

State of Alabama



Alabama Law Institute

Alabama Uniform Condominium Act of 1991

March 2017

ALABAMA LAW INSTITUTE

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March 2017

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PREFACE

Alabama's Condominium Act was passed in 1990 and is located in Chapter 8A of Title 35 of the Code of Alabama. During the past 26 years several issues have been raised needing clarification. Throughout the Act, revisions have been made to provide for consistent language throughout or to address practical matters raised by those on the committee that have experience with the Act. This proposed Act was drafted by a committee of attorneys, title agents, management agents, and insurance professionals from throughout the State of Alabama who volunteer their time and assist the Law Institute in its mandate to update the laws of Alabama. The committee was chaired by John Plunk and the reporters for the committee were Carol Stewart and Melinda Sellers. These amendments are presented to the members of the Alabama Legislature for their consideration.

1. Section 35-8A-102(c) was amended to clarify when an offering statement is required for the sale of units in condominiums located outside of Alabama which are sold to Alabama residents.
2. The amendment to § 35-8A-103(4) recognizes that easements and other interests in real property can be a common element.
3. The amendment to § 35-8A-103(11) identifies the development right to convert common elements to units when reserved in the declaration.
4. The amendment to § 35-8A-105(c) recognizes that some property subject to development rights can not be separately assessed and taxed.
5. The amendment to § 35-8A-107(c) requires that any portion of an award attributable to condemnation of limited common elements be divided among the owners in accordance with the value of the interest in a particular limited common element assigned to the units rather than requiring the amounts to be equally divided among the unit owners.
6. Section 35-8A-201(b) was amended to delete the requirement of maintenance of a condominium book by the judge of probate in each Alabama county.

7. Section 35-8A-201(c) was amended to clarify that a declaration or an amendment to the declaration is not effective until there is substantial completion of the structural and mechanical systems in the buildings located on the property being submitted to the condominium form of ownership. The amendment to § 35-8A-210(c) also removes the requirement that the engineer or architect certify that the structural and mechanical systems of all buildings were "completed in accordance with the plans."
8. Section 35-8A-208(a) was amended to require the association's consent for limited common element reallocations.
9. The amendments to § 35-8A-209(b) were substantially revised to require all information to be included on the plat to the extent such information could be shown on a two dimensional page, showing the subdivision of land and reciprocal rights relating to the subdivision.
10. The amendments to § 35-8A-209(d) eliminate the requirement of showing development rights to subdivide if such rights are described in the declaration.
11. Section 35-8A-(209)(g) was amended to allow a licensed surveyor to provide the required certification. This change expands the prior law which provided that only a licensed engineer or architect could certify to a plat.
12. Section 35-8A-313 was amended to clarify that the Association shall be responsible for the insurance deductible unless the declaration provides otherwise.
13. Section 35-8A-410 was previously amended in 2015 by and the current draft of this bill includes such language as previously amended.

Othni J. Lathram
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**ALABAMA UNIFORM
CONDOMINIUM ACT OF 1991**

SECTION 35-8A-101. SHORT TITLE. This chapter shall be known and may be cited as the "Alabama Uniform Condominium Act of 1991."

SECTION 35-8A-102. APPLICABILITY.

(a) This chapter applies to all condominiums created within this state after January 1, 1991. Sections 35-8A-104 (Variation by agreement), 35-8A-105 (Separate titles and taxation), 35-8A-106 (Applicability of local ordinances, regulations, and building codes), 35-8A-107 (Eminent domain), 35-8A-203 (Construction and validity of declaration and bylaws), 35-8A-204 (Description of units), 35-8A-302(a)(1) through (a)(6) and (a)(11) through (a)(16) (Powers of unit owners' association), 35-8A-311 (Tort and contract liability), 35-8A-316 (Lien for assessments), 35-8A-318 (Association records), 35-8A-409 (Resales of units), and 35-8A-417 (Substantial completion of units), and section 35-8A-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this state before January 1, 1991; but those sections apply only with respect to events and circumstances occurring after January 1, 1991 and do

not invalidate existing provisions of the declaration, bylaws, plats or plans of those condominiums.

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

(c) This chapter does not apply to condominiums or units located outside this state, but the offering statement provisions (sections 35-8A-402 through 35-8A-408) apply to all contracts for the disposition thereof signed ~~in~~by a resident of this state ~~by any party~~State unless: i) the transaction is exempt under section 35-8A-401(b), ii) the transaction is exempt pursuant to section 35-8A-407;

or iii) the state in which the condominium is located has statutory disclosure requirements and all terms thereof have been met.

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

ALABAMA COMMENT

Section 35-8A-102(a) was amended to include § 35-8A-104 in the list of sections of this chapter applicable to condominiums created prior to 1991 in this State. This amendment reflects the intent of the legislature as stated in the Alabama Commentary to § 35-8A-104 that the section is applicable to condominiums created under the Condominium Ownership Act.

Section 35-8A-102(c) was amended to clarify when an offering statement is required for sales of units in condominiums located outside this State sold to Alabama residents. The amendment requires a seller to provide disclosures to allow an Alabama resident to make an informed decision when contemplating the purchase of a condominium unit, but permits forms of disclosure other than those required by this chapter.

Section 35-8A-102(d) was amended to clarify that if a de minimus condominium is not created under this chapter, the condominium must be created under the Condominium Ownership Act.

SECTION 35-8A-103. DEFINITIONS. In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter, the following terms are defined as set forth below:

(1) Affiliate of—a declarant. Any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person

(i) is a general partner, officer, director, or employer of the declarant,

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interest in the declarant,

(iii) controls in any manner the election of a majority of the directors of the declarant, or

(iv) has contributed more than 20 percent of the capital of the declarant.

A person "is controlled by" a declarant if the declarant

(i) is a general partner, officer, director, or employer of the person,

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interest in the person,

(iii) controls in any manner the election of a majority of the directors of the person, or

(iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) Allocated interests. The undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) ~~Association or of unit owners' association.~~ The corporation organized under section 35-8A-301.

(4) Common elements. All portions of a condominium other than the units, and any other interests in real estate for the

benefit of the unit owners which are declared to be subject to the declaration.

(5) Common expenses. Expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(6) Common expense liability. The liability for common expenses allocated to each unit pursuant to section 35-8A-207.

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

(8) Conversion building. A building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

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

(10) Declaration. Any ~~instruments~~instrument, however denominated, that ~~create~~creates a condominium, and any amendments to ~~those instruments~~that instrument.

(11) Development rights. Any right or combination of rights reserved by a declarant in the declaration to

(i) add real estate to a condominium;

(ii) ~~to~~ create units, common elements, or limited common elements within a condominium;

(iii) ~~to~~ subdivide units or convert units into common elements or common elements into units; or

(iv) ~~to~~ withdraw real estate from a condominium.

(12) Dispose or disposition. A ~~voluntary~~ transfer to a purchaser of ~~any legal or equitable interest in~~title to a unit, but does not include the transfer or release of a security interest.

(13) Board. The body, ~~regardless of name, designated in the declaration to act on behalf of~~ governing the association.

