

1 HB426  
2 189015-2  
3 By Representative England  
4 RFD: Judiciary  
5 First Read: 15-FEB-18

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

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

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

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

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

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 "§35-8A-102.

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

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

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

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

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

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

15 "§35-8A-103.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

13           "§35-8A-105.

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

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

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

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

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

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

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

12           "§35-8A-106.

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

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

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

27           "§35-8A-107.

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

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

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

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

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

15 "§35-8A-201.

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

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

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

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

16           "§35-8A-205.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

3           "§35-8A-208.

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

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

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

26           "§35-8A-209.

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

15           "(b) Each plat must show:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 "§35-8A-210.

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

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

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

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

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

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



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

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

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

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

14 "§35-8A-211.

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

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

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

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

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

6 "§35-8A-214.

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

18 "§35-8A-215.

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

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

6 "§35-8A-218.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 "§35-8A-220.

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

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

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

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

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

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



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

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

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

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

13           "§35-8A-302.

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

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

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

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

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

5           "(5) Make contracts and incur liabilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

24           "§35-8A-303.

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

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

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

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

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

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

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

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

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

16 "§35-8A-304.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

6 "1. Misrepresentations by any previous declarant;

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

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

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

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

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

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

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

18 "§35-8A-305.

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

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

10 "§35-8A-307.

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

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

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

4 "§35-8A-310.

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

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

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

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

14           "§35-8A-311.

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

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

13 "§35-8A-312.

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

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

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

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

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

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

27           "§35-8A-313.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18           "§35-8A-314.

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

25           "§35-8A-315.

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

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

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

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

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

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

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

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

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

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

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

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

18           "§35-8A-316.

19           "(a) The association has a lien on a unit for any  
20 assessment and any other moneys due the association for  
21 special assessments or services or charges, such as water or  
22 repairs, levied against that unit or fines imposed against its  
23 unit owner from the time the assessment or fine becomes due.  
24 The association's lien may be foreclosed in like manner as a  
25 mortgage on real estate ~~but the~~ provided the declaration is in  
26 conformity with Article 1A of Chapter 10 of Title 35 and  
27 subject to the rights under Article 14A of Chapter 5 of Title

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

10 "(b) A lien under this section is prior to all other  
11 liens and encumbrances on a unit except (i) liens and  
12 encumbrances recorded before the recordation of the  
13 declaration, (ii) a first security interest on the unit  
14 recorded before the date on which the assessment sought to be  
15 enforced became delinquent, and (iii) liens for real estate  
16 taxes and other governmental assessments or charges against  
17 the unit. The lien is also prior to the mortgages and deeds of  
18 trust described in clause (ii) above to the extent of the  
19 common expense assessments based on the periodic budget  
20 adopted by the association pursuant to Section 35-8A-315(a)  
21 which would have become due in the absence of acceleration  
22 during the six months immediately preceding (1) the  
23 association's institution of an a civil action to enforce the  
24 its lien, or (2) a foreclosure of a mortgage or deed of trust  
25 described in clause (ii) above. The association's six-month  
26 priority lien does not include the association's costs or  
27 attorney fees in enforcing its lien under this subsection.

1 Notwithstanding anything in the act adding this amendatory  
2 language to the contrary, upon a showing by the holder of a  
3 mortgage or deed of trust described in clause (ii) above that  
4 the instrument has been assigned to or is owned or guaranteed  
5 by the Federal Home Loan Mortgage Corporation, the Federal  
6 National Mortgage Association, or the Government National  
7 Mortgage Association, the six-month priority lien is subject  
8 to and shall not be interpreted to exceed any period of time  
9 or amount allowed for priority under regulations, rules,  
10 guidelines, or requirements adopted by or applicable to any of  
11 the above entities. This subsection does not affect the  
12 priority of mechanics' or materialmen's liens, ~~or the priority~~  
13 ~~of liens for other assessments made by the association.~~ The  
14 lien under this section is not subject to the provisions of  
15 homestead or other exemptions.

