

1 SB255
2 208815-1
3 By Senator Barfoot
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 23-FEB-21

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8 SYNOPSIS: Under existing law, homeowners' associations
9 created on or after January 1, 2016, are subject to
10 the authority of the Alabama Homeowners'
11 Association Act, but the substantial majority of
12 homeowners' associations created before January 1,
13 2016, are generally unregulated by state law.

14 This bill would apply the Alabama
15 Homeowners' Association Act to all homeowners'
16 associations operating in the state.

17 This bill would require a homeowners'
18 association to conduct periodic audits of its books
19 and records.

20 This bill would require certain notices to
21 be given of a violation and an opportunity to cure
22 a violation prior to a penalty being assessed
23 against a homeowner.

24 This bill would provide certain limitations
25 on the authority of a homeowners' association to
26 foreclose on a lien.

1 This bill would authorize the display of
2 certain noncommercial signs, banners, and flags
3 within a development.

4 This bill would prohibit unreasonable
5 restrictions on the ability of a member of a
6 homeowners' association to market or sell his or
7 her home in a development.

8 This bill would provide general notice
9 requirements for homeowners' association board
10 meetings and rule changes.

11 This bill would also authorize a homeowners'
12 association or a member thereof to file a civil
13 action for a violation of the Alabama Homeowners'
14 Association Act.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 Relating to the Alabama Homeowners' Association Act;
21 to amend Sections 35-20-2, 35-20-3, 35-20-5, 35-20-11,
22 35-20-12, and 35-20-13, Code of Alabama 1975, to require all
23 homeowners' associations to comply with the Alabama
24 Homeowners' Association Act; to provide certain audit
25 requirements; to provide certain notice requirements; to
26 further provide for the authority of a homeowners'
27 association; and to add Sections 30-20-15 to 30-20-22,

1 inclusive, to the Code of Alabama 1975, to authorize the
2 display of certain noncommercial signs, banners, and flags
3 within a development; and to provide authority to bring a
4 civil action for a violation.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. The Legislature finds and declares the
7 following:

8 (1) There are hundreds of homeowners' associations
9 operating in this state to which the Alabama Homeowners'
10 Association Act does not apply.

11 (2) Many of these homeowners' associations, as
12 associations, and their members, as individuals, have
13 experienced problems due to the lack of statutory regulatory
14 provisions.

15 (3) Largely unregulated homeowners' associations
16 wield great power to assess fines and penalties and foreclose
17 liens against members of the association.

18 (4) It is a matter of statewide concern that this
19 body implement statutory changes to provide basic requirements
20 for the operation of homeowners' associations and provide for
21 the protection of their members.

22 Section 2. Sections 35-20-2, 35-20-3, 35-20-5,
23 35-20-11, 35-20-12, and 35-20-13, Code of Alabama 1975, are
24 amended to read as follows:

25 "§35-20-2.

26 "For the purposes of this chapter, the following
27 terms shall have the following meanings:

1 "(1) ASSOCIATION. A homeowners' association.

2 "(2) BOARD OF DIRECTORS. The group of persons vested
3 with the management of the association irrespective of the
4 name by which the group is designated.

5 "(3) COMMON AREA. Property within a development
6 which is owned, leased, or required by the declaration to be
7 maintained or operated by a homeowners' association for the
8 use of its members and designated as common area in the
9 declaration or on a recorded subdivision map or plat.

10 "(4) DECLARANT. The person or entity who submits
11 property to a declaration.

12 "(5) DECLARATION. Any instrument, however
13 denominated, including any amendment, modification,
14 restatement, or supplement, recorded in the office of the
15 judge of probate in the county in which the development or any
16 part thereof is located and which satisfies the following:

17 "a. Imposes on the association maintenance or
18 operational responsibilities for the common areas.

19 "b. Creates the authority in the association to levy
20 an assessment on lots, the owners or occupants of the lots, or
21 other entities to provide for maintenance or services for the
22 benefit of ~~some~~ or all of the lots in the development, the
23 owners or occupants of the lots, or the common area.

24 "c. Is a covenant running with the land enforceable
25 by and against successors and assigns.

26 "(6) DEVELOPMENT. Real property subject to a
27 declaration that contains lots for residential use and common

1 areas in which any owner is a member of an association and the
2 owner's lot is subject to assessments pursuant to a
3 declaration.

4 "(7) DIRECTOR. A duly elected or appointed member of
5 the board of directors of an association.