(14) Identifying number. A ~~symbol or address~~number, letter, or combination thereof that identifies only one unit in a condominium.

(15) Leasehold condominium. A condominium in which all or a portion of the real estate is subject to a lease, the expiration

or termination of which will terminate the condominium or reduce its size.

(16) Limited common ~~element~~elements. A portion of the common elements allocated by the declaration or by operation of section 35-8A-202(2) or (4) for the exclusive use ~~of~~by one or more but fewer than all of the units.

(17) Master association. An organization described in section 35-8A-220, ~~whether or not~~ it is also an association described in section 35-8A-301.

(18) Offering. Any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. ~~An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.~~

(19) Person. A natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(20) Purchaser. Any person, other than a declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than

(i) a leasehold interest (including renewal options) of less than 20 years, or

(ii) as security for an obligation.

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

(22) Residential purposes. Use for dwelling or recreational purposes, or both.

(23) Security interest. An interest in real estate or personal property created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, vendor's lien, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of

lease, rents intended as security, or any similar security device, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(24) Special declarant rights. Rights reserved for the benefit of a declarant

(i) to complete improvements indicated on plats and plans filed with the declaration (section 35-8A-209);

(ii) to exercise any development right (section 35-8A-210);

(iii) to maintain sales offices, management offices, signs advertising the condominium, and models (section 35-8A-215);

(iv) to use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium (section 35-8A-216);

(v) to make the condominium subject to a master association (section 35-8A-220);

(vi) or to appoint or remove any officer of the association or any master association or any board member during any period of declarant control (section 35-8A-303(d)).

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

(26) Unit. A physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 35-8A-205(a)(5).

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

ALABAMA COMMENT

The amendments to § 35-8A-103(1), (3), (9), (10), (12), (13), (16), (17), and (27) contain no substantive changes and are for clarification purposes only.

The amendment to § 35-8A-103(4) recognizes that easements and other interests in real property can be a common element.

The amendment to § 35-8A-103(11) identifies the development right to convert common elements to units when reserved in the declaration.

The amendment to § 35-8A-103(14) eliminates the potential confusion that could result from allowing a symbol or address to be the identifying number for a unit, which identifying number becomes part of the legal description.

The amendment to § 35-8A-103(18) was made to be consistent with amended § 35-8A-102(c).

SECTION 35-8A-104. VARIATION BY AGREEMENT. Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

SECTION 35-8A-105. SEPARATE TITLES AND TAXATION.

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

(b) ~~In a condominium where~~If there is any unit owner other than a declarant: ~~(1) Each unit that has been created together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate; and~~(2) Each, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

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

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

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

ALABAMA COMMENT

The amendment to § 35-8A-105(b) eliminates a redundant section (cf. § 35-8A-105(a) to § 35-8A-105(b)(1)).

The amendment to § 35-8A-105(c) recognizes that some property subject to development rights cannot be separately assessed and taxed.

SECTION 35-8A-106. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES.

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

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

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

ALABAMA COMMENT

The amendment to change the word "development" to "structure" in § 35-8A-106(a) more accurately conforms to the parlance of building codes.

SECTION 35-8A-107. EMINENT DOMAIN.

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the

reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides,

(i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and

(ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award

attributable to the acquisition of a limited common element must be ~~equally~~ divided among the owners of the units in accordance with the value of the interest assigned to the unit in that particular limited common element to which that limited common element was allocated at the time of acquisition.

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

ALABAMA COMMENT

The amendment to § 35-8A-107(c) requires that any portion of an award attributable to condemnation of limited common elements be divided among the owners in accordance with the value of the interest in a particular limited common element assigned to the units rather than requiring said amounts to be equally divided among the unit owners.

SECTION 35-8A-108. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE. The principles of law and equity, including the law of corporations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

SECTION 35-8A-109. CONSTRUCTION AGAINST IMPLICIT REPEAL. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

SECTION 35-8A-110. CHAPTER TO BE LIBERALLY CONSTRUED; REMEDIES LIBERALLY ADMINISTERED.

(a) Notwithstanding a finding that this chapter is in derogation of the common law, it should be liberally construed to effectuate its purpose of encouraging development and construction of condominium property under the provisions of this chapter. The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.

(b) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

**SECTION 35-8A-201. CREATION OF
CONDOMINIUM.**

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

(b) The judge of probate shall index the declaration of condominium in the grantee's index in the name of the condominium, and in the name of the association, and in the grantor's index in the name of each person executing the declaration. ~~A well bound book of suitable size for each condominium to be known as "Condominium Book No." shall be maintained by the judge of probate. Such book shall contain a copy of the declaration of condominium, all drawings, amendments, certificate of completion, certificate of termination or other like instruments.~~

(c) A declaration or an amendment to a declaration adding units to a condominium, ~~may~~is not be recorded effective unless all

structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially ~~completed in accordance with the plans~~complete, as evidenced by a recorded certificate of substantial completion of structural and mechanical systems executed by an independent registered engineer or independent registered architect.

ALABAMA COMMENT

Section 35-8A-201(a) was amended to delete unnecessary language.

Section 35-8A-201(b) was amended to delete the requirement of maintenance of a condominium book by the judge of probate in each Alabama county. Additionally, § 35-8A-201(b) was amended to require that the declaration of condominium be indexed in the grantee's index in the name of the association as well as the name of the condominium.

Section 35-8A-201(c) was amended to clarify that a declaration or an amendment to the declaration is not effective until there is substantial completion of the structural and mechanical systems in the buildings located on the property being submitted to the condominium form of ownership. The amendment to § 35-8A-201(c) also removes the requirement that the engineer or architect certify that the structural and mechanical systems of all buildings were "completed in accordance with the plans." The subsection was also amended to require the registered architect to be "independent" for consistency.

SECTION 35-8A-202. UNIT BOUNDARIES. Except

as provided by the declaration:

(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subdivision (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but

located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

SECTION 35-8A-203. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to section 35-8A-302(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. The determination of whether a substantial failure impairs marketability is not governed by this chapter.

SECTION 35-8A-204. DESCRIPTION OF UNITS. A description of a unit which sets forth the name of the

condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

SECTION 35-8A-205. CONTENTS OF DECLARATION.

(a) The declaration for a condominium must contain:

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

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

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

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

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

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

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

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

(9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with

(i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards, and

(ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

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

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

(12) Any restrictions on

(i) use, occupancy, leasing or alienation of the units, provided that reasonable rules and regulations related to conduct by unit owners or ~~esthetic~~aesthetic considerations which are adopted by the association from time to time need not be included in the declaration, and

(ii) the amount for which a unit may be sold or the amount that may be received by a unit owner on sale, condemnation, casualty loss to the unit or to the condominium, or on the termination of the condominium;

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

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

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

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

ALABAMA COMMENT

The amendment to § 35-8A-205(a)(7) recognizes that limited common elements are created from common elements allocated for the exclusive use by one or more but fewer than all of the units.

A spelling correction was made to § 35-8A-205(a)(12).

SECTION 35-8A-206. LEASEHOLD

CONDOMINIUMS.

