would terminate
6 the condominium or reduce its size, unless the real estate
7 subject to that lease was included in the condominium for the
8 purpose of avoiding the right of the association to terminate
9 a lease under this section.

10 "§35-8A-307.

11 "(a) Except to the extent provided by the
12 declaration, subsection (b), or Section 35-8A-313(h), the
13 association is responsible for maintenance, repair, and
14 replacement of the common elements, and each unit owner is
15 responsible for maintenance, repair, and replacement of his or
16 her unit. Each unit owner shall afford to the association and
17 the other unit owners, and to their agents or employees,
18 access through his or her unit reasonably necessary for those
19 purposes. If damage is inflicted on the common elements, or on
20 any unit through which access is taken, the unit owner
21 responsible for the damage, or the association if it is
22 responsible, is liable for the prompt repair thereof.

23 "(b) In addition to the liability that a declarant
24 as a unit owner has under this chapter, the declarant alone is
25 liable for all expenses in connection with real estate subject
26 to development rights. No other unit owner and no other
27 portion of the condominium is subject to a claim for payment

1 of those expenses. Unless the declaration provides otherwise,
2 any income or proceeds from real estate subject to development
3 rights inures to the declarant.

4 "§35-8A-310.

5 "(a) If only one of the multiple owners of a unit is
6 present at a meeting of the association, he or she is entitled
7 to cast all the votes allocated to that unit. If more than one
8 of the multiple owners are present, the votes allocated to
9 that unit may be cast only in accordance with the agreement of
10 a majority in interest of the multiple owners, unless either
11 the declaration or bylaws expressly provides otherwise. There
12 is majority agreement if any one of the multiple owners casts
13 the votes allocated to that unit without protest being made
14 promptly to the person presiding over the meeting by any of
15 the other owners of the unit.

16 "(b) Votes allocated to a unit may be cast pursuant
17 to a proxy duly executed by the unit owner except as provided
18 in Section 35-8A-303(g). If a unit is owned by more than one
19 person, each owner of the unit may vote or register protest to
20 the casting of votes by the other owners of the unit through a
21 duly executed proxy. A unit owner may not revoke a proxy given
22 pursuant to this section except by actual notice of revocation
23 to the person presiding over a meeting of the association. A
24 proxy is void if it is not dated or purports to be revocable
25 without notice. A proxy terminates one year after its date,
26 unless it specifies a shorter term.

1 "(c) If the declaration requires that votes on
2 specified matters affecting the condominium be cast by lessees
3 rather than unit owners of leased units: (i) the provisions of
4 ~~subsection~~ subsections (a) and (b) apply to lessees as if they
5 were unit owners; (ii) unit owners who have leased their units
6 to other persons may not cast votes on those specified
7 matters; and (iii) lessees are entitled to notice of meetings,
8 access to records, and other rights respecting those matters
9 as if they were unit owners. Unit owners must also be given
10 notice, in the manner provided in Section 35-8A-308, of all
11 meetings at which lessees may be entitled to vote.

12 "(d) No votes allocated to a unit owned by the
13 association may be cast.

14 "§35-8A-311.

15 "Neither the association, any association mortgagee,
16 nor any unit owner except the declarant is liable for that
17 declarant's torts in connection with any part of the
18 condominium which that declarant has the responsibility to
19 maintain. Otherwise, an action alleging a wrong done by the
20 association shall be brought against the association and not
21 against any unit owner. If the wrong occurred during any
22 period of declarant control and the association gives the
23 declarant reasonable notice of and an opportunity to defend
24 against the action, the declarant who then controlled the
25 association is liable to the association or to any unit owner:
26 (i) for all tort losses not covered by insurance suffered by
27 the association or that unit owner, and (ii) for all costs

1 which the association would not have incurred but for a breach
2 of contract or other wrongful act or omission. Whenever the
3 declarant is liable to the association under this section, the
4 declarant is also liable for all reasonable litigation
5 expenses, including reasonable attorneys fees, incurred by the
6 association. Any statute of limitation affecting the
7 association's right of action under this section is tolled
8 until the period of declarant control terminates. A unit owner
9 is not precluded from bringing an action contemplated by this
10 section solely because he or she is a unit owner, or a member
11 or officer of the association. Liens resulting from judgments
12 against the association are governed by Section 35-8A-317.

13 "§35-8A-312.

14 "(a) In a condominium portions of the common
15 elements may be conveyed or subjected to a security interest
16 by the association if persons entitled to cast at least 80
17 percent of the votes in the association, including 80 percent
18 of the votes allocated to units not owned by a declarant, or
19 any larger percentage the declaration specifies, agree to that
20 action; but all the owners of units to which any limited
21 common element is allocated must agree in order to convey that
22 limited common element or subject it to a security interest.
23 The declaration may specify a smaller percentage only if all
24 of the units are restricted exclusively to nonresidential
25 uses. Proceeds of the sale or loan are an asset of the
26 association.

1 "(b) An agreement to convey common elements in a
2 condominium or subject them to a security interest must be
3 evidenced by the execution of an agreement, or ratifications
4 thereof, in the same manner as a deed, by the requisite number
5 of unit owners. The agreement must specify a date after which
6 the agreement will be void unless recorded before that date.
7 The agreement and all ratifications thereof must be recorded
8 in every county in which a portion of the condominium is
9 situated, and is effective only upon recordation.