6 "(8) ~~HOMEOWNER'S~~ HOMEOWNERS' ASSOCIATION. An entity
7 incorporated as a nonprofit corporation pursuant to Chapter 3
8 of Title 10A, and provided for in a declaration.

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

12 "(10) MEMBER. An owner or occupant of a lot in a
13 development subject to a declaration having membership rights
14 as defined in the declaration or other governing documents of
15 the association.

16 "(11) POTENTIAL PURCHASER. A person having a
17 contractual right or option to acquire a lot or a person or
18 entity who intends to execute a mortgage to secure an
19 indebtedness.

20 "§35-20-3.

21 "(a) This chapter applies to all developments
22 subject to a declaration providing for a homeowners'
23 association recorded in the office of the judge of probate in
24 the county in which the development, or any part thereof, is
25 located ~~on or after January 1, 2016, and any association~~
26 ~~formed prior to that time, provided the association, by a~~

1 ~~majority of its members, elects to be governed by this chapter.~~

2 "(b) Beginning January 1, 2022, a homeowners'
3 association may not enforce any bylaw, resolution, or other
4 governing document unless the association is in substantial
5 compliance with this chapter.

6 ~~"(b)(c)~~ This chapter does not apply to any of the
7 following:

8 "(1) A development for commercial, industrial, or
9 other nonresidential use.

10 "(2) Any association that is subject to regulation
11 under Chapters 8 or 8A of this title.

12 "(3) A real estate cooperative, time-share
13 development, or campground.

14 "§35-20-5.

15 ~~"(a) On or after January 1, 2016, a~~ A homeowners'
16 association created pursuant to a declaration shall be
17 organized as a nonprofit corporation pursuant to Chapter 3 of
18 Title 10A, and shall be governed in all respects as a
19 nonprofit corporation.

20 "(b) (1) A homeowners' association, and its members,
21 and directors shall be subject to all of the obligations,
22 duties, and responsibilities of and shall have all of the
23 rights and benefits provided in Chapter 3 of Title 10A.

24 "(2) In addition or supplemental to any other filing
25 required in Chapter 3 of Title 10A, a homeowners' association
26 shall file the following documents with the Secretary of
27 State:

1 "a. Articles of incorporation.

2 "b. Bylaws, resolutions, or other governing
3 documents of the association.

4 "c. The original covenants, conditions, or
5 restrictions adopted by the association.

6 "(3) The Secretary of State shall implement and
7 maintain an electronic database, organized by association
8 name, accessible by the public through the Secretary of
9 State's website, ~~which provides~~ shall provide the capability
10 to search and retrieve the documents listed in subdivision
11 (2). Any documents filed with the Secretary of State shall be
12 filed in accordance with Division 4 of Article 3 of Chapter 4,
13 provided such documents filed with the Secretary of State
14 pursuant to this chapter shall not be deemed to provide notice
15 pursuant to Chapter 4.

16 "(4) The Secretary of State may adopt rules
17 necessary for the implementation of this section, including
18 reasonable fees for the filing of documents.

19 "(c) ~~The organizational~~ Subject to the requirements
20 of this chapter, the governing documents of a homeowners'
21 association shall provide for all of the following:

22 "(1) Methods of efficient communications with the
23 members of the association unless a different method is
24 required by Chapter 3 of Title 10A.

25 "(2) Rules and regulations for the conduct of any
26 meetings of the association.

1 "(3) The compilation, organization, and maintenance
2 of full and complete financial records of the association
3 available to any member at a reasonable time and place upon
4 the payment of reasonable associated costs.

5 "(4) Reasonable rules and regulations for the use,
6 maintenance, repair, replacement, or modification of any
7 common areas, if any, including penalties for violations.

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

10 "(6) Statements regarding the payment of dues and
11 assessments to be provided to any person having an interest,
12 upon the payment of reasonable associated costs.

13 "(7) Preparation and submission of the annual
14 budgets of the association to the members.

15 "(8) Periodic audits of the financial records of the
16 association; provided, an audit shall be conducted not less
17 than every two years.

18 ~~(8)~~ (9) Any other act a nonprofit corporation is
19 required to do under law.

20 "(d) In addition to the requirements set forth in
21 subsection (c), the organizational documents of a homeowners'
22 association may provide for the following:

23 "(1) Indemnification and insurance for the
24 association, and its officers, and directors.

25 "(2) Fidelity bonds for any person or entity having
26 custody or control of any funds of the association.

1 "~~(3) Periodic audits of the financial records of the~~
2 ~~association.~~

3 "~~(4)~~ (3) Power to acquire real and personal property
4 for the benefit of the association and its members.