(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size shall be recorded. Every lessor of those leases must sign the declaration, and the declaration must state:

(1) The recording data for the lease, the date of the lease and the date of its recordation;

(2) The date on which the lease is scheduled to expire;

(3) A legally sufficient description of the real estate subject to the lease;

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or

termination of the lease, or a statement that they do not have those rights; and

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests must be

reallocated in accordance with section 35-8A-107(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

SECTION 35-8A-207. ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES.

(a) The declaration must allocate to each unit in a condominium a fraction or percentage of undivided interests in the common elements and in the common expenses of the association specified in section 35-8A-315(a), and a portion of the votes in the association, to each unit and Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide:

(i) that different allocations of votes shall be made to the units on particular matters specified in the declaration;

(ii) for cumulative voting only for the purpose of electing members of the board; and

(iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or 100 percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(e) In a condominium the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided

interest in the common elements made without the unit to which that interest is allocated, is void.

SECTION 35-8A-208. LIMITED COMMON ELEMENTS.

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

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

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

ALABAMA COMMENT

Section 35-8A-208(a) was amended to clarify that an amendment to relocate require the association's consent for limited common elements must be prepared, executed, and recorded in accordance with Section 35-8A-217(e) reallocations.

SECTION 35-8A-209. PLATS AND PLANS.

~~(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this chapter if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and~~ A clear and legible plat of the condominium property and plans, if required under (d) below, shall be recorded in the office of the judge of probate in every county in which any portion of the condominium is located and shall contain a certification that the plat or plan and plans, if any, contain all information required by this section. If the plat contains all of the information required by this

~~section~~described in (b), (c), (d), and (g) below, plans are not required. The recorded plats and plans are a part of the declaration.

(b) Each plat must show:

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

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

(3) ~~A legally sufficient description~~The location and dimensions of any real estate subject to development rights reserved over any part of the condominium property, labeled to identify the rights applicable to each parcel identified portion, but the plat needs not designate or label which development rights are applicable if that information is clearly described in the declaration;

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

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

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

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

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

~~(89)~~ A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

~~(910)~~ The distance between noncontiguous parcels of real estate ~~comprising~~ property included in the condominium;

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

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

~~(12)~~(11) A certification as to whether any portion of the real property subject to contained in the condominium is located within a flood zone as determined by the ~~United States department of housing and urban development~~ Federal agency charged with implementation of the National Flood Insurance Act and, if so, the flood zone classification. When any portion of the condominium property is located within a flood zone, the flood zone boundary

shall be shown on the plat, together with the elevations and locations of all ~~proposed~~existing structures ~~to be~~ located within the flood zone area.

~~(e) A plat may also show the~~(12) The intended location and dimensions of any contemplated ~~improvement~~improvements to be constructed ~~anywhere within~~on the condominium-property pursuant to any development right. Any contemplated or proposed improvement shown on the plat must be clearly labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

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

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

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

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

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

(3) ~~Any~~ The location and dimensions of any limited common elements other than parking spaces and the limited common elements described in section 35-8A-202(2) and (4); and

(4) The location and dimensions of any units in which the declarant has reserved the right to create additional units or common elements described in section 35-8A-210(c), identified appropriately, unless said development rights are adequately described in the declaration.

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

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

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

ALABAMA COMMENT

Section 35-8A-209 was substantially amended to reflect practical application of the section to Alabama law and practice. The amendment requires the filing of a plat and plans, if necessary, to create a condominium, which plat and plans become part of the declaration, even if recorded as a separate document. The amendment contemplates that in some instances all information

required by this section can be contained on a plat and separate plans would not be required in those instances.

The amendments to § 35-8A-209(b) ~~were~~ substantially revised the subsection to require all information required by subsection 35-8A-209(b) to be included on the plat to the extent such information could be shown on a two dimensional page, showing the subdivision of land and reciprocal rights relating to the subdivision. The amendments to this subsection recognize the limitations of a two dimensional drawing, and if the boundaries and limited common elements cannot be shown on the plat, plans should be prepared and recorded to reflect the same.

The amendments to § 35-8A-209(c) states the requirement previously contained in § 35-8A-209(b)(1) relating to a general schematic map of the entire project, as opposed to the condominium, and clarifies that the map or a legal description of the project be included either in the declaration or ~~as an additional page on the plat~~, so that the property that may be added to the condominium in the future pursuant to a development right will not be inadvertently added to the described condominium property.

The amendments to § 35-8A-209(~~d~~e) recognize that in condominiums with horizontal boundaries, the limited common elements assigned to units above or below ground level would most likely need to be shown on the plans rather than the plat of the condominium property. Also, the amendments to § 35-8A-209(~~d~~e) eliminates the requirement of showing development rights to subdivide if such rights are described in the declaration.

The amendment to § 35-8A-209(b)(12) is not substantive, but clarifies existing law.

Section 35-8A-(209)(g) was amended to allow a licensed surveyor to provide the required certification. This change expands the prior law which provided that only a licensed engineer or architect could certify to a plat. The amendment to subsection (g) removes the requirement that the registered engineer or architect be “independent”.

**SECTION 35-8A-210. EXERCISE OF
DEVELOPMENT RIGHTS.**

(a) To exercise any development right reserved under section 35-8A-205(a)(8), the declarant shall prepare, execute, and record an amendment to the declaration as specified in section 35-8A-217 and comply with section 35-8A-209. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (bc)(2), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 35-8A-208.

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by section 35-8A-205 or 35-8A-206, as the case may be, and the plats and plans include all matters required by section 35-8A-209. This provision does not

extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 35-8A-205(a)(8).

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

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

(2) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

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

(1) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate

subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

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

ALABAMA COMMENT

The amendment to § 35-8A-210(b) was to change subsection "(b)(2)" to "(c)(2)."

SECTION 35-8A-211. ALTERATIONS OF UNITS.

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

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

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

(3) After acquiring an adjoining unit, or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subdivision is not an alteration of boundaries.

SECTION 35-8A-212. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the

name of the grantor, grantee, and shall be recorded as an amendment to the declaration.

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

(c) Any costs incurred utilizing the procedures described in subsections (a) and (b) above shall be borne by the requesting unit owners.

SECTION 35-8A-213. SUBDIVISION OF UNITS.

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests

formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

(c) Any costs incurred utilizing the procedures described in subsections (a) and (b) above shall be borne by the requesting unit owners.

SECTION 35-8A-214. MONUMENTS AS BOUNDARIES. The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed or plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats or plans or in the deed and those of the building. This section does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

SECTION 35-8A-215. USE FOR SALES PURPOSES. A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only

if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law, and to local ordinances.

SECTION 35-8A-216. EASEMENT RIGHTS. Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

**SECTION 35-8A-217. AMENDMENT OF
DECLARATION.**

(a) Except in cases of amendments that may be executed by a declarant under section 35-8A-209(f) or 35-8A-210; the association under section 35-8A-107, 35-8A-206(d), 35-8A-208(c), 35-8A-212(a), or 35-8A-213; or by certain unit owners under section 35-8A-208(b), 35-8A-212(a), 35-8A-213(b), or 35-8A-218(b), and except as limited by subsection (d), the declaration, including the plats and plans, may be amended only by the affirmative vote or agreement of unit owners of units to which at least two-thirds of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to non-residential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is

located, and is effective only upon recordation. An amendment shall be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment in the absence of unanimous consent of the unit owners may: create or increase special declarant rights, create or increase the number or identity of units that may be disposed of on a time share basis, increase the number of units; change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted.