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

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

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



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

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

9           "(h) Any unit owner, mortgagee of a unit, person  
10 having executed a contract for the purchase of a condominium  
11 unit, or lender considering the loan of funds to be secured by  
12 a condominium unit shall be entitled upon request to a  
13 statement from the association or its management agent setting  
14 forth the amount of assessments levied against the unit,  
15 including information regarding whether such assessments are  
16 past due and the amount past due ~~and unpaid~~ together with late  
17 charges and interest applicable thereto against that  
18 condominium unit. Such request shall be in writing, shall be  
19 delivered to the registered office of the association, and  
20 shall state an address to which the statement is to be  
21 directed. Failure on the part of the association to mail or  
22 otherwise furnish such statement regarding amounts due and  
23 payable if specified in the written request therefor within 10  
24 business days from the receipt of such request releases the  
25 association's lien against the unit for the amount of the  
26 assessment as of that date, but does not discharge the unit  
27 owner's debt to the association. The information specified in

1 such statement shall be binding upon the association and upon  
2 every unit owner. Payment of a reasonable fee not exceeding  
3 ~~\$10.00~~ twenty-five dollars (\$25) may be required as a  
4 prerequisite to the issuance of such a statement if the  
5 condominium instruments so provide.

6 "§35-8A-317.

7 "(a) Except as provided in subsection (b), a  
8 judgment for money against the association if recorded is not  
9 a lien on the common elements, but is a lien in favor of the  
10 judgment lienholder against all of the units in the  
11 condominium at the time the judgment was entered. No other  
12 property of a unit owner is subject to the claims of creditors  
13 of the association.

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

19 "(c) Whether perfected before or after the creation  
20 of the condominium, if a lien other than a deed of trust or  
21 mortgage, including a judgment lien or lien attributable to  
22 work performed or materials supplied before creation of the  
23 condominium, becomes effective against two or more units, the  
24 unit owner of an affected unit may pay to the lienholder the  
25 amount of the lien attributable to his or her unit, and the  
26 lienholder, upon receipt of payment, promptly shall deliver a  
27 release of the lien covering that unit. The amount of the

1 payment must be proportionate to the ratio which that unit  
2 owner's common expense liability bears to the common expense  
3 liabilities of all unit owners whose units are subject to the  
4 lien. After payment, the association may not assess or have a  
5 lien against that unit owner's unit for any portion of the  
6 common expenses incurred in connection with that lien.

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

10 "§35-8A-318.

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

19 "§35-8A-401.

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

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

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

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

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

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

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

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

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

15           "§35-8A-402.

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

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

1 enable the transferee to fulfill the requirements of  
2 subsection (a).

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

12 "(d) If a unit is part of a condominium and is part  
13 of any other real estate regime in connection with the sale of  
14 which the delivery of an offering statement is required under  
15 the laws of this state, a single offering statement conforming  
16 to the requirements of Sections 35-8A-403 through 35-8A-406 as  
17 those requirements relate to each regime in which the unit is  
18 located, and to any other requirements imposed under the laws  
19 of this state, may be prepared and delivered in lieu of  
20 providing two or more offering statements.

21 "§35-8A-403.

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

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

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

4           "(3) A general description of the condominium,  
5 including to the extent possible, ~~the types,~~ number and types  
6 of buildings, structures, and amenities the declarant is  
7 obligated to build, and declarant's schedule of commencement  
8 and completion of construction of buildings, structures, and  
9 amenities ~~that declarant anticipates including in the~~  
10 ~~condominium;~~ The number of units is obligated to include in  
11 the condominium;

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

24           "(5) ~~Any current balance sheet and a~~ A projected  
25 budget for the association, ~~either within or as an exhibit to~~  
26 ~~the offering statement,~~ for at least one year after the date  
27 or anticipated date of the first conveyance to a purchaser,

1 and thereafter the current budget along with the current  
2 balance sheet of the association, a statement of who prepared  
3 the budget, and a statement of the budget's assumption  
4 concerning occupancy. The budget must include, without  
5 limitation:

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

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

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

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

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

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

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

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

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

13           "(11) A statement that:

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

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

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

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



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

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

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

11           "b. On the amount for which a unit may be sold or on  
12 the amount that may be received by a unit owner on sale,  
13 condemnation, casualty loss to the unit or to the condominium  
14 or on the termination of the condominium;

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

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

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

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

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

1           "(b) If a condominium composed of not more than 12  
2 units is not subject to any development rights, and no power  
3 is reserved to a declarant to make the condominium part of a  
4 larger condominium, group of condominiums, or other real  
5 estate, an offering statement may but need not include the  
6 information otherwise required by subdivisions (9), (10),  
7 (15), (16), (17), and (18) of subsection (a).

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

11           "§35-8A-404.

