

1 HB137
2 159774-4
3 By Representatives McCutcheon, Ball and Collins
4 RFD: Commerce and Small Business
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

1 recover assessed charges or to obtain injunctive or other
2 relief for violations; to provide for liens on a lot for
3 unpaid assessments; and to provide for judgments enforcing
4 liens and releases for satisfaction of liens.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

10 (1) ASSOCIATION. A homeowners' association.

11 (2) BOARD OF DIRECTORS. The executive body of a
12 homeowners' association, or a committee which is exercising
13 the power of the executive body by resolution or bylaw.

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

19 (4) DECLARANT. The person or entity signing the
20 declaration and its successors or assigns who may submit
21 property to a declaration.

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

26 a. Imposes on the association maintenance or
27 operational responsibilities for the common area.

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

6 "Declaration" includes any amendment or supplement
7 to the instruments described in this definition. "Declaration"
8 does not include a declaration of a condominium, real estate
9 cooperative, time-share project, or campground.

10 (6) DEVELOPMENT. Real property located within this
11 state subject to a declaration that contains both lots,
12 primarily designed for residential use or are occupied for
13 recreational purposes, and common areas with respect to which
14 any person, by virtue of ownership of a lot, is a member of an
15 association and is obligated to pay assessments provided for
16 in a declaration.

17 (7) HOMEOWNERS' ASSOCIATION. An incorporated or
18 unincorporated entity upon which responsibilities are imposed
19 and to which authority is granted in a declaration.

20 (8) LOT. Any plot or parcel of land designated for
21 separate ownership or occupancy shown on a recorded
22 subdivision plat for a development or the boundaries of which
23 are described in the declaration or in a recorded instrument
24 referred to or expressly contemplated by the declaration,
25 other than a common area.

26 Section 3. (a) This act applies to all developments
27 subject to a declaration, as defined by this act.

1 (b) This act does not apply to either of the
2 following:

3 (1) A community that is composed of property
4 primarily intended for commercial, industrial, or other
5 nonresidential use.

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

8 Section 4. (a) Within 60 days of the initial
9 selection of the board of directors of the association and
10 continuing thereafter, the declarant shall provide to the
11 board of directors or its designated agent all of the
12 following:

13 (1) All association books and records held by or
14 controlled by the declarant, including without limitation,
15 minute books and rules, including all amendments, which may
16 have been adopted.

17 (2) An accurate and complete statement of receipts
18 and expenditures from the date of the recording of the
19 association documents to the end of the regular accounting
20 period immediately succeeding the first election of the board
21 of directors by the home owners, not to exceed 60 days after
22 the date of the election

23 (3) A separate accounting of any dues paid to the
24 association.

25 (4) The number of lots subject to the declaration.

26 (5) The number of lots that may be subject to the
27 declaration upon completion of development.

1 (6) A copy of the latest available approved plans
2 and specifications for all improvements in the project or
3 as-built plans if available.

4 (7) All association insurance policies which are
5 currently in force.

6 (8) Written unexpired warranties of the contractors,
7 subcontractors, suppliers, and manufacturers, if any, relative
8 to all common area improvements.

9 (9) Any contracts in which the association is a
10 contracting party.

11 (10) A list of manufacturers of paints, roofing
12 materials, and other similar materials if specified for use on
13 the association property.

14 (11) A list of development costs relating to a
15 common area under the administration of the homeowners'
16 association.

17 (12) The number of members of the board of directors
18 and number of directors appointed by the declarant together
19 with names and contact information of members of the board of
20 directors.

21 (b) If the declarant fails to provide the required
22 documents and information to the board of directors as
23 required under subsection (a), the board may make a written
24 demand, mailed by registered or certified mail, for the
25 declarant to comply with subsection (a). If the declarant
26 fails to provide the documents and information within 10 days
27 from the date of receipt of the written demand, the board may

1 bring an action to compel compliance with subsection (a). If
2 the court finds that any of the required documents or
3 information were not delivered within the required period, the
4 board shall recover its reasonable attorney's fees and costs
5 incurred from and after the date of expiration of the 10-day
6 demand.

7 (c) If the association is managed by a common
8 interest community manager in which the declarant, or its
9 principals, has no pecuniary interest or management role, the
10 common interest community manager shall provide the documents
11 and information required by subdivisions (1), (2), (7), and
12 (9) of subsection (a).

13 Section 5. (a) The association shall keep detailed
14 records of receipts and expenditures affecting the operation
15 and administration of the association. All financial books and
16 records shall be kept in accordance with generally accepted
17 accounting practices.