(e) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) Where a specific right is given a lender, pursuant to section 35-8A-219 no amendment affecting those rights may be

made without the consent of the lender or specified number or percentage thereof as required by the declaration.

SECTION 35-8A-218. TERMINATION OF CONDOMINIUM.

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

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

(c) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

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

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers

necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in accordance with subsections (i), (j) and (k). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h), and liens on the units shift accordingly. While the

tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

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

(h) Following termination, creditors of the association holding liens on the units which were recorded before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

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

(1) Except as provided in subdivision (2), the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The

decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit and common element interest by the total fair market values of all the units and common elements.

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

(j) Except as provided in subsection (k), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the

condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

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

SECTION 35-8A-219. RIGHTS OF SECURED LENDERS. The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to

(i) deny or delegate control over the general administrative affairs of the association by the unit owners or the board, or

(ii) prevent the association or the board from commencing, intervening in, or settling any litigation or proceeding, or receiving

and distributing any insurance proceeds except pursuant to section 35-8A-313.

SECTION 35-8A-220. MASTER ASSOCIATION.

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

(b) Unless it is acting in the capacity of an association described in section 35-8A-301, a master association may exercise the powers set forth in section 35-8A-302(a)(2) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

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

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

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

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

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

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

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

SECTION 35-8A-221. MERGER OR CONSOLIDATION OF CONDOMINIUMS.

(a) Any two or more condominiums, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the

resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all pre-existing associations.

(b) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the pre-existing condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either

(i) by stating the reallocations or the formulas upon which they are based or

(ii) by stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the pre-existing condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing condominium must be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing condominium.

SECTION 35-8A-301. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. A unit owners' association must be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 35-8A-218, or their heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation.

**SECTION 35-8A-302. POWERS OF UNIT OWNERS'
ASSOCIATION.**

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

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

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

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

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

(5) Make contracts and incur liabilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

ALABAMA COMMENT

Section 35-8A-302(a)(1) was amended to eliminate the limitation on an association's power to adopt or enforce bylaws restricting a unit owner's activities inside the unit that could affect the rights of other unit owners that was added by an amendment to this section in 1998. If for example, alterations to a unit could affect the rights of peaceable enjoyment of other unit owners or could impact the structural integrity of the buildings, the association will now have the power to address these issues. ~~This amendment is consistent with this section as adopted in 1991.~~ Section 35-8A-302(a)(4) was amended to clarify the association's power to resolve disputes affecting the condominium through negotiation and mediation.

SECTION 35-8A-303. BOARD MEMBERS AND OFFICERS.

(a) Except as provided in the declaration, the bylaws, the articles of incorporation in subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the unit owners other than the declarant and (ii) if elected by the unit owners other than declarant, ordinary and reasonable care.

(b) The board may not act on behalf of the association to amend the declaration as specified in section 35-8A-217, to

terminate the condominium described in section 35-8A-218, or to elect members of the board or to determine the qualifications, powers and duties, or terms of office of board members as provided in section 35-8A-303(f), but the board may fill vacancies in its membership for the unexpired portion of any term.

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

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and

remove the officers and members of the board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earliest of (i) 60 days after conveyance of 75 percent of the units which may be created to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than 90 days after conveyance of 25 percent of the units which may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the board must be elected by unit owners other than the declarant. Not later than 90 days after conveyance of 50 percent of the units which may be created to unit owners other than

a declarant, not less than 33 1/3 percent of the members of the board must be elected by unit owners other than the declarant.

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

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

SECTION 35-8A-304. TRANSFER OF SPECIAL DECLARANT RIGHTS.

(a) No special declarant right specified in section 35-8A-103(24) created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The

instrument is not effective unless executed by the transferor and the transferee in the same formality as a conveyance of real property.

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

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

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

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

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

(c) Unless otherwise provided in a mortgage instrument or deed of trust or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under federal bankruptcy law or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration pursuant to section 35-8A-215 and held by that declarant to maintain models, sales offices and signs.

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

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

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

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

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

(2) A successor to any special declarant right, other than a successor described in subdivisions (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by this chapter or the declaration:

a. On a declarant which relates to his exercise or nonexercise of special declarant rights; or

b. On his transferor, other than:

1. Misrepresentations by any previous declarant;

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

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

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

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

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and

who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the board in accordance with the provisions of section 35-8A-303(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under section 35-8A-303(d).

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

ALABAMA COMMENT

Section 35-8A-304(a) was amended to require that the assignment of special declarant rights be made with the same formalities as a transfer of an interest in real property.

SECTION 35-8A-305. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT. If entered into before the board elected by the unit owners pursuant to section 35-8A-303(f) takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association ~~at any time~~ during the current term of such contract or lease after the board elected by the unit owners pursuant to section 35-8A-303(f) takes office upon not less than 90 days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the

purpose of avoiding the right of the association to terminate a lease under this section.

SECTION 35-8A-306. BYLAWS.

(a) The bylaws of the association must provide for:

(1) The number of members of the board and the titles of the officers of the association;

(2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies;

(4) Which, if any, of its powers the board or officers may delegate to other persons or to a managing agent;

(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) The method of amending the bylaws, but in no event shall the required percentage for amendment of the bylaws exceed two-thirds of the total association.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

SECTION 35-8A-307. UPKEEP OF CONDOMINIUMS.

(a) Except to the extent provided by the declaration, subsection (b), or section 35-8A-313(h), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

SECTION 35-8A-308. MEETINGS. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board or by unit owners having 20 percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment

to the declaration or bylaws, any budget changes, and any proposal to remove an officer or a member of the board.

SECTION 35-8A-309. QUORUMS.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast 20 percent of the votes which may be cast for election of the board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board if persons entitled to cast 50 percent of the votes on that board are present at the beginning of the meeting.

SECTION 35-8A-310. VOTING; PROXIES.

(a) If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless either the declaration or bylaws expressly

provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

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

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (i) the provisions of subsection (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of

meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in section 35-8A-308, of all meetings at which lessees may be entitled to vote.

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

ALABAMA COMMENT

Section 35-8A-310(b) was amended to recognize that a vote to remove a member from the board of director is not permitted by proxy under § 35-8A-303(g).

SECTION 35-8A-311. TORT AND CONTRACT LIABILITY. Neither the association, any association mortgagee, nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association shall be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (i) for

all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all reasonable litigation expenses, including reasonable attorneys fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section solely because he is a unit owner, or a member or officer of the association. Liens resulting from judgments against the association are governed by section 35-8A-317.

SECTION 35-8A-312. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.

(a) In a condominium portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the

declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or loan are an asset of the association.