5 "~~(5)~~ (4) Power to hire and discharge managing agents
6 and other employees, agents, and independent contractors.

7 "§35-20-11.

8 "(a) ~~The~~ Subject to this section, the board of
9 directors, to the extent authorized by the declaration and
10 governing documents, may do the following:

11 "(1) Suspend a member's right to use facilities or
12 services provided directly through the association for
13 nonpayment of assessments under subdivision (2), to the extent
14 that access to the member's lot is not denied.

15 "(2) Assess reasonable penalties against a member
16 for any violation of the declaration or rules adopted by the
17 board of directors after the member is afforded the
18 opportunity to be heard and represented by counsel before the
19 board of directors. Prior to any hearing or assessment of a
20 penalty against a member, the association shall provide
21 written notice of a violation to the homeowner and provide the
22 homeowner a reasonable opportunity to cure the violation.

23 "(b) If a tenant of a member violates the
24 declaration or rules adopted by the board of directors, in
25 addition to exercising any of its powers and rights against
26 the member, the board of directors may do any of the
27 following:

1 "(1) Exercise any of the actions authorized in
2 subdivision (1) of subsection (a) directly against a tenant of
3 a member.

4 "(2) Assess a penalty authorized in subdivision (2)
5 of subsection (a) directly against a tenant after giving
6 written notice to the tenant and member of the violation,
7 providing the tenant and landlord a reasonable opportunity to
8 cure the violation, and providing the tenant and landlord an
9 opportunity to be heard and represented by counsel before the
10 board of directors.

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

15 "(c) The enforcement of the declaration or rules
16 adopted by a board of directors shall be done uniformly and
17 may not be done selectively or in an arbitrary or capricious
18 manner. It is an affirmative defense to an alleged violation
19 of the declaration or rules adopted by the board of directors
20 that similar violations by other members have occurred without
21 penalty or were otherwise allowed to continue.

22 "~~(c)~~(d) The amount of any penalty assessed under
23 this section shall be considered an assessment for purposes of
24 Section 35-20-12.

25 "(e) A member assessed a penalty under this section
26 by a board of directors may appeal the assessment, within 30
27 calendar days after the date of the assessment, to the circuit

1 court of the county where the association is operating for a
2 trial de novo. The trial is subject to the Alabama Rules of
3 Civil Procedure.

4 "§35-20-12.

5 "(a) Except as may be otherwise provided in the
6 declaration or the governing documents of an association, an
7 association shall have, and there is declared, a lien on every
8 lot for unpaid assessments levied against that lot arising on
9 and from the date the assessment is due as fixed and
10 determined by the board of directors at an annual meeting
11 after giving notice as provided in Chapter 3 of Title 10A. The
12 lien may be enforced ~~or foreclosed~~ as provided in the
13 declaration or governing documents or as provided in this
14 section. The lien may only be foreclosed on if the unpaid
15 assessment, including interest, is the lesser of twenty-five
16 thousand dollars (\$25,000) or 10 percent of the value of the
17 property. Written notice of the assessment and lien shall be
18 given to the owner of any lot on which the assessment and lien
19 is claimed by personal delivery or first class United States
20 mail, postage prepaid.

21 "(b) A lien declared by this section shall have
22 priority, except as may be otherwise provided in Chapters 4
23 and 11, over all other subsequent liens and encumbrances
24 except state and county ad valorem taxes, municipal
25 improvement assessments, UCC fixture filings, mortgages, and
26 deeds of trust securing an indebtedness.

1 "(c) The association, within 12 months from the date
2 any assessment becomes due, shall record a statement of lien
3 verified by an officer or director of the association having
4 personal knowledge of the facts in the office of the judge of
5 probate of the county in which a lot subject to the assessment
6 is located, which shall contain all of the following:

7 "(1) A description of the lot on which the lien is
8 claimed.

9 "(2) The name of the association claiming the lien.

10 "(3) The name of the owner or owners of the lot on
11 which the lien is claimed.

12 "(4) The amount of any unpaid assessments together
13 with the date of the assessments.

14 "(5) The amount of any other interests and costs
15 claimed by the association.

16 "(d) At least 30 days prior to recording a statement
17 of lien, the association shall give written notice by
18 certified mail to the owner of the lot or other person
19 obligated for the lien, as shown on the books and records of
20 the association, that the statement will be recorded in the
21 office of the judge of probate.

22 "(e) An association may bring an action in a court
23 having jurisdiction to enforce a lien declared in this section
24 in the county where the lot is located by filing a verified
25 complaint, attaching a copy of the statement of the lien,
26 alleging those facts showing it is entitled to a lien for the

1 claimed unpaid assessment in accordance with the Alabama Rules
2 of Civil Procedure.