18 (b)(1) Subject to subsections (c) and (e) and
19 provided that the request is for a proper purpose related to
20 his or her membership in the association, all books and
21 records kept by or on behalf of the association shall be
22 available for examination and copying by a member in good
23 standing or his or her authorized agent.

24 (2) The right of examination shall exist without
25 reference to the duration of membership and may be exercised
26 only during reasonable business hours or at a mutually
27 convenient time and location and upon five days' written

1 notice reasonably identifying the purpose for the request and
2 the specific books and records of the association requested.

3 (c) Except as provided in subsection (e), books and
4 records kept by or on behalf of an association may be withheld
5 from inspection and copying to the extent that they concern
6 any of the following:

7 (1) Personnel matters relating to specific,
8 identified persons or a person's medical records.

9 (2) Contracts, leases, and other commercial
10 transactions to purchase or provide goods or services,
11 currently in or under negotiation.

12 (3) Pending or probable litigation. For the purposes
13 of this subdivision, "probable litigation" means those
14 instances where there has been a specific threat of litigation
15 from a party or the legal counsel of a party.

16 (4) Matters involving state or local judicial,
17 administrative, or other formal proceedings for enforcement of
18 the association documents or rules and regulations
19 promulgated.

20 (5) Communications with legal counsel that relate to
21 subdivisions (1) through (4) or that are protected by the
22 attorney-client privilege or the attorney work product
23 doctrine.

24 (6) Disclosure of information in violation of law.

25 (7) Meeting minutes or other confidential records of
26 an executive session of the board of directors.

1 (8) Documentation, correspondence, or management or
2 board reports compiled for or on behalf of the association or
3 the board by its agents or committees for consideration by the
4 board in executive session.

5 (9) Individual lot owner or member files, other than
6 those of the requesting lot owner, including any individual
7 lot owner's or member's files kept by or on behalf of the
8 association.

9 (d) Except as provided in subsection (e), prior to
10 providing copies of any books and records to a member in good
11 standing under this section, the association may impose and
12 collect a charge, reflecting the reasonable costs of materials
13 and labor, not to exceed the actual costs of the production.
14 Charges may be imposed only in accordance with a cost schedule
15 adopted by the board of directors. The cost schedule shall
16 satisfy all of the following:

17 (1) Specify the charges for materials and labor.

18 (2) Apply equally to all members in good standing.

19 (3) Be provided to a requesting member at the time
20 the request is made.

21 (e) Notwithstanding subsections (c) and (d), all
22 books and records of the association, including individual
23 salary information for all employees and payments to
24 independent contractors, shall be available for examination
25 and copying upon request by a member of the board of directors
26 in the discharge of his or her duties as a director.

1 (f) (1) Meetings of the association shall be held in
2 accordance with the bylaws at least once each year after the
3 formation of the association. The bylaws shall specify an
4 officer or his or her agent who, at least 14 days in advance
5 of any annual or regularly scheduled meeting, and at least
6 seven days in advance of any other meeting, shall send to each
7 member notice of the time, place, and purposes of the meeting.
8 In the event of cancellation of any annual meeting of the
9 association at which directors are elected, the seven-day
10 notice of any subsequent meeting scheduled to elect the
11 directors shall include a statement that the meeting is
12 scheduled for the purpose of the election of directors.

13 (2) Notice shall be sent by United States mail to
14 all members at the address of their respective lots unless the
15 member has provided to an officer or his or her agent an
16 address other than the address of the member's lot.
17 Alternatively, notice may be hand delivered by the officer or
18 his or her agent, provided the officer or agent certifies in
19 writing that notice was delivered to the member. Except as
20 provided in subdivision (7) of subsection (c), draft minutes
21 of the board of directors shall be open for inspection and
22 copying within 60 days from the conclusion of the meeting to
23 which the minutes pertain or when the minutes are distributed
24 to board members as part of an agenda package for the next
25 meeting of the board of directors, whichever occurs first.

26 Section 6. (a) All meetings of the board of
27 directors, including any subcommittee or other committee

1 thereof, shall be open to all members of record. The board of
2 directors may not use work sessions or other informal
3 gatherings of the board of directors to circumvent the open
4 meeting requirements of this section. Minutes of the meetings
5 of the board of directors shall be recorded and shall be
6 available as provided in subsection (b) of Section 5.

7 (b) (1) Notice of the time, date, and place of each
8 meeting of the board of directors or of any subcommittee or
9 other committee thereof shall be published where it is
10 reasonably calculated to be available to a majority of the lot
11 owners.