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

(c) The association, on behalf of the unit owners, may contract to convey an interest in a condominium pursuant to subsection (a), but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b). Thereafter, the association has all powers necessary and

appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

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

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

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

SECTION 35-8A-313. INSURANCE.

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

(1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than the greater of

80 percent of the actual cash value of the insured property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any co-insurance provision and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

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

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

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United

States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

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

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

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

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

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

(e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lien holders as their interests may appear. Subject to the provisions of subsection (h), the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association unit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed

cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

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

(1) The condominium is terminated, in which case section 35-8A-218 applies,

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

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

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

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

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

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

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

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

Alabama Comment

If the Declaration provides that the Association may seek expenses incurred as a result of damage caused by a unit owner's negligence, gross negligence and/or willful misconduct, then the Association may seek reimbursement of the deductible or Retention.

SECTION 35-8A-314. SURPLUS FUNDS. Unless otherwise provided in the declaration or bylaws, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments, or held in reserves.

**SECTION 35-8A-315. ASSESSMENTS FOR
COMMON EXPENSES.**

(a) Until the association makes a common expense assessment, the declarant must pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

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

(c) To the extent required by the declaration:

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

(2) Any common expense or portion thereof benefiting fewer than all of the units may be assessed exclusively against the units benefited; and

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

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

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

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

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

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

SECTION 35-8A-316. LIEN FOR ASSESSMENTS.

(a) The association has a lien on a unit for any assessment, and any other monies due the association for special assessments or services or charges(e.g. water, repairs) levied against that unit or fines imposed against its unit owner from the time the assessment or fine ~~becomes due~~ is levied. The association's lien may be foreclosed in like manner as a mortgage on real estate and as provided in the declaration and in (Ala. Code 35-10-11) or (Title 35, Chapter 10, Article 1A of the Code of Alabama) and subject to the rights under Article 14A of Chapter 5 of Title 6. ~~but~~ and ~~†~~The association shall ~~give~~ send reasonable advance notice of its proposed action to the unit owner and all lienholders of record who have provided a notice address in the record instrument evidencing the lien ~~of~~ on the unit. Unless the declaration otherwise provides,

fees, charges, late charges, fines, and interest charged pursuant to section 35-8A-302(a)(10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time ~~the first installment thereof becomes due~~ it is levied.

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

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

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

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

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

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

(h) Any unit owner, mortgagee of a unit, person having executed a contract for the purchase of a condominium unit, or lender considering the loan of funds to be secured by a condominium unit shall be entitled upon request to a statement from the association or its management agent setting forth the amount of assessments levied against the unit, including

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

**SECTION 35-8A-317. OTHER LIENS AFFECTING
THE CONDOMINIUM.**

(a) Except as provided in subsection (b), a judgment for
money against the association if recorded is not a lien on the
common elements, but is a lien in favor of the judgment lienholder

against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

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

(c) Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien

against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

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

SECTION 35-8A-318. ASSOCIATION RECORDS.

The association shall keep financial records sufficiently detailed to enable the association to comply with section 35-8A-409. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents and such records shall be made available in the county where the condominium is located. A reasonable fee or hourly charge may be assessed for this service.

SECTION 35-8A-319. ASSOCIATION AS TRUSTEE.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the

association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

SECTION 35-8A-401. APPLICABILITY; WAIVER.

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

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

- (1) A gratuitous disposition of a unit;
- (2) A transfer pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A transfer by foreclosure or disposition by deed in lieu of foreclosure;
- (5) A disposition to a person in the business of selling real estate who intends to offer those units to purchasers

where the responsibility for preparing and delivering the offering statement has been transferred to such person pursuant to section 35-8A-402(b);

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

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

ALABAMA COMMENT

Section 35-8A-401(a) was amended to require that any waiver of Article 4 allowed only for purchasers of non-residential units be in writing.

Section 35-8A-401(b)(5) was amended to clarify the exemption for dispositions to a person in the business of selling real estate who intends to offer those units for sale to purchasers for his own account. Specifically, the exemption only applies when the declarant has transferred the offering statement responsibilities to the described real estate professional as set forth in § 35-8A-402(b).

SECTION 35-8A-402. LIABILITY FOR OFFERING STATEMENT REQUIREMENTS.

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

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

(c) Any declarant or other person in the business of selling real estate who offers to a purchaser a unit for ~~his~~ the offeror's own account to ~~a purchaser~~ whom such responsibility for preparation and delivery of an offering statement has been transferred shall deliver an offering statement in the manner prescribed in section 35-8A-408(a) and is liable under sections 35-8A-408 and 35-8A-417414 for any false or misleading statement set forth therein or for any omission of material fact.

(d) If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of an offering statement is required under the laws of this state, a single offering statement conforming to the requirements of sections 35-8A-403 through 35-8A-406 as those requirements

relate to each regime in which the unit is located; and to any other requirements imposed under the laws of this state; may be prepared and delivered in lieu of providing two or more offering statements.

ALABAMA COMMENT

The amendment to § 35-8A-402(c) clarifies the transfer of offering statement responsibilities to real estate professionals and corrects a typographical error ~~in the original section.~~

SECTION 35-8A-403. OFFERING STATEMENT – GENERAL PROVISIONS.

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

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

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

(3) A general description of the condominium, including to the extent possible, ~~the types,~~ number and types of buildings, structures, and amenities the declarant is obligated to

build, and declarant's schedule of commencement and completion of construction of buildings, structures and amenities that declarant anticipates including in the condominium;~~(3) The number of units~~ is obligated to include in the condominium;

(4) Copies of the declaration, ~~other than the plats and plans~~, as well as any ~~other~~ recorded plats, plans, easements, covenants, conditions, restrictions and reservations affecting the condominium; the ~~bylaws~~ certificate or the proposed certificate of formation and the bylaws of the association created or to be created to manage the condominium, ~~and~~ any rules or regulations of the association; a copy of the lease for any leasehold condominium, copies of any contracts and leases to be signed by purchasers at closing, and copies of any contracts or leases that will or may be subject to cancellation by the association under section 35-8A-305;

~~(5) Any current balance sheet and a~~ 5) A projected budget for the association; ~~either within or as an exhibit to the offering statement~~, for at least one year after the date or anticipated date of the first conveyance to a purchaser, and thereafter the current budget along with the current balance sheet of the association, a statement of who prepared the budget, and a

statement of the budget's assumption concerning occupancy. The budget must include, without limitation:

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

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

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

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

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

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

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

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

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

(11) A statement that:

a. Within seven days after receipt of an offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant,

b. If a declarant fails to provide an offering statement to a purchaser before conveying a unit, that purchaser

may rescind the conveyance within seven days after first receiving the offering statement, and

c. If a purchaser receives the ~~public~~ offering statement more than seven days before signing a contract, he cannot cancel the contract;

(12) A statement of any unsatisfied judgments or pending suits against the association; and the status of any pending law suits material to the condominium of which a declarant has actual knowledge;

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

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

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

b. On the amount for which a unit may be sold or on the amount that may be received by a unit owner on

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

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

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

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

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

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

(b) If a condominium composed of not more than 12 units is not subject to any development rights, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, an offering statement may but need not include the information

otherwise required by subdivisions (9), (10), (15), (16), (17), and (18) of subsection (a).