3 "(f) The court in which the action is pending may
4 enforce the lien by a sale of the property after the giving of
5 notice. Notice of a sale shall be given in the county where
6 the lot is located. Notice of all sales under this subsection
7 shall be given by publication once a week for three successive
8 weeks in a newspaper published in the county or counties in
9 which the lot is located. If the lot is located in more than
10 one county, publication shall be made in all counties where
11 the lot is located. The notice of sale must give the time,
12 place, and terms of the sale, together with the description of
13 the lot. If no newspaper is published in the county where the
14 lot is located, the notice must be placed in a newspaper
15 published in an adjoining county for three successive weeks.

16 "§35-20-13.

17 "(a) A homeowners' association ~~subject to this~~
18 ~~chapter~~ shall maintain records and information, as required
19 under Section 10A-3-2.32, to be made available to each member
20 or potential purchaser, upon written request, within a
21 reasonable time not to exceed ~~30~~ 10 business days from the
22 date of the request, and upon the payment of reasonable
23 associated costs. Any homeowners' association may provide the
24 records and information in paper or electronic form or direct
25 the member or potential purchaser to the location of any
26 public record containing the records or information.

1 "(b) Upon written request by a member or potential
2 purchaser and upon payment of reasonable costs, the
3 homeowners' association, as specified in subsection (a), shall
4 provide or direct the member or potential purchaser to the
5 location of the public record containing the following:

6 "(1) Documents reflecting the most recent
7 assessments, any pending homeowners' association assessments
8 approved by the board but not yet in effect, or any mandatory
9 dues and charges with the amounts, including dates due and
10 payable.

11 "(2) Common areas owned by the association and those
12 common areas not owned by the association but which HOA dues
13 go to pay.

14 "(3) A copy of the current operating budget and
15 reserve funds, if any, and a statement of financial condition
16 for the last fiscal year.

17 "(4) Documents evidencing any insurance coverage
18 provided for all lot owners by the association, including any
19 fidelity bond.

20 "(5) Documents evidencing any loans against the
21 association and any collateral provided by the association for
22 the loans.

23 "(6) The official name of the association with
24 current contact information of the current officers and agent,
25 if any.

26 "(7) A copy of the current covenants, conditions,
27 and restrictions adopted by the association along with any

1 amendments, modifications, restatement, or supplement and
2 current architectural control regulations.

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

5 "(9) A list of all existing common areas.

6 "(10) The case number or other identifying
7 information of any pending lawsuits, judgments, liens,
8 arbitration, or any other dispute resolution process to which
9 the association is a party and contained in a public record.

10 "(11) Any other books and records required to be
11 maintained under Section 10A-3-2.32."

12 Section 3. Sections 30-20-15, 30-20-16, 30-20-17,
13 30-20-18, 30-20-19, 30-20-21, 30-20-21, and 30-20-22 are added
14 to the Code of Alabama 1975, to read as follow:

15 §30-20-15.

16 (a) A declaration or rule of a homeowners'
17 association may not prohibit the posting or displaying of
18 noncommercial signs, posters, flags, or banners on or in a
19 member's separate interest within a development, except as
20 required for the protection of public health or safety or if
21 the posting or display would violate a local, state, or
22 federal law.

23 (b) For purposes of this section, a noncommercial
24 sign, poster, flag, or banner may be made of paper, cardboard,
25 cloth, plastic, or fabric, and may be posted or displayed from
26 the yard, window, door, balcony, or outside wall of the
27 separate interest, but may not be made of lights, roofing,

1 siding, paving materials, flora, or balloons, or any similar
2 building, landscaping, or decorative component, or include the
3 painting of architectural surfaces.

4 (c) Notwithstanding subsection (a), a homeowners'
5 association may prohibit noncommercial signs and posters that
6 are more than nine square feet in size and noncommercial flags
7 or banners that are more than 15 square feet in size.

8 §30-20-16.

9 (a) Any provision of a declaration or rule of a
10 homeowners' association that arbitrarily or unreasonably
11 restricts a member's ability to market the member's interest
12 within a development is void.

13 (b) A homeowners' association may not adopt,
14 enforce, or otherwise impose a rule that does either of the
15 following:

16 (1) Imposes an assessment or fee in connection with
17 the marketing of a member's interest in an amount that exceeds
18 the association's actual or direct costs.