12 (2) A lot owner may request to be notified on a
13 continual basis of any meetings. The request shall be made at
14 least once a year in writing. Notice of the time, date, and
15 place shall be sent to any lot owner requesting notice as
16 follows:

17 a. By first-class mail or e-mail for meetings of the
18 board of directors.

19 b. By e-mail for meetings of any subcommittee or
20 other committee of the board of directors.

21 (3) Reasonable notice of special or emergency
22 meetings shall be given contemporaneously with the notice
23 provided members of the association's board of directors or
24 any subcommittee or other committee thereof conducting the
25 meeting.

26 (4) Unless otherwise exempt as relating to an
27 executive session pursuant to subsection (c), at least one

1 copy of all agenda packets and materials furnished to members
2 of an association's board of directors or subcommittee or
3 other committee thereof for a meeting shall be made available
4 for inspection by the membership of the association at the
5 same time the documents are furnished to the members of the
6 board of directors or any subcommittee or committee thereof.

7 (5) Any member may record any portion of an open
8 meeting. The board of directors or subcommittee or other
9 committee thereof conducting the meeting may adopt rules
10 relating to the following:

11 a. Placement and use of equipment necessary for
12 recording a meeting to prevent interference with the
13 proceedings.

14 b. Notice by a member recording the meeting that it
15 is being recorded.

16 (6) If a meeting is conducted by telephone
17 conference or video conference or similar electronic means, at
18 least two members of the board of directors shall be
19 physically present at the meeting place included in the
20 notice. The audio equipment shall be sufficient for any member
21 in attendance to hear what is said by any member of the board
22 of directors participating in the meeting who is not
23 physically present.

24 (7) Except for the election of officers, voting by
25 secret or written ballot in an open meeting shall be a
26 violation of this act.

1 (c) (1) Upon the affirmative vote in an open meeting
2 to assemble in executive session, the board of directors or
3 any subcommittee or other committee thereof may convene to
4 consider any of the following:

5 a. Personnel matters.

6 b. Consultation with legal counsel.

7 c. Contracts, pending or probable litigation, and
8 matters involving violations of the declaration or rules
9 adopted for which a member, his or her family members,
10 tenants, guests, or other invitees are responsible.

11 d. Personal liability of members to the association.

12 (2) The motion to convene in executive session shall
13 state specifically the purpose for the executive session.

14 Reference to the motion and the stated purpose for the
15 executive session shall be included in the minutes. The board
16 of directors shall restrict the consideration of matters
17 during the portions of meetings to only those purposes
18 specifically exempted and stated in the motion. The
19 requirements of this section shall not require the disclosure
20 of information in violation of law.

21 (d) Subject to reasonable rules adopted by the board
22 of directors, the board of directors shall provide a
23 designated period of time during a meeting to allow members an
24 opportunity to comment on any matter relating to the
25 association. During a meeting at which the agenda is limited
26 to specific topics or at a special meeting, the board of

1 directors may limit the comments of members to the topics
2 listed on the meeting agenda.

3 Section 7. The board of directors shall establish a
4 reasonable, effective, and free method, appropriate to the
5 size and nature of the association, for lot owners to
6 communicate among themselves and with the board of directors
7 regarding any matter concerning the association.

8 Section 8. ~~(a) The board of directors shall annually~~
9 ~~register with the Alabama Real Estate Commission in a form and~~
10 ~~at such time as prescribed by rules adopted by the commission.~~

11 ~~(b) The Alabama Real Estate Commission shall~~
12 ~~maintain a list of homeowners' associations registered in this~~
13 ~~state and publish the list on its public website.~~

14 ~~(c)(1) The Alabama Real Estate Commission may~~
15 ~~establish a fee for the registration of a homeowners'~~
16 ~~association in an amount to be determined by the commission.~~

17 ~~(2) All registration fees collected shall be~~
18 ~~deposited in the State Treasury to the credit of the Real~~
19 ~~Estate Commission Revenue Fund and shall be disbursed by the~~
20 ~~state Comptroller on order of the executive director at the~~
21 ~~direction of the commission.~~

22 ~~(d) A registration with the commission shall be~~
23 ~~valid for one year. If a board of directors fails to register~~
24 ~~in accordance with this section and rules adopted by the~~
25 ~~commission, the board may not impose or enforce a lien for~~
26 ~~assessments under Section 12 or pursue an action under Section~~
27 ~~10 or 11. A lien for assessments previously recorded during a~~