12           "If the declaration provides that a condominium is  
13 subject to any development rights, the offering statement must  
14 disclose, in addition to the information required by Section  
15 35-8A-403:

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

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

22           "(3) If any of the units that may be built within  
23 real estate subject to development rights are not to be  
24 restricted exclusively to residential use, a statement, ~~with~~  
25 ~~respect to each portion of that real estate, of the as to~~  
26 ~~whether there is a~~ maximum percentage of the ~~real estate~~  
27 ~~areas, and the maximum percentage of the floor areas of all~~

1 ~~units that may be created therein, that are not restricted~~  
2 ~~exclusively to residential use~~ units which may be used for  
3 nonresidential purposes;

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

7 "(5) A statement of the maximum extent to which ~~each~~  
8 ~~unit's~~ the allocated interests of each unit may be changed by  
9 the exercise of any development right described in subdivision  
10 ~~(3)~~ (4);

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

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

23 "(8) A statement of any limitations as to the  
24 locations of any building or other improvement that may be  
25 made within any part of the condominium property that may be  
26 added to the condominium pursuant to any development right

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

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

10 "(10) A statement that the proportion of limited  
11 common elements to units created pursuant to any development  
12 right reserved by the declarant will be approximately equal to  
13 the proportion existing within other parts of the condominium,  
14 or a statement of any other assurances in that regard, or a  
15 statement that no assurances are made in that regard;

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

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

26 "§35-8A-406.

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

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

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

14           "§35-8A-407.

15           "If an interest in a condominium is currently  
16 registered with the ~~securities and exchange commission~~  
17 Securities and Exchange Commission of the United States or  
18 registered pursuant to the Interstate Land Sales Full  
19 Disclosure Act, a declarant satisfies all requirements  
20 relating to the preparation and delivery of an offering  
21 statement of this chapter if he or she delivers to the  
22 purchaser a copy of the offering statement filed with the  
23 ~~securities and exchange commission~~ Securities and Exchange  
24 Commission or a copy of the property report approved in  
25 accordance with the Interstate Land Sales Full Disclosure Act  
26 as a part of the registration process.

27           "§35-8A-408.

1           "(a) A person required to deliver ~~an offering~~  
2 ~~statement~~ the required documents or report pursuant to Section  
3 35-8A-402(c) or 35-8A-407 shall provide a purchaser of a unit  
4 with a copy of the offering statement and all amendments  
5 thereto ~~before conveyance of that unit,~~ and not later than the  
6 date of any contract of sale. Unless a purchaser is given the  
7 ~~offering statement~~ required documents more than seven days  
8 before execution of a contract for the purchase of a unit, the  
9 purchaser may cancel the contract, ~~or rescind the conveyance~~  
10 ~~if a conveyance has already occurred,~~ within seven days after  
11 first receiving the ~~offering statement~~ required documents or  
12 report.

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

20           "(c) If a person required to deliver an offering  
21 statement or report pursuant to Section 35-8A-402(c) or  
22 35-8A-407 fails to provide a purchaser to whom a unit is  
23 conveyed with that ~~offering statement and all amendments~~  
24 ~~thereto as~~ the documents required by subsection (a), the  
25 purchaser, at the purchaser's option and in lieu of any rights  
26 to damages or other relief, is entitled to receive from that  
27 person an amount equal to five percent of the sales price of

1 the unit ~~at anytime prior to the expiration of six months from~~  
2 if the purchaser provides notice of the election to that  
3 person in the same manner as described in subsection (b)  
4 within six months of the date of conveyance of the unit, ~~plus~~  
5 ~~five percent of the share, proportionate to his common expense~~  
6 ~~liability, of any indebtedness of the association secured by~~  
7 ~~security interests encumbering the condominium.~~

8 "§35-8A-409.