19 (2) Establishes an exclusive relationship with a
20 real estate broker through which the sale or marketing of
21 interests in the development is required to occur. The
22 limitation set forth in this subdivision does not apply to the
23 sale or marketing of separate interests owned by the
24 association or to the sale or marketing of common areas by the
25 association.

26 (c) For purposes of this section, "market" and
27 "marketing" mean listing, advertising, or obtaining or

1 providing access to show the owner's interest in the
2 development.

3 §30-20-17.

4 (a) (1) The board of directors shall provide general
5 notice of a proposed rule change not less than 30 days before
6 making the rule change. The notice shall include the text of
7 the proposed rule change and a description of the purpose and
8 effect of the rule change. The notice shall be distributed,
9 electronically or otherwise, to each member of the association
10 or shall be posted in a conspicuous place in the common area
11 of the association.

12 (2) The notice required under subdivision (1) is not
13 required if the board of directors determines that an
14 immediate rule change is necessary to address an imminent
15 threat to public health or safety or an imminent risk of
16 substantial economic loss to the association.

17 (b) Proposed rule changes shall be made at a board
18 meeting, after consideration of any comments made by
19 association members.

20 (c) As soon as possible after making a rule change,
21 but not more than 15 days after making the rule change, the
22 board shall deliver notice to members of the association of
23 the rule change. The notice shall include the rule change and
24 a description of the purpose and effect of the rule change.

25 (d) An emergency rule adopted pursuant to
26 subdivision (a) (2) may only be effective for 120 days, unless
27 the rule change provides for a shorter effective period. An

1 emergency rule may not be readopted without the proper notice
2 and comment requirements of subdivision (a)(1) and subsection
3 (b).

4 §30-20-18.

5 (a) The board of directors may not take action on
6 any item of business outside of a board meeting called
7 pursuant to this section.

8 (b) The homeowners' association shall give notice of
9 the time and place of a board meeting at least four calendar
10 days before the meeting.

11 (c) Notice of a board meeting shall be delivered by
12 the association to each member of the association. Delivery
13 may be by electronic means or by any other method authorized
14 by the board.

15 (d) Notice of a board meeting shall include the
16 agenda for the meeting.

17 §30-20-19.

18 (a) Any member may attend a board meeting, except
19 when the board of directors adjourns to, or meets solely in,
20 executive session. If the board of directors meets through a
21 teleconference meeting, any member of the association may
22 attend the teleconference meeting or any portion of that
23 meeting open to members.

24 (b) The board of directors shall permit any member
25 to speak at any meeting of the board of directors, except for
26 meetings of the board of directors held in executive session.

1 A reasonable time limit to speak at the meeting shall be
2 determined by the board by the board of directors.

3 §30-20-20.

4 (a) The board of directors may adjourn to, or meet
5 solely in, executive session to consider litigation, matters
6 relating to the formation of contracts with third parties,
7 member discipline, or, upon a member's request, meeting with a
8 member regarding the member's payment of assessments.

9 (b) The board of directors shall adjourn to, or meet
10 solely in, executive session to discuss member discipline, if
11 requested by the member who is the subject of the discussion.
12 The member shall be entitled to attend the executive session
13 with counsel.

14 (c) The board of directors shall adjourn to, or meet
15 solely in, executive session to decide whether to foreclose on
16 a lien imposed against a member.

17 (d) Any matter discussed in executive session shall
18 be generally noted in the minutes of the immediately following
19 meeting that is open to the entire membership.

20 §30-20-21.

21 The minutes, minutes proposed for adoption that are
22 marked to indicate draft status, or a summary of the minutes
23 of any board of directors meeting, other than an executive
24 session, shall be available to members within 30 days after
25 the meeting, and the minutes shall be distributed in
26 electronic format or otherwise to any member upon request.

27 §30-20-22.

1 (a) A member of a homeowners' association may bring
2 a civil action for declaratory or equitable relief for a
3 violation of this chapter by the association, including, but
4 not limited to, injunctive relief, restitution, or a
5 combination thereof, subject to the statute of limitations
6 provided under Section 6-2-38.

7 (b) A member who prevails in a civil action to
8 enforce the member's rights pursuant to this chapter shall be
9 entitled to reasonable attorney's fees and court costs, and
10 the court may impose a civil penalty of up to five hundred
11 dollars (\$500) for each violation, except that each identical
12 violation shall be subject to only one penalty if the
13 violation similarly affects each member. A prevailing
14 association may not recover any costs or fees, unless the
15 court finds the action to be frivolous, unreasonable, or
16 without foundation.

17 Section 4. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.