10 "(c) The association, on behalf of the unit owners,
11 may contract to convey an interest in a condominium pursuant
12 to subsection (a), but the contract is not enforceable against
13 the association until approved pursuant to subsections (a) and
14 (b). Thereafter, the association has all powers necessary and
15 appropriate to effect the conveyance or encumbrance, including
16 the power to execute deeds or other instruments.

17 "(d) Any purported conveyance, encumbrance, judicial
18 sale or other voluntary transfer of common elements, unless
19 made pursuant to this section, is void.

20 "(e) A conveyance or encumbrance of common elements
21 pursuant to this section does not deprive any unit of its
22 rights of access and support.

23 "(f) Unless the declaration otherwise provides, a
24 conveyance or encumbrance of common elements pursuant to this
25 section does not affect the priority or validity of
26 pre-existing encumbrances.

27 "§35-8A-313.

1 "(a) Commencing not later than the time of the first
2 conveyance of a unit to a person other than a declarant, the
3 association shall maintain, to the extent reasonably
4 available:

5 "(1) Property insurance on the common elements
6 insuring against all risks of direct physical loss commonly
7 insured against or, in the case of a conversion building,
8 against fire and extended coverage perils. The total amount of
9 insurance after application of any deductibles shall be not
10 less than the greater of 80 percent of the actual cash value
11 of the insured property at the time the insurance is purchased
12 or such greater percentage of such actual cash value as may be
13 necessary to prevent the applicability of any co-insurance
14 provision and at each renewal date, exclusive of land,
15 excavations, foundations and other items normally excluded
16 from property policies; and

17 "(2) Liability insurance, including medical payments
18 insurance, in an amount determined by the board but not less
19 than any amount specified in the declaration, covering all
20 occurrences commonly insured against for death, bodily injury,
21 and property damage arising out of or in connection with the
22 use, ownership, or maintenance of the common elements.

23 "(b) In the case of a building containing units
24 having horizontal boundaries described in the declaration, the
25 insurance maintained under subdivision (a)(1), to the extent
26 reasonably available, must include the units, but need not
27 include improvements and betterments installed by unit owners.

1 "(c) If the insurance described in subsections (a)
2 and (b) is not reasonably available, the association promptly
3 shall cause notice of that fact to be hand-delivered or sent
4 prepaid by United States mail to all unit owners. The
5 declaration may require the association to carry any other
6 insurance, and the association in any event may carry any
7 other insurance it deems appropriate to protect the
8 association or the unit owners.

9 "(d) Insurance policies carried pursuant to
10 subsection (a) must provide that:

11 "(1) Each unit owner is an insured person under the
12 policy with respect to liability arising out of his or her
13 interest in the common elements or membership in the
14 association;

15 "(2) The insurer waives its right to subrogation
16 under the policy against any unit owner or member of his or
17 her household;

18 "(3) No act or omission by any unit owner, unless
19 acting within the scope of his or her authority on behalf of
20 the association, will void the policy or be a condition to
21 recovery under the policy; and

22 "(4) If, at the time of a loss under the policy,
23 there is other insurance in the name of a unit owner covering
24 the same risk covered by the policy, the association's policy
25 provides primary insurance.

26 "(e) Any loss covered by the property policy under
27 subsections (a) (1) and (b) must be adjusted with the

1 association, but the insurance proceeds for that loss are
2 payable to any insurance trustee designated for that purpose,
3 or otherwise to the association, and not to any holder of a
4 security interest. The insurance trustee or the association
5 shall hold any insurance proceeds in trust for unit owners and
6 lien holders as their interests may appear. Subject to the
7 provisions of subsection (h), the proceeds must be disbursed
8 first for the repair or restoration of the damaged property,
9 and the association unit owners and lien holders are not
10 entitled to receive payment of any portion of the proceeds
11 unless there is a surplus of proceeds after the property has
12 been completely repaired or restored, or the condominium is
13 terminated.

14 "(f) An insurance policy issued to the association
15 does not prevent a unit owner from obtaining insurance for his
16 or her own benefit.

17 "(g) An insurer that has issued an insurance policy
18 under this section shall issue certificates or memoranda of
19 insurance to the association and, upon written request, to any
20 unit owner, or holder of a security interest. The insurer
21 issuing the policy may not cancel or refuse to renew it until
22 30 days after notice of the proposed cancellation or
23 nonrenewal has been mailed to the association, each unit owner
24 and each mortgagee or beneficiary under a deed of trust to
25 whom a certificate or memorandum of insurance has been issued
26 at their respective last known addresses.

1 "(h) Any portion of the condominium for which
2 insurance is required under this section which is damaged or
3 destroyed must be repaired or replaced promptly by the
4 association unless:

5 "(1) The condominium is terminated, in which case
6 Section 35-8A-218 applies,

7 "(2) Repair or replacement would be illegal under
8 any state or local statute or ordinance governing health or
9 safety, or

10 "(3) Eighty percent of the unit owners, including
11 every owner of a unit or assigned limited common element which
12 will not be rebuilt, vote not to rebuild. The cost of repair
13 or replacement in excess of insurance proceeds, including any
14 deductible or retention under any contract of insurance, and
15 reserves is a common expense.