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

ALABAMA COMMENT

The amendments to § 35-8A-403 do not materially change what is required to be provided in an offering statement. The revisions ~~are to~~ describe the disclosure more specifically and ~~to~~ reflect new terms under the Alabama Business and Non-Profit Entity Code.

Section 35-8A-403(a) was also amended to clarify that as used in this section, the word "condominium" is to be interpreted to be the condominium in which the unit offered is located whether the condominium has been created at the time the offering statement is prepared or whether it is proposed. The ~~expectation~~ intent is, however, that the declarant ~~must~~ will fully disclose the rights and obligations of the unit owner and ~~of~~ the developer related to the condominium regardless of whether it has been created.

SECTION 35-8A-404. OFFERING STATEMENT – CONDOMINIUMS SUBJECT TO DEVELOPMENT

RIGHTS. If the declaration provides that a condominium is subject to any development rights, the offering statement must

disclose, in addition to the information required by section 35-8A-403:

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

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

(3) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, ~~with respect to each portion of that real estate, of the~~ as to whether there is a maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to units which may be used for non-residential use purposes;

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

(5) A statement of the maximum extent to which ~~each unit's~~the allocated interests of each unit may be changed by the exercise of any development right described in subdivision (34);

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

(7) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to any development right

reserved by the declarant, or a statement that no assurances are made in that regard;

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

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

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

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

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

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

ALABAMA COMMENT

The amendment to § 35-8A-404(1) deleted the requirement that the offering statement disclose the maximum number of units that may be created pursuant to development rights per acre.

The amendment to § 35-8A-404(3) was made to simplify the disclosure of any maximum percentage of nonresidential units reserved in any development right.

Section 35-8A-404(8) was amended to include disclosures regarding any limitations as to locations of any buildings or other improvements that may be built on the condominium property or any property that may be added to the condominium.

Section 35-8A-404(9) was amended to require disclosures as to the general types and sizes of the common elements that may be created pursuant to development rights.

SECTION 35-8A-405. OFFERING STATEMENT – TIME SHARES. If the declaration provides that ownership or occupancy of any units is or may be in time shares, the offering statement shall disclose, in addition to the information required by section 35-8A-403:

- (1) The number and identity of units in which time shares may be created;
- (2) The total number of time shares that may be created;
- (3) The minimum duration of any time shares that may be created; and
- (4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in section 35-8A-316.

**SECTION 35-8A-406. OFFERING STATEMENT –
CONDOMINIUMS CONTAINING CONVERSION
BUILDINGS.** The offering statement of a condominium
containing any conversion building containing units that may be
occupied for residential use must contain, in addition to the
information required by section 35-8A-402403:

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

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

ALABAMA COMMENT

The amendment to § 35-8A-406 was made to correct a
typographical error.

**SECTION 35-8A-407. OFFERING STATEMENT-
~~CONDOMINIUM SECURITIES~~ OTHER FORMS OF
DISCLOSURE.** If an interest in a condominium is currently

registered with the securities and exchange commission of the United States or registered pursuant to the Interstate Land Sales Full Disclosure Act, a declarant satisfies all requirements relating to the preparation and delivery of an offering statement of this chapter if he delivers to the purchaser a copy of the offering statement filed with the securities and exchange commission or a copy of the property report approved in accordance with the Interstate Land Sales Full Disclosure Act as a part of the registration process.

ALABAMA COMMENT

Section 35-8A-407 was amended to allow a declarant to satisfy all requirements of this chapter relating to the preparation and delivery of an offering statement if the declarant registered the condominium under the Interstate Land Sales Full Disclosure Act and provided the purchaser with a copy of the property report approved in accordance with the Interstate Land Sales Full Disclosure Act.

SECTION 35-8A-408. PURCHASER'S RIGHT TO CANCEL.

(a) A person required to deliver ~~an offering statement~~ the required documents or report pursuant to sections 35-8A-402(c) or 35-8A-407 shall provide a purchaser of a unit with a copy of the offering statement and all amendments thereto ~~before conveyance~~

~~of that unit, and~~ not later than the date of any contract of sale. Unless a purchaser is given the ~~offering statement~~ required documents more than seven days before execution of a contract for the purchase of a unit, the purchaser may cancel the contract, ~~or rescind the conveyance if a conveyance has already occurred,~~ within seven days after first receiving the ~~offering statement~~ required documents or report.

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

(c) If a person required to deliver an offering statement ~~or report~~ pursuant to sections 35-8A-402(c) ~~or 35-8A-407~~ fails to provide a purchaser to whom a unit is conveyed with ~~that offering statement and all amendments thereto as~~ the documents required by subsection (a), the purchaser, at the purchaser's option and in lieu of any rights to damages or other relief, is entitled to receive from that person an amount equal to five percent of the sales price of the unit ~~at anytime prior to the expiration of six months from~~ if

purchaser provides notice to that person in the same manner as described in subsection (b) of such election within six months of the date of conveyance of the unit, plus five percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the condominium.

ALABAMA COMMENT

Section 35-8A-408 was amended to eliminate the right to rescind the conveyance in the event no offering statement or equivalent required documents were provided more than seven days before conveyance. The remedies set forth in subsection (c) are still available.

Section 35-8A-408(c) was amended to provide that in the event a purchaser does not receive an offering statement or equivalent required documents prior to conveyance, the purchaser must give notice to seller of the election to receive five percent of the sales price of the unit in lieu of any other right to damage or other relief within the six month period following the date of conveyance of the unit to the purchaser.

Section 35-8A-408(c) was also amended to eliminate any penalty in excess of five percent of the sales price of the unit

SECTION 35-8A-409. REALES OF UNITS.

(a) Except in the case of a sale where delivery of an offering statement is required, or unless exempt under section 35-8A-401(b), a unit owner upon written request by the purchaser purchaser of a unit previously disposed of, which written request

must be made within fourteen days of the date the purchaser signs the contract to purchaser, shall furnish to a purchaser before the conveyance and in any event within fifteen days of receipt of the written request, a copy of the declaration, other than the plats and plans, the bylaws, the rules and regulations of the association, and a certificate containing:

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

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

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

~~(2) A statement of any other fees payable by unit owners;~~
(34) The most recent regularly prepared balance sheet, and income and expense statement, if any, or any other reports regularly prepared showing cash flow of the association;

(45) The current operating budget of the association;

(56) A statement of any unsatisfied judgments against the association and any pending suit in which the association is a party;

(67) A statement describing any insurance coverage provided for the benefit of unit owners;

(78) A statement of the remaining term of any ~~lease~~ leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof; and

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

(b) The association, within 10 days after a request by a unit owner, shall furnish a certificate containing the above listed information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection

(a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser who receives a copy of the certificate prepared by the association is not liable after closing for any unpaid ~~assessment~~assessments or ~~fee~~fees greater than the amount set forth in the certificate prepared by the association. ~~A~~ The unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in ~~a timely manner,~~ but accordance with the time set forth in (b) above. If the purchaser timely requested the information in accordance with (a) above the purchase contract ~~is~~remains voidable by the purchaser until the ~~certificate~~requested information has been provided and for five days thereafter or until conveyance, whichever first occurs.