1 ~~period in which the association was validly registered is not~~
2 ~~extinguished by a lapse in the association's registration, but~~
3 ~~a pending enforcement proceeding related to the lien is~~
4 ~~suspended, and an applicable statute of limitation tolled,~~
5 ~~until the association is validly registered pursuant to this~~
6 ~~section. An association's registration in compliance with this~~
7 ~~section revives a previously suspended right without penalty~~
8 ~~to the association.~~

9 ~~(e) A registration under this section is valid upon~~
10 ~~the commission's acceptance of the registration form and~~
11 ~~payment of applicable fees.~~

12 ~~(f) Homeowners' associations formed prior to January~~
13 ~~1, 2015, shall register under this section beginning on~~
14 ~~January 1, 2015.~~

15 ~~Section 9. (a) The Alabama Real Estate Commission~~
16 ~~may coordinate and assist in the preparation of educational~~
17 ~~and reference materials regarding the rights and duties of lot~~
18 ~~owners and boards of directors under this act, as well as any~~
19 ~~additional information the commission deems appropriate.~~

20 ~~(b) The commission shall track inquiries and~~
21 ~~complaints relating to homeowners' associations and report~~
22 ~~annually to the Governor and the Legislature regarding the~~
23 ~~number and types of inquiries and complaints received.~~

24 ~~(c) The commission shall develop an alternative~~
25 ~~dispute resolution program to address disputes between~~
26 ~~homeowners' associations and lot owners. The commission may~~
27 ~~charge a fee for participation in the alternative dispute~~

1 ~~resolution program, as determined by the commission. Any fee~~
2 ~~collected shall be deposited in the State Treasury to the~~
3 ~~credit of the Real Estate Commission Revenue Fund and shall be~~
4 ~~disbursed by the state Comptroller on order of the executive~~
5 ~~director at the direction of the commission.~~

6 Section 10. (a) Except as otherwise provided in this
7 act, the board of directors shall have the power to adopt and
8 enforce rules regarding use of the common areas. Rules may be
9 adopted by resolution and shall be reasonably published or
10 distributed throughout the development. A majority of votes
11 cast, in person or by proxy, at a meeting convened in
12 accordance with the bylaws and called for that purpose, shall
13 repeal or amend any rule adopted by the board of directors.
14 Rules may be enforced by any method normally available to the
15 owner of private property in this state, including, but not
16 limited to, application for injunctive relief or damages,
17 during which the court may award to the association court
18 costs and reasonable attorney's fees.

19 (b) (1) The board of directors shall have the power,
20 to the extent the declaration or rules adopted provide, to do
21 the following:

22 a. To suspend a member's right to use facilities or
23 services, including utility services, provided directly
24 through the association for nonpayment of assessments which
25 are more than 60 days past due, to the extent that access to
26 the lot through the common areas is not precluded and provided

1 that the suspension will not endanger the health, safety, or
2 property of any owner, tenant, or occupant.

3 b. Assess penalties against any member for any
4 violation of the declaration or rules for which the member or
5 his or her family members, tenants, guests, or other invitees
6 are responsible.

7 (2) Before any penalty or suspension may be imposed,
8 a member shall be given an opportunity to be heard and to be
9 represented by counsel before the board of directors or other
10 tribunal specified in the documents. Notice of a hearing,
11 including the penalties or other sanctions that may be
12 imposed, shall be hand delivered or mailed by registered or
13 certified mail, return receipt requested, to the member at the
14 address of record with the association at least 14 days prior
15 to the hearing. Within seven days of the hearing, the hearing
16 result shall be hand delivered or mailed by registered or
17 certified mail, return receipt requested, to the member at the
18 address of record with the association.

19 (3) The amount of any penalty assessed may not be
20 limited to the expense or damage to the association caused by
21 the violation and shall be set by the association, not to
22 exceed five thousand dollars (\$5,000) for any one offense or
23 an offense of a continuing nature. The penalty assessed shall
24 be treated as an assessment against the member's lot for the
25 purposes of Section ~~12~~ 10.

26 (4) If a suit is filed pursuant to this section or
27 Section ~~11~~ 9, no additional penalty shall accrue after the

1 filing of the suit. If the court rules in favor of the
2 association, it shall be entitled to collect the penalty from
3 the date the action was filed as well as all other penalties
4 assessed pursuant to this section against the lot owner prior
5 to the action. In addition, if the court finds that the
6 violation remains uncorrected, the court may order the lot
7 owner to abate or remedy the violation.