16 "If the entire condominium is not repaired or
17 replaced, (i) the insurance proceeds attributable to the
18 damaged common elements must be used to restore the damaged
19 area to a condition compatible with the remainder of the
20 condominium, (ii) except to the extent that other persons will
21 be distributees under Section 35-8A-205(a)(12)(ii),

22 "(1) The insurance proceeds attributable to units
23 and limited common elements which are not rebuilt must be
24 distributed to the owners of those units and the owners of the
25 units to which those limited common elements were allocated,
26 or to lienholders, as their interests may appear, and

1 "(2) The remainder of the proceeds must be
2 distributed to all the unit owners or lienholders, as their
3 interests may appear, in proportion to the common element
4 interests of all the units.

5 "If the unit owners vote not to rebuild any unit,
6 that unit's allocated interests are automatically reallocated
7 upon the vote as if the unit had been condemned under Section
8 35-8A-107(a), and the association promptly shall prepare,
9 execute, and record an amendment to the declaration reflecting
10 the reallocations.

11 "(i) The provisions of this section may be varied or
12 waived in the case of a condominium all of whose units are
13 restricted to nonresidential use.

14 "(j) Unless the declaration provides otherwise, the
15 association shall pay any cost in excess of insurance
16 proceeds, including any deductible or retention under any
17 contract of insurance as a common expense.

18 "§35-8A-314.

19 "Unless otherwise provided in the declaration or
20 bylaws, any surplus funds of the association remaining after
21 payment of or provision for common expenses and any prepayment
22 of reserves must be paid to the unit owners in proportion to
23 their common expense liabilities or credited to them to reduce
24 their future common expense assessments, or held in reserve.

25 "§35-8A-315.

26 "(a) Until the association makes a common expense
27 assessment, the declarant must pay all common expenses. After

1 any assessment has been made by the association, assessments
2 must be made at least annually, based on a budget adopted at
3 least annually by the association.

4 "(b) Except for assessments under subsections (c),
5 (d), and (e), all common expenses must be assessed against all
6 the units in accordance with the allocations set forth in the
7 declaration pursuant to Section 35-8A-207(a) and (b). Any past
8 due common expense assessment or installment thereof bears
9 interest at the rate established by the association not
10 exceeding 18 percent per year.

11 "(c) To the extent required by the declaration:

12 "(1) Any common expense associated with the
13 maintenance, repair, or replacement of a limited common
14 element must be assessed against the units to which that
15 limited common element is assigned, equally, or in any other
16 proportion that the declaration provides;

17 "(2) Any common expense or portion thereof
18 benefiting fewer than all of the units must be assessed
19 exclusively against the units benefited; and

20 "(3) The costs of insurance must be assessed in
21 proportion to risk and the costs of utilities ~~must~~ may be
22 assessed in proportion to usage.

23 "(d) Assessments to pay a judgment against the
24 association under Section 35-8A-317(a) may be made only
25 against the units in the condominium at the time the judgment
26 was entered, in proportion to their common expense
27 liabilities.

1 "(e) If any common expense is caused by the
2 misconduct of any unit owner or such unit owner's invitee, the
3 association may assess that expense exclusively against his or
4 her unit after notice and an opportunity to be heard.

5 "(f) If common expense liabilities are reallocated,
6 common expense assessments and any installment thereof not yet
7 due shall be recalculated in accordance with the reallocated
8 common expense liabilities.

9 "(g) All assessments, including utilities, fees, and
10 other charges shall also constitute the personal obligation of
11 the unit owner to the association.

12 "(h) No unit owner other than the association shall
13 be exempted from any liability for any assessment under this
14 code section or under any condominium instrument for any
15 reason whatsoever, including, without limitation, abandonment,
16 nonuse, or waiver of the use or enjoyment of his or her unit
17 or any part of the common elements.

18 "§35-8A-316.

19 "(a) The association has a lien on a unit for any
20 assessment and any other moneys due the association for
21 special assessments or services or charges, such as water or
22 repairs, levied against that unit or fines imposed against its
23 unit owner from the time the assessment or fine ~~becomes due~~ is
24 levied. The association's lien may be foreclosed in like
25 manner as a mortgage on real estate ~~but the~~ and as provided in
26 the declaration and in Section 35-10-11 or Article 1A of
27 Chapter 10 of this title and subject to the right under

1 Article 14A of Chapter 5 of Title 6. The association shall
2 ~~give~~ send reasonable advance notice of its proposed action to
3 the unit owner and all lienholders of record ~~of~~ who have
4 provided a notice address in the record instrument evidencing
5 the lien on the unit. Unless the declaration otherwise
6 provides, fees, charges, late charges, fines, and interest
7 charged pursuant to Section 35-8A-302(a)(10), (11), and (12)
8 are enforceable as assessments under this section. If an
9 assessment is payable in installments, the full amount of the
10 assessment is a lien from the time ~~the first installment~~
11 ~~thereof becomes due~~ it is levied.

12 " (b) A lien under this section is prior to all other
13 liens and encumbrances on a unit except (i) liens and
14 encumbrances recorded before the recordation of the
15 declaration, (ii) a first security interest on the unit
16 recorded before the date on which the assessment sought to be
17 enforced became delinquent, and (iii) liens for real estate
18 taxes and other governmental assessments or charges against
19 the unit. The lien is also prior to the mortgages and deeds of
20 trust described in clause (ii) above to the extent of the
21 common expense assessments based on the periodic budget
22 adopted by the association pursuant to Section 35-8A-315(a)
23 which would have become due in the absence of acceleration
24 during the six months immediately preceding institution of an
25 action to enforce the lien. This subsection does not affect
26 the priority of mechanics' or materialmen's liens, ~~or the~~
27 ~~priority of liens for other assessments made by the~~

1 ~~association~~. The lien under this section is not subject to the
2 provisions of homestead or other exemptions.