9 "(a) Except in the case of a sale where delivery of  
10 an offering statement is required, or unless exempt under  
11 Section 35-8A-401(b), a unit owner upon written request by ~~the~~  
12 purchaser a purchaser of a unit previously disposed of, which  
13 written request must be made within 14 days of the date the  
14 purchaser signs the contract with a purchaser, shall furnish  
15 to a purchaser before the conveyance and in any event within  
16 15 days of receipt of the written request, a copy of the  
17 declaration, ~~other than the plats and plans,~~ the bylaws, the  
18 rules ~~or,~~ and the regulations of the association, and a  
19 certificate containing:

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

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

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

1           "~~(3)~~ (4) A statement of any other assessments or fees  
2 assessed against the unit or the unit owner either past due or  
3 then due and owing;

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

8           "~~(4)~~ (5) The current operating budget of the  
9 association;

10          "~~(5)~~ (6) A statement of any unsatisfied judgments  
11 against the association and any pending suit in which the  
12 association is a party;

13          "~~(6)~~ (7) A statement describing any insurance  
14 coverage provided for the benefit of unit owners;

15          "~~(7)~~ (8) A statement of the remaining term of any  
16 ~~lease hold~~ leasehold estate affecting the condominium and the  
17 provisions governing any extension or renewal thereof; and

18          "~~(8)~~ (9) A statement of any restrictions in the  
19 declaration affecting the amount that may be received by a  
20 unit owner upon sale, condemnation, casualty loss to the unit  
21 or condominium or on termination of the condominium.

22          "(b) The association, within 10 days after a request  
23 by a unit owner, shall furnish a certificate containing the  
24 above listed information necessary to enable the unit owner to  
25 comply with this section. A unit owner providing a certificate  
26 pursuant to subsection (a) is not liable to the purchaser for



1 any erroneous information provided by the association and  
2 included in the certificate.

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

16 "§35-8A-411.

17 "(a) In the case of a sale of a unit where delivery  
18 of an offering statement is required pursuant to Section  
19 35-8A-402(c) or a disclosure is made pursuant to Section  
20 35-8A-407, a seller shall ~~before conveying a unit,~~ ~~(i)~~ record  
21 or furnish to the purchaser releases of all liens or an  
22 agreement to release any liens that encumber that unit and its  
23 common element interest, except liens on real estate that a  
24 declarant has the right to withdraw from the condominium, that  
25 the purchaser does not expressly agree in a written contract  
26 of sale which specifically identifies such lien and its amount  
27 to take subject to or assume ~~and that encumber a condominium,~~

1 ~~that unit and its common element interest, or (ii),~~ or provide  
2 a surety bond or substitute collateral for or insurance  
3 against the lien in the manner provided for liens on real  
4 estate in Section 35-11-233(b).

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

12 "§35-8A-412.

13 "(a) A declarant of a condominium containing  
14 conversion buildings, and any person in the business of  
15 selling real estate for his or her own account who intends to  
16 offer units in such a condominium shall give each of the  
17 residential tenants and any residential subtenant in  
18 possession of a portion of a conversion building notice of the  
19 conversion no later than 60 days before the tenants and any  
20 subtenant in possession are required to vacate. The notice  
21 must set forth generally the rights of tenants and subtenants  
22 under this section and shall be hand-delivered to the unit or  
23 mailed by prepaid United States mail to the tenant and  
24 subtenant at the address of the unit or any other mailing  
25 address provided by a tenant. No tenant or subtenant may be  
26 required to vacate upon less than 60 days' notice, except by  
27 reason of nonpayment of rent, waste, or conduct that disturbs

1 other tenants' peaceful enjoyment of the premises, and the  
2 terms of the tenancy may not be altered during that period.  
3 Failure to give notice as required by this section is a  
4 defense to an action for possession.

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

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

12 "§35-8A-413.

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

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

25 "(2) Any model or description of the physical  
26 characteristics of the condominium, including plans and  
27 specifications of or for improvements, creates an express

1 warranty that the condominium will substantially conform to  
2 the model or description;

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

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

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

16 "§35-8A-415.

17 "No promotional material may be displayed or  
18 delivered to prospective purchasers which describes or  
19 portrays an improvement that the declarant is not obligated to  
20 build unless the description or portrayal of the improvement  
21 that is not in existence and is displayed in the promotional  
22 material is conspicuously labeled or identified as, "NEED NOT  
23 BE BUILT."

24 "§35-8A-417.

25 "In the case of a sale of a unit where delivery of  
26 an offering statement is required or a disclosure is made  
27 pursuant to Section 35-8A-407, a contract of sale may be

1       executed, but no interest in that unit may be conveyed, or  
2       voted until the declaration is recorded and the unit is  
3       substantially completed, as evidenced by a recorded  
4       certificate of substantial completion executed by an  
5       independent registered architect, or independent registered  
6       engineer, or by issuance of a certificate of occupancy  
7       authorized by law."

8                   Section 2. This act shall become effective on  
9       January 1, 2019.