8 Section 11. (a) Every lot owner and all those
9 entitled to occupy a lot shall comply with this act and the
10 declaration. Any lack of compliance shall be grounds for an
11 action or suit by the association, its board of directors or
12 managing agent, or one or more aggrieved lot owners, to
13 recover sums due, for damages or injunctive relief, or for any
14 other remedy available at law or in equity. Except as provided
15 in subsection (b), the prevailing party shall be entitled to
16 recover reasonable attorney's fees, court costs, and interest
17 on the judgment.

18 (b) In actions against a lot owner for nonpayment of
19 assessments in which the lot owner has failed to pay
20 assessments levied by the association on more than one lot or
21 the lot owner has had legal action taken against him or her
22 for nonpayment of any prior assessment, the prevailing party
23 shall be awarded reasonable attorney's fees, costs expended in
24 the matter, and interest on the judgment as provided in
25 subsection (a).

26 Section 12. (a) (1) The association shall have a lien
27 on every lot for unpaid assessments levied against that lot in

1 accordance with this act and the declaration. The lien shall
2 be prior to all other subsequent liens and encumbrances,
3 except any of the following:

4 a. Real estate tax liens on that lot.

5 b. Liens and encumbrances recorded prior to the
6 recordation of the declaration.

7 c. Sums secured by any mortgage, deed of trust,
8 Uniform Commercial Code filing, or similar instrument recorded
9 prior to the perfection of the lien.

10 (2) The lien is prior to mortgages and deeds of
11 trust for unpaid assessments which would have become due in
12 the absence of acceleration during the six months immediately
13 preceding institution of an action to enforce the lien.

14 (3) This subsection shall not affect the priority of
15 mechanics' liens.

16 (b) (1) In order to perfect a lien under this
17 section, the association shall file a notice of lien, verified
18 by the oath of the principal officer of the association, in
19 the office of the judge of probate in the county in which the
20 development is located. The notice of lien shall be filed
21 before the expiration of 12 months from the time the first
22 assessment became due and payable and shall contain all of the
23 following information:

24 a. The name of the development.

25 b. A description of the lot.

26 c. The names of the owners of the lot.

1 d. The amount of any unpaid assessments currently
2 due or past due relative to the lot together with the date
3 when each were due.

4 e. The date of issuance of the notice of lien.

5 f. The name of the association and the name and
6 current address of the person to contact to arrange for
7 payment or release of the lien.

8 g. A statement that the association is obtaining a
9 lien in accordance with the Alabama Homeowners' Association
10 Act.

11 (2) The office of the judge of probate in which the
12 notice of lien is filed shall record and index the lien, in
13 the names of the persons identified therein as well as in the
14 name of the association. The cost of recording and releasing
15 the lien shall be taxed against the person found liable in any
16 judgment or decree enforcing the lien.

17 (c) Prior to filing the notice of lien, the
18 association shall send a written notice by certified mail to
19 the property owner at the property owner's last known address,
20 informing the property owner that a notice of lien will be
21 filed in the office of the judge of probate. The notice shall
22 be sent at least 30 days before the actual filing date of the
23 notice of lien.

24 (d) (1) An association may bring suit to enforce a
25 lien in the circuit court in the county where the development
26 is located by filing a verified complaint and sworn affidavit
27 that the notice of lien has been recorded in compliance with

1 this section. The summons and complaint, and all other
2 particulars of suit, shall be made in accordance with the
3 Alabama Rules of Civil Procedure. All liens claimed under this
4 section shall be foreclosed as provided for by law.

5 (2) A judgment enforcing a lien under this section
6 may include reimbursement for costs and reasonable attorney's
7 fees of the prevailing party. If the association prevails, it
8 may also recover interest on the amount secured by the lien.

9 (3) Upon full payment of all sums secured by the
10 lien, the party making payment shall be entitled to a
11 recordable satisfaction of lien.

12 (4) An action to recover a money judgment for unpaid
13 assessments may be maintained without waiving the lien
14 securing the same.

15 Section 13. ~~Except as provided in Section 8, this~~
16 This act does not apply to a homeowners' association created
17 prior to the effective date of this act.

18 Section 14. This act shall become effective on
19 January 1, 2015, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 14-JAN-14

Read for the second time and placed
on the calendar with 1 substitute
and..... 05-MAR-14

Read for the third time and passed
as amended..... 20-MAR-14

Yeas 95, Nays 0, Abstains 0

Jeff Woodard
Clerk