3 "(c) Unless the declaration otherwise provides, if
4 two or more associations have liens for assessments created at
5 any time on the same real estate, those liens have equal
6 priority.

7 "(d) Recording of the declaration constitutes record
8 notice and perfection of the lien. No further recordation of
9 any claim of lien for assessment under this section is
10 required.

11 "(e) A lien for unpaid assessments is extinguished
12 unless proceedings to enforce the lien are instituted within
13 three years after the full amount of the assessments becomes
14 due.

15 "(f) This section does not prohibit actions to
16 recover sums for which subsection (a) creates a lien or
17 prohibit an association from taking a deed in lieu of
18 foreclosure.

19 "(g) A judgment or decree in any action brought
20 under this or the preceding section must include costs and
21 reasonable attorney's fees ~~actually incurred for~~ to the
22 prevailing party.

23 "(h) Any unit owner, mortgagee of a unit, person
24 having executed a contract for the purchase of a condominium
25 unit, or lender considering the loan of funds to be secured by
26 a condominium unit shall be entitled upon request to a
27 statement from the association or its management agent setting

1 forth the amount of assessments levied against the unit,
2 including information regarding whether such assessments are
3 past due, ~~and unpaid~~ together with late charges and interest
4 applicable thereto against that condominium unit. Such request
5 shall be in writing, shall be delivered to the registered
6 office of the association, and shall state an address to which
7 the statement is to be directed. Failure on the part of the
8 association to mail or otherwise furnish such statement
9 regarding amounts due and payable if specified in the written
10 request therefor within 10 business days from the receipt of
11 such request releases the association's lien against the unit
12 for the amount of the assessment as of that date, but does not
13 discharge the unit owner's debt to the association. The
14 information specified in such statement shall be binding upon
15 the association and upon every unit owner. Payment of a
16 reasonable fee ~~not exceeding \$10.00~~ may be required as a
17 prerequisite to the issuance of such a statement if the
18 condominium instruments so provide.

19 "§35-8A-317.

20 "(a) Except as provided in subsection (b), a
21 judgment for money against the association if recorded is not
22 a lien on the common elements, but is a lien in favor of the
23 judgment lienholder against all of the units in the
24 condominium at the time the judgment was entered. No other
25 property of a unit owner is subject to the claims of creditors
26 of the association.

1 "(b) If the association has granted a security
2 interest in the common elements to a creditor of the
3 association pursuant to Section 35-8A-312, the holder of that
4 security interest shall exercise its right against the common
5 elements before its judgment lien on any unit may be enforced.

6 "(c) Whether perfected before or after the creation
7 of the condominium, if a lien other than a deed of trust or
8 mortgage, including a judgment lien or lien attributable to
9 work performed or materials supplied before creation of the
10 condominium, becomes effective against two or more units, the
11 unit owner of an affected unit may pay to the lienholder the
12 amount of the lien attributable to his or her unit, and the
13 lienholder, upon receipt of payment, promptly shall deliver a
14 release of the lien covering that unit. The amount of the
15 payment must be proportionate to the ratio which that unit
16 owner's common expense liability bears to the common expense
17 liabilities of all unit owners whose units are subject to the
18 lien. After payment, the association may not assess or have a
19 lien against that unit owner's unit for any portion of the
20 common expenses incurred in connection with that lien.

21 "(d) A judgment against the association must be
22 indexed in the name of the condominium and the association
23 and, when so indexed, is notice of the lien against the units.

24 "§35-8A-318.

25 "The association shall keep financial records
26 sufficiently detailed to enable the association to comply with
27 Section 35-8A-409. All financial and other records shall be

1 made reasonably available for examination by any unit owner
2 and his or her authorized agents and such records shall be
3 made available in the county where the condominium is located.
4 A reasonable fee or hourly charge may be assessed for this
5 service.

6 "§35-8A-401.

7 "(a) This article applies to all units subject to
8 this chapter, except as provided in subsection (b) or as
9 modified or waived in writing by agreement of purchasers of
10 units in a condominium in which all units are restricted to
11 nonresidential use.

12 "(b) Neither an offering statement nor a resale
13 certificate need be prepared or delivered in the case of:

14 "(1) A gratuitous disposition of a unit;

15 "(2) A transfer pursuant to court order;

16 "(3) A disposition by a government or governmental
17 agency;

18 "(4) A transfer by foreclosure or disposition by
19 deed in lieu of foreclosure;

20 "(5) A disposition to a person in the business of
21 selling real estate who intends to offer those units to
22 purchasers where the responsibility for preparing and
23 delivering the offering statement has been transferred to the
24 person pursuant to subsection (b) of Section 35-8A-402;

25 "(6) A disposition that may be canceled at any time
26 and for any reason by the purchaser without penalty; or

1 "(7) A disposition of a time share interest in a
2 unit.

3 "§35-8A-402.

4 "(a) Except as provided in subsection (b), a
5 declarant, prior to the offering of any interest in a unit to
6 the public, shall prepare an offering statement conforming to
7 the requirements of Sections 35-8A-403 through 35-8A-406.