ALABAMA COMMENT

Section 35-8A-409(a) was revised to apply only to units previously disposed of and to set forth a time limit within which a purchaser of a unit from a seller who is not a declarant is entitled to request information regarding the condominium. Also the amendment sets a deadline for the unit owner to provide the requested information.

The amendments to § 35-8A-409 also would make the section not applicable to assignments of contracts because the seller must be a unit owner at the time of contract.

SECTION 35-8A-410. ESCROW OF DEPOSITS.

~~(a) Except as provided in subsection (b), any~~Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver an offering statement or report pursuant to Sections 35-8A-402(c) or a disclosure pursuant to Section 35-8A-407 shall be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an attorney, a licensed real estate broker, or an institution whose accounts are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing; (ii) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser. Except as provided in subsection (b) and as otherwise provided herein, ~~the~~The funds representing the deposit shall be held in an interest bearing account and the interest shall belong to the party entitled to the principal deposit. Notwithstanding anything in this subsection to the contrary, funds deposited pursuant to a reservation agreement that provides the prospective buyer is not bound to purchase a unit and that the prospective buyer may

~~choose to have the deposit returned to him or her, need not bear interest unless the reservation agreement specifically states that the deposit will bear interest.~~

~~(b) Notwithstanding subsection (a), if the time period during which a purchaser may cancel an agreement to purchase a unit pursuant to Section 35-8A-408 has expired without the purchaser's having exercised the right to cancel and construction of the project in which the unit is located is not substantially completed, if the purchase contract between the declarant and the purchaser so provides, and if the declarant has acquired the land on which the condominium will be built, the declarant may do either of the following: (1) Withdraw deposited funds in excess of 10 percent of the purchase price from the escrow account for use in the actual construction and development of the condominium project provided at least 10 percent of the purchase price remains on deposit after any withdrawals, or (2) after the declarant has caused a bond to be issued by a surety insurer licensed in this state in favor of the purchaser, withdraw deposited funds from the escrow account for use in the actual construction and development of the condominium. The declarant may not withdraw more than~~

~~the face amount of the bond. The bond shall name the purchaser as the beneficiary thereof and shall be payable to the purchaser if the purchaser obtains a final judgment against declarant requiring the declarant to return the deposit to the purchaser pursuant to the purchase contract. The declarant may satisfy this bond requirement by causing one or more blanket bonds to be issued in favor of all purchasers whose deposited funds may be used pursuant to this subsection. In the event of a withdrawal pursuant to this subsection, the withdrawn funds need not bear interest and the declarant shall not owe the purchaser interest on any withdrawn funds if the purchase contract provides that interest on withdrawn funds will not accrue or be owed. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons or for advertising purposes. A purchase contract that permits use of deposits for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the purchaser: ANY DEPOSIT MAY BE USED FOR CONSTRUCTION PURPOSES BY DECLARANT. Additionally, an offering statement given to a prospective purchaser whose deposit may be used as provided in this subsection shall contain~~

~~the same legend, which may be contained within the body of the offering statement. In determining whether more than 10 percent of the purchase price has been deposited, the face amount of any letter of credit accepted by declarant as part of the deposit shall be considered.~~

(a) As used in this Section 35-8A-410, except as otherwise provided, the following terms shall have the meanings ascribed to such terms below:

(1) “Hard Costs” shall mean any and all costs associated with the actual building and construction of the condominium project, including, but not limited to, site preparation, building materials, shell features, interior enclosures, fit-out costs, mechanical and electrical systems, and fixtures. The term “Hard Costs” does not include financing costs, compensation paid to architects, engineers, consultants, salespersons, or attorneys, advertising or other marketing costs;

(2) “Qualified Purchaser” shall mean 1) an individual, a group of individuals, or an entity owned directly or indirectly solely by individuals where each individual shall have an income of more than \$200,000 for the calendar year immediately preceding the date of the purchaser’s signing of the purchase

contract, or a joint income with his or her spouse of \$300,000 for the calendar year immediately preceding the date of the purchaser's signing of the purchase contract, with a good faith reasonable expectation to maintain the same level of income for the current calendar year; 2) an individual, a group of individuals, or an entity owned directly or indirectly solely by individuals where each individual shall have a net worth, either individually or jointly with his or her spouse, exceeding \$1 million on the date of the purchaser's signing of the purchase contract; or 3) an individual, a group of individuals, or an entity owned directly or indirectly solely by individuals where each individual shall have an income for the calendar year immediately preceding the date of the purchaser's signing of the purchase contract of more than 30% of the condominium's purchase price, or a joint income with his or her spouse of more than 50% of the condominium's purchase price for such calendar year, with a good faith reasonable expectation to maintain the same level of income for the current calendar year. Any purchaser providing a written statement to declarant attesting that purchaser satisfies the qualifications of this subsection (a)(2) shall be conclusively presumed to be a Qualified Purchaser within the meaning of this Section 35-8A-410 and any such statement

may be relied upon by declarant and escrow agent for purposes of this Section 35-8A-410; and

(3) “substantially completed” shall mean the issuance of a certificate of occupancy for the improvements, or the equivalent authorization issued by the governmental body having jurisdiction, and, in a jurisdiction where no certificate of occupancy or equivalent authorization is issued, shall mean substantial completion of construction of the improvements in accordance with the applicable plans and specifications.

(b) Except as provided in subsection (c), any deposit made in connection with the purchase or reservation of a unit from a person required to deliver an offering statement pursuant to Section 35-8A-402(c) shall be placed in escrow and held in this state by a licensed title insurance company, a licensed title agent, an attorney, a licensed real estate broker, or an institution whose accounts are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing; (ii) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser. Declarant shall be permitted to accept a letter of credit in lieu of a portion or all of the deposit. Notwithstanding the foregoing, the escrow agent shall not be

located outside of the state. Except as provided in subsection (c) and as otherwise provided herein, the funds representing the deposit shall be held in an interest bearing account and the interest shall belong to the party entitled to the principal deposit. Notwithstanding anything in this subsection to the contrary, funds deposited pursuant to a reservation agreement that provides the prospective purchaser is not bound to purchase a unit and that the prospective purchaser may choose to have the deposit returned to him or her, need not bear interest unless the reservation agreement specifically states that the deposit will bear interest.

(c) Notwithstanding subsection (b), provided that (1) the time period during which a purchaser may cancel an agreement to purchase a unit pursuant to Section 35-8A-408 has expired without the purchaser having properly and timely exercised the right to cancel and construction of the project in which the unit is located is not substantially completed; (2) the purchase contract between the declarant and the purchaser authorizes the declarant to withdraw deposited funds pursuant to this subsection (c); and (3) the declarant has acquired an interest in the land on which the condominium project will be built (the existence of a mortgage on the declarant's interest in the land shall not preclude the declarant's

satisfaction of this condition), then the declarant shall be permitted to:

(1) withdraw deposited funds in excess of 10 percent of the purchase price from the escrow account for use in paying the Hard Costs incurred in the actual building and construction of the condominium project provided that at least 10 percent of the purchase price remains on deposit after any such withdrawals and provided that the purchaser whose funds are being withdrawn is a Qualified Purchaser; or

(2) after the declarant has caused a bond to be issued by a surety insurer licensed in this state in favor of a Qualified Purchaser for the full amount of the escrow deposit to be withdrawn, withdraw deposited funds from the escrow account up to the amount in the escrow account for use in paying the Hard Costs incurred in the actual building and construction of the condominium project.