8 "(b) A declarant may transfer responsibility for
9 preparation of all or a part of the offering statement to a
10 successor declarant specified in Section 35-8A-304 or to a
11 person in the business of selling real estate who intends to
12 offer units in the condominium for ~~his~~ the offeror's own
13 account. In the event of any such transfer, the transferor
14 shall provide the transferee with any information necessary to
15 enable the transferee to fulfill the requirements of
16 subsection (a).

17 "(c) Any declarant or other person in the business
18 of selling real estate who offers to a purchaser a unit for
19 ~~his~~ the offeror's own account to ~~a purchaser~~ whom such
20 responsibility for preparation and delivery of an offering
21 statement has been transferred shall deliver an offering
22 statement in the manner prescribed in Section 35-8A-408(a) and
23 is liable under Sections 35-8A-408 and ~~35-8A-417~~ 35-8A-414 for
24 any false or misleading statement set forth therein or for any
25 omission of material fact.

26 "(d) If a unit is part of a condominium and is part
27 of any other real estate regime in connection with the sale of

1 which the delivery of an offering statement is required under
2 the laws of this state, a single offering statement conforming
3 to the requirements of Sections 35-8A-403 through 35-8A-406 as
4 those requirements relate to each regime in which the unit is
5 located, and to any other requirements imposed under the laws
6 of this state, may be prepared and delivered in lieu of
7 providing two or more offering statements.

8 "§35-8A-403.

9 "(a) Except as provided in subsection (b), an
10 offering statement must contain or fully and accurately
11 disclose the following information with regard to the
12 condominium, including a proposed condominium:

13 "(1) The name and principal address of the declarant
14 ~~and of the condominium;~~

15 "(2) The name and the address, legal description, or
16 other description of the location of the condominium, and the
17 number and types of units in the condominium;

18 "(3) A general description of the condominium,
19 including to the extent possible, ~~the types,~~ number and types
20 of buildings, structures, and amenities the declarant is
21 obligated to build, and declarant's schedule of commencement
22 and completion of construction of buildings, structures, and
23 amenities ~~that declarant anticipates including in the~~
24 ~~condominium; The number of units~~ is obligated to include in
25 the condominium;

26 "(4) Copies of the declaration, ~~other than the plats~~
27 ~~and plans,~~ as well as any ~~other~~ recorded plats, plans,

1 easements, covenants, conditions, restrictions, and
2 reservations affecting the condominium; the ~~bylaws, and~~
3 certificate or the proposed certificate of formation and the
4 bylaws of the association created or to be created to manage
5 the condominium, any rules or regulations of the association;
6 , a copy of the lease for any leasehold condominium, copies of
7 any contracts and leases to be signed by purchasers at
8 closing, and copies of any contracts or leases that will or
9 may be subject to cancellation by the association under
10 Section 35-8A-305;

11 " (5) ~~Any current balance sheet and a~~ A projected
12 budget for the association, ~~either within or as an exhibit to~~
13 ~~the offering statement,~~ for at least one year after the date
14 or anticipated date of the first conveyance to a purchaser,
15 and thereafter the current budget along with the current
16 balance sheet of the association, a statement of who prepared
17 the budget, and a statement of the budget's assumption
18 concerning occupancy. The budget must include, without
19 limitation:

20 "a. A statement of the amount, or a statement that
21 there is no amount, included in the budget as a reserve for
22 repairs and replacement;

23 "b. A statement of any other reserves included in
24 the budget;

25 "c. The projected common ~~expense assessment~~ expenses
26 by category of expenditures for the association; and

1 "d. The projected monthly common expense assessment
2 for each type of unit;

3 "(6) Any services not reflected in the budget that
4 the declarant provides, or expenses that he or she pays, and
5 that he or she expects may become at any subsequent time a
6 common expense of the association and the projected common
7 expense assessment attributable to each of those services or
8 expenses for the association and for each type of unit;

9 "(7) Any initial or special fee due from the
10 purchaser at closing together with a description of the
11 purpose and method of calculating the fee;

12 "(8) A reference to, and a brief description of, any
13 liens, known defects, or encumbrances on or affecting the
14 title to the condominium;

15 "(9) A description of any financing offered or
16 arranged by the declarant and if the contract of sale offered
17 to the purchaser does not contain a provision conditioning
18 purchaser's obligation to perform the contract on obtaining
19 financing, a statement that the purchaser will forfeit any
20 deposit he or she has paid if the purchaser requires such
21 financing but does not qualify for such financing as is
22 offered or arranged by declarant;

23 "(10) The terms and significant limitations of any
24 warranties provided by the declarant, including statutory
25 warranties provided in this chapter and limitations on the
26 enforcement thereof or on damages;

27 "(11) A statement that:

1 "a. Within seven days after receipt of an offering
2 statement a purchaser, before conveyance, may cancel any
3 contract for purchase of a unit from a declarant~~7~~;

4 "b. If a declarant fails to provide an offering
5 statement to a purchaser before conveying a unit, that
6 purchaser may rescind the conveyance within seven days after
7 first receiving the offering statement~~7~~; and

8 "c. If a purchaser receives the ~~public~~ offering
9 statement more than seven days before signing a contract, he
10 or she cannot cancel the contract;

11 "(12) A statement of any unsatisfied judgments or
12 pending ~~suits~~ lawsuits against the association; and the status
13 of any pending ~~suits~~ lawsuits material to the condominium of
14 which a declarant has actual knowledge;

15 "(13) A statement that any deposit made in
16 connection with the purchase of a unit will be held in an
17 escrow account until closing and will be returned to the
18 purchaser if the purchaser cancels the contract pursuant to
19 Section 35-8A-408, together with the name and address of the
20 escrow agent;

21 "(14) Any restraints on sale or lease of any units
22 in the condominium and any restrictions:

23 "a. On use, occupancy or alienation of the units,
24 and

25 "b. On the amount for which a unit may be sold or on
26 the amount that may be received by a unit owner on sale,

1 condemnation, casualty loss to the unit or to the condominium
2 or on the termination of the condominium;

3 "(15) A brief description of the insurance coverage
4 provided for the benefit of unit owners;

5 "(16) Any current or expected fees or charges to be
6 paid by unit owners for the use of the common elements and
7 other facilities related to the condominium;

8 "(17) The extent to which financial arrangements
9 have been provided for completion of all improvements that the
10 declarant is obligated to build pursuant to Section 35-8A-416
11 (Declarant's obligation to complete and restore);

12 "(18) A brief narrative description of any zoning
13 affecting the condominium; and

14 "(19) The applicable amendment requirements as
15 provided in the declaration or as provided by Alabama law.

16 "(b) If a condominium composed of not more than 12
17 units is not subject to any development rights, and no power
18 is reserved to a declarant to make the condominium part of a
19 larger condominium, group of condominiums, or other real
20 estate, an offering statement may but need not include the
21 information otherwise required by subdivisions (9), (10),
22 (15), (16), (17), and (18) of subsection (a).

23 "(c) A declarant shall promptly amend the offering
24 statement to report any material change in the information
25 required by this section.

26 "§35-8A-404.

1 "If the declaration provides that a condominium is
2 subject to any development rights, the offering statement must
3 disclose, in addition to the information required by Section
4 35-8A-403:

5 "(1) The maximum number of units, ~~and the maximum~~
6 ~~number of units per acre,~~ that may be created;

7 "(2) A statement of how many or what percentage of
8 the units which may be created will be restricted exclusively
9 to residential use, or a statement that no representations are
10 made regarding use restrictions;

11 "(3) If any of the units that may be built within
12 real estate subject to development rights are not to be
13 restricted exclusively to residential use, a statement, ~~with~~
14 ~~respect to each portion of that real estate, of the~~ as to
15 whether there is a maximum percentage of the ~~real estate~~
16 ~~areas, and the maximum percentage of the floor areas of all~~
17 ~~units that may be created therein, that are not restricted~~
18 ~~exclusively to residential use~~ units which may be used for
19 nonresidential purposes;

20 "(4) A statement of any development rights reserved
21 by a declarant and of any conditions relating to or
22 limitations upon the exercise of development rights;

23 "(5) A statement of the maximum extent to which ~~each~~
24 ~~unit's~~ the allocated interests of each unit may be changed by
25 the exercise of any development right described in subdivision
26 ~~(3)~~ (4);

1 "(6) A statement of the extent to which any
2 buildings or other improvements that may be erected pursuant
3 to any development right in any part of the condominium will
4 be compatible with existing buildings and improvements in the
5 condominium in terms of architectural style, quality of
6 construction, and size, or a statement that no assurances are
7 made in those regards;

8 "(7) General descriptions of all other improvements
9 that may be made and limited common elements that may be
10 created within any part of the condominium pursuant to any
11 development right reserved by the declarant, or a statement
12 that no assurances are made in that regard;

13 "(8) A statement of any limitations as to the
14 locations of any building or other improvement that may be
15 made within any part of the condominium property that may be
16 added to the condominium pursuant to any development right
17 reserved by the declarant, or a statement that no assurances
18 are made in that regard;

19 "(9) A statement that any common elements or limited
20 common elements created pursuant to any development right
21 reserved by the declarant will be of the same general types
22 and sizes as the common elements and the limited common
23 elements within other parts of the condominium, or a statement
24 of the types and sizes planned, or a statement that no
25 assurances are made in that regard;

26 "(10) A statement that the proportion of limited
27 common elements to units created pursuant to any development

1 right reserved by the declarant will be approximately equal to
2 the proportion existing within other parts of the condominium,
3 or a statement of any other assurances in that regard, or a
4 statement that no assurances are made in that regard;

5 "(11) A statement that all restrictions in the
6 declaration affecting use, occupancy, and sale or lease of
7 units will apply to any units created pursuant to any
8 development right reserved by the declarant, or a statement of
9 any differentiations that may be made as to those units, or a
10 statement that no assurances are made in that regard; and

11 "(12) A statement of the extent to which any
12 assurances made pursuant to this section apply or do not apply
13 in the event that any development right is not exercised by
14 the declarant.

15 "§35-8A-406.

16 "The offering statement of a condominium containing
17 any conversion building containing units that may be occupied
18 for residential use must contain, in addition to the
19 information required by ~~Section 35-8A-402~~ Section 35-8A-403:

20 "(1) A statement by the declarant, to the best of
21 declarant's knowledge, of the approximate age of structural
22 components and mechanical and electrical installations which
23 are material to the use and enjoyment of the buildings or an
24 affirmative statement in bold face print that no
25 representations are made in that regard and;

1 "(2) A list of any outstanding notices of uncured
2 violations of building code or other municipal regulations,
3 together with the estimated cost of curing those violations.