(d) If declarant elects to post the aforesaid bond pursuant to item (c)(ii), the declarant may not withdraw more than the face amount of the bond, the bond shall name the purchaser as the beneficiary thereof and shall be payable to the purchaser if the purchaser obtains a final judgment against declarant requiring the declarant

to return the deposit to the purchaser pursuant to the purchase contract, and the declarant may satisfy this bond requirement by causing one or more blanket bonds to be issued in favor of all purchasers whose deposited funds may be used pursuant to this subsection.

(e) In the event of a withdrawal pursuant to this subsection, the withdrawn funds need not bear interest and the declarant shall not owe the purchaser interest on any withdrawn funds if the purchase contract provides that interest on withdrawn funds will not accrue or be owed to the purchaser.

(f) A purchase contract that permits use of deposits in accordance with items (c)(i) and/or (c)(ii) above shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the purchaser: DEPOSITS MAY BE USED BY DECLARANT FOR HARD COSTS INCURRED IN THE ACTUAL BUILDING AND CONSTRUCTION OF THE CONDOMINIUM PROJECT PURSUANT TO ALA. CODE SECTION 35-8A- 410. Additionally, an offering statement given to a prospective purchaser whose deposit may be used as provided in this subsection shall contain the same legend, which may be

contained within the body of the offering statement. The funds deposited into escrow pursuant to subsection (b) and subsection (c) may be held in one or more escrow accounts by the escrow agent. If only one escrow account is used, then the escrow agent must maintain separate accounting records for each purchaser and the amounts separately covered under subsection (b) and (c). For the purposes of item (c)(i) above, in determining whether more than 10 percent of the purchase price has been deposited, the face amount of any letter of credit accepted by declarant as part of the deposit shall be considered.

(g) Any escrow agent holding deposited funds pursuant to this Section is protected from liability arising from disbursing funds pursuant to subsections (c) and/or (d) if such disbursement is pursuant to a draw requested by the declarant and the declarant certifies in such writing to the escrow agent that the declarant is entitled to such disbursement pursuant to subsection (c) or, as the case may be, pursuant to subsection (d).

ALABAMA COMMENT

The amendment to § 35-8A-410 ~~revokes~~ substantially modifies the 2005 amendment to this section. ~~adopted by the legislature in 2005 to the extent the 2005 amendment allowed the declarant to use any portion of a deposit made in connection with~~

~~the sale of a condominium unit for construction purposes.~~ On reconsideration, it is the intent of the legislature to protect the deposits made by purchasers of units in connection with the sale of a unit rather than allowing developers to use any portion of said deposits in the construction of the condominium

The 2005 amendment ~~clarifying~~ stating that a deposit made pursuant to a reservation agreement that provides that the prospective buyer is not bound to purchase a unit and that the prospective buyer may choose to have the deposit returned to him or her need not be held in an interest bearing account remains in the section.

SECTION 35-8A-411. RELEASE OF LIENS.

(a) In the case of a sale of a unit where delivery of an offering statement or report is required pursuant to sections 35-8A-402(c) or a disclosure is made pursuant to 35-8A-407, a seller shall ~~before conveying a unit, (i) record or furnish to the purchaser releases of all liens, or an agreement to release any liens that encumber that unit and its common element interest (except liens on real estate that a declarant has the right to withdraw from the condominium), that the purchaser does not expressly agree in a written contract of sale which specifically identifies such lien and its amount to take subject to or assume and that encumber a condominium, that unit and its common element interest, or (ii), or~~ provide a surety bond or substitute collateral for or insurance

against the lien in the manner provided for liens on real estate in section 35-11-233(b).

(b) ~~Before~~In conveying real estate to the association the declarant shall have that real estate released from: (i) all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (ii) all other liens on that real estate unless the offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

ALABAMA COMMENT

The amendments to § 35-8A-411 require the seller to release liens or make other agreements regarding the liens before conveying the unit.

Section 35-8A-411(b) refers to conveying real estate to the association. However, because a condominium association does not typically own real estate it is rare that a declarant would convey real estate to the association.

SECTION 35-8A-412. CONVERSION BUILDINGS.

(a) A declarant of a condominium containing conversion buildings, and any person in the business of selling real estate for his own account who intends to offer units in such a condominium shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice

of the conversion no later than 60 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than 60 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of section ~~35-9-80~~ 35-9A-101 – 35-9A-603, the notice also constitutes a notice to terminate specified by that statute.

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

SECTION 35-8A-413. EXPRESS WARRANTIES.

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

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

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

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

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

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

ALABAMA COMMENT

The amendments to § 35-8A-413 make no substantive changes. The term "warrant" is changed to "warranty" in § 35-8A-413(a)(1).

SECTION 35-8A-414. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION; ATTORNEY'S FEES. If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for actual damages or appropriate equitable relief. The court, in an appropriate case, may award reasonable attorney's fees to either party.

SECTION 35-8A-415. LABELING OF PROMOTIONAL MATERIAL. No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that the declarant is not obligated to build unless the description or portrayal of the improvement that is not in existence and is displayed in the promotional material is conspicuously labeled or identified as, "NEED NOT BE BUILT."

ALABAMA COMMENT

The amendment to § 35-8A-415 clarifies that promotional materials may describe or portray an improvement that the declarant is not obligated to build if the improvement shown is labeled "NEED NOT BE BUILT." The original section prohibited depiction or display of any improvement not built unless it contained "NEED NOT BE BUILT," even if the declarant was obligated to build the improvement.

SECTION 35-8A-416. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.

(a) Except for improvements labeled, "NEED NOT BE BUILT" the declarant shall complete all improvements depicted on any site plan or graphic representation including plats or plans prepared pursuant to section 35-8A-209, whether or not that site

plan or other graphic representation is contained in the offering statement or any promotional material distributed by or for the declarant.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the declarant's exercise of rights reserved pursuant to or created by sections 35-8A-210 through 35-8A-213, 35-8A-215, and 35-8A-216.

SECTION 35-8A-417. SUBSTANTIAL COMPLETION OF UNITS. In the case of a sale of a unit where delivery of an offering statement is required or a disclosure is made pursuant to Section 35-8A-407, a contract of sale may be executed, but no interest in that unit may be conveyed, ~~or voted~~ until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent registered architect, or independent registered engineer, or by issuance of a certificate of occupancy authorized by law.

ALABAMA COMMENT

The amendment to § 35-8A-417 deleted "or voted," recognizing that the votes allocated to a unit are not related to the conveyance of said unit. The votes allocated to a unit exist from the creation of the condominium and the association and are not connected to the sale.