4 "§35-8A-407.

5 "If an interest in a condominium is currently
6 registered with the ~~securities and exchange commission~~
7 Securities and Exchange Commission of the United States or
8 registered pursuant to the Interstate Land Sales Full
9 Disclosure Act, a declarant satisfies all requirements
10 relating to the preparation and delivery of an offering
11 statement of this chapter if he or she delivers to the
12 purchaser a copy of the offering statement filed with the
13 ~~securities and exchange commission~~ Securities and Exchange
14 Commission or a copy of the property report approved in
15 accordance with the Interstate Land Sales Full Disclosure Act
16 as a part of the registration process.

17 "§35-8A-408.

18 "(a) A person required to deliver ~~an offering~~
19 ~~statement~~ the required documents or report pursuant to Section
20 35-8A-402(c) or 35-8A-407 shall provide a purchaser of a unit
21 with a copy of the offering statement and all amendments
22 thereto ~~before conveyance of that unit, and~~ not later than the
23 date of any contract of sale. Unless a purchaser is given the
24 ~~offering statement~~ required documents more than seven days
25 before execution of a contract for the purchase of a unit, the
26 purchaser may cancel the contract, ~~or rescind the conveyance~~
27 ~~if a conveyance has already occurred,~~ within seven days after

1 first receiving the ~~offering statement~~ required documents or
2 report.

3 "(b) If a purchaser elects to cancel a contract or
4 conveyance pursuant to subsection (a), he or she may do so by
5 hand-delivering notice thereof to the offeror or by mailing
6 notice thereof by prepaid United States mail to the offeror or
7 to his or her agent for service of process. Cancellation is
8 without penalty, and all payments made by the purchaser before
9 cancellation shall be refunded promptly.

10 "(c) If a person required to deliver an offering
11 statement or report pursuant to Section 35-8A-402(c) or
12 35-8A-407 fails to provide a purchaser to whom a unit is
13 conveyed with ~~that offering statement and all amendments~~
14 ~~thereto as~~ the documents required by subsection (a), the
15 purchaser, at the purchaser's option and in lieu of any rights
16 to damages or other relief, is entitled to receive from that
17 person an amount equal to five percent of the sales price of
18 the unit ~~at anytime prior to the expiration of six months from~~
19 if the purchaser provides notice of the election to that
20 person in the same manner as described in subsection (b)
21 within six months of the date of conveyance of the unit, ~~plus~~
22 ~~five percent of the share, proportionate to his common expense~~
23 ~~liability, of any indebtedness of the association secured by~~
24 ~~security interests encumbering the condominium.~~

25 "§35-8A-409.

26 "(a) Except in the case of a sale where delivery of
27 an offering statement is required, or unless exempt under

1 Section 35-8A-401(b), a unit owner upon written request by ~~the~~
2 ~~purchaser~~ a purchaser of a unit previously disposed of, which
3 written request must be made within 14 days of the date the
4 purchaser signs the contract with a purchaser, shall furnish
5 to a purchaser before the conveyance and in any event within
6 15 days of receipt of the written request, a copy of the
7 declaration, ~~other than the plats and plans,~~ the bylaws, the
8 rules ~~or,~~ and the regulations of the association, and a
9 certificate containing:

10 "(1) A statement setting forth the amount of the
11 ~~monthly~~ periodic common expense assessment ~~and;~~

12 "(2) A statement setting forth the amount of any
13 unpaid common expense or special assessment currently due and
14 payable from the selling unit owner assessments against the
15 unit either past due or then due owing;

16 "~~(2)~~ A statement of any other fees payable by unit
17 owners;

18 "(3) A statement of any other assessments or fees
19 assessed against the unit or the unit owner either past due or
20 then due and owing;

21 "~~(3)~~ (4) The most recent regularly prepared balance
22 sheet, and income and expense statement, if any, or any other
23 reports regularly prepared showing cash flow of the
24 association;

25 "~~(4)~~ (5) The current operating budget of the
26 association;

1 "~~(5)~~ (6) A statement of any unsatisfied judgments
2 against the association and any pending suit in which the
3 association is a party;

4 "~~(6)~~ (7) A statement describing any insurance
5 coverage provided for the benefit of unit owners;

6 "~~(7)~~ (8) A statement of the remaining term of any
7 ~~lease hold~~ leasehold estate affecting the condominium and the
8 provisions governing any extension or renewal thereof; and

9 "~~(8)~~ (9) A statement of any restrictions in the
10 declaration affecting the amount that may be received by a
11 unit owner upon sale, condemnation, casualty loss to the unit
12 or condominium or on termination of the condominium.

13 "(b) The association, within 10 days after a request
14 by a unit owner, shall furnish a certificate containing the
15 above listed information necessary to enable the unit owner to
16 comply with this section. A unit owner providing a certificate
17 pursuant to subsection (a) is not liable to the purchaser for
18 any erroneous information provided by the association and
19 included in the certificate.

20 "(c) A purchaser who receives a copy of the
21 certificate prepared by the association is not liable after
22 closing for any unpaid ~~assessment~~ assessments or ~~fee~~ fees
23 greater than the amount set forth in the certificate prepared
24 by the association. ~~A~~ The unit owner is not liable to a
25 purchaser for the failure or delay of the association to
26 provide the certificate in ~~a timely manner,~~ but accordance
27 with the time set forth in subsection (b). If the purchaser

1 timely requested the information in accordance with subsection
2 (a), the purchase contract ~~is~~ remains voidable by the
3 purchaser until the ~~certificate~~ requested information has been
4 provided and for five days thereafter or until conveyance,
5 whichever first occurs.

6 "§35-8A-411.

7 "(a) In the case of a sale of a unit where delivery
8 of an offering statement is required pursuant to Section
9 35-8A-402(c) or a disclosure is made pursuant to Section
10 35-8A-407, a seller shall ~~before conveying a unit,~~ (i) record
11 or furnish to the purchaser releases of all liens or an
12 agreement to release any liens that encumber that unit and its
13 common element interest, except liens on real estate that a
14 declarant has the right to withdraw from the condominium, that
15 the purchaser does not expressly agree in a written contract
16 of sale which specifically identifies such lien and its amount
17 to take subject to or assume ~~and that encumber a condominium,~~
18 ~~that unit and its common element interest,~~ or (ii), or provide
19 a surety bond or substitute collateral for or insurance
20 against the lien in the manner provided for liens on real
21 estate in Section 35-11-233(b).

22 "(b) ~~Before~~ In conveying real estate to the
23 association the declarant shall have that real estate released
24 from: (i) all liens the foreclosure of which would deprive
25 unit owners of any right of access to or easement of support
26 of their units, and (ii) all other liens on that real estate

1 unless the offering statement describes certain real estate
2 which may be conveyed subject to liens in specified amounts.

3 "§35-8A-412.

4 "(a) A declarant of a condominium containing
5 conversion buildings, and any person in the business of
6 selling real estate for his or her own account who intends to
7 offer units in such a condominium shall give each of the
8 residential tenants and any residential subtenant in
9 possession of a portion of a conversion building notice of the
10 conversion no later than 60 days before the tenants and any
11 subtenant in possession are required to vacate. The notice
12 must set forth generally the rights of tenants and subtenants
13 under this section and shall be hand-delivered to the unit or
14 mailed by prepaid United States mail to the tenant and
15 subtenant at the address of the unit or any other mailing
16 address provided by a tenant. No tenant or subtenant may be
17 required to vacate upon less than 60 days' notice, except by
18 reason of nonpayment of rent, waste, or conduct that disturbs
19 other tenants' peaceful enjoyment of the premises, and the
20 terms of the tenancy may not be altered during that period.
21 Failure to give notice as required by this section is a
22 defense to an action for possession.

23 "(b) If a notice of conversion specifies a date by
24 which a unit or proposed unit must be vacated, and otherwise
25 complies with the provisions of ~~Section 35-9-80~~ Chapter 9A,
26 the notice also constitutes a notice to terminate specified by
27 that statute.

1 "(c) Nothing in this section permits termination of
2 a lease by a declarant in violation of the terms of the lease.

3 "§35-8A-413.

4 "(a) Express warranties made by declarant, ~~his~~ an
5 affiliate of the declarant, ~~and or~~ any person in the business
6 of selling real estate for his or her own account, to a
7 purchaser of a unit, if relied upon by the purchaser, are
8 created as follows:

9 "(1) Any affirmation of material fact or material
10 promise which relates to the unit, its use, or rights
11 appurtenant thereto, improvements to the condominium that
12 would directly benefit the unit, or the right to use or have
13 the benefit of facilities not located in the condominium,
14 creates an express ~~warrant~~ warranty that the unit and related
15 rights and uses will conform to the affirmation or promise;

16 "(2) Any model or description of the physical
17 characteristics of the condominium, including plans and
18 specifications of or for improvements, creates an express
19 warranty that the condominium will substantially conform to
20 the model or description;

21 "(3) Any description of the quantity or extent of
22 the real estate comprising the condominium, including plats or
23 surveys, creates an express warranty that the condominium will
24 conform to the description, subject to customary tolerances;
25 and

1 "(4) A provision statement that a buyer may put a
2 unit only to a specified use is an express warranty that the
3 specified use is lawful.

4 "(b) Neither formal words, such as "warranty" or
5 "guarantee," nor a specific intention to make a warranty, are
6 necessary to create an express warranty of quality, but a
7 statement purporting to be merely an opinion or commendation
8 of the real estate or its value does not create a warranty.

9 "§35-8A-415.

10 "No promotional material may be displayed or
11 delivered to prospective purchasers which describes or
12 portrays an improvement that the declarant is not obligated to
13 build unless the description or portrayal of the improvement
14 that is not in existence and is displayed in the promotional
15 material is conspicuously labeled or identified as, "NEED NOT
16 BE BUILT."

17 "§35-8A-417.

18 "In the case of a sale of a unit where delivery of
19 an offering statement is required or a disclosure is made
20 pursuant to Section 35-8A-407, a contract of sale may be
21 executed, but no interest in that unit may be conveyed, or
22 voted until the declaration is recorded and the unit is
23 substantially completed, as evidenced by a recorded
24 certificate of substantial completion executed by an
25 independent registered architect, or independent registered
26 engineer, or by issuance of a certificate of occupancy
27 authorized by law."

1 Section 2. This act shall become effective on
2 January 1, 2018.