

SB98 INTRODUCED



1 U8R8XG-1

2 By Senator Givhan

3 RFD: Fiscal Responsibility and Economic Development

4 First Read: 21-Mar-23

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SYNOPSIS:

Under existing law, in order to establish its existence as a nonprofit organization under the laws of the state, a homeowners' association is required to file articles of incorporation with the Secretary of State under one code section, and file a certificate of formation with the Secretary of State consisting of information substantially the same as articles of incorporation, under a more recent code section.

This bill would remove the requirement that a homeowners' association must file articles of incorporation to be organized as a nonprofit corporation.

A BILL
TO BE ENTITLED
AN ACT

Relating to nonprofit homeowners' associations; amending Section 35-20-5, Code of Alabama 1975, to remove the requirement that certain duplicative filings shall be submitted to the Secretary of State.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 35-20-5, Code of Alabama 1975, is



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29 amended to read as follows:

30 "§35-20-5

31 (a) On or after January 1, 2016, a homeowners'
32 association created pursuant to a declaration shall be
33 organized as a nonprofit corporation pursuant to Chapter 3 of
34 Title 10A, and shall be governed in all respects as a
35 nonprofit corporation.

36 (b) (1) A homeowners' association, its members, and
37 directors shall be subject to all of the obligations, duties,
38 and responsibilities of and shall have all of the rights and
39 benefits provided in Chapter 3 of Title 10A.

40 (2) In addition or supplemental to any other filing
41 required in Chapter 3 of Title 10A, a homeowners' association
42 shall file the following documents with the Secretary of
43 State:

44 ~~a. Articles of incorporation.~~

45 ~~b.a.~~ b.a. Bylaws, ~~resolutions,~~ or other governing documents
46 of the association.

47 ~~e.b.~~ e.b. The original covenants, conditions, or
48 restrictions adopted by the association.

49 (3) The Secretary of State shall implement and maintain
50 an electronic database, organized by association name,
51 accessible by the public through the Secretary of State's
52 website which provides the capability to search and retrieve
53 the documents listed in subdivision (2). Any documents filed
54 with the Secretary of State shall be filed in accordance with
55 Division 4 of Article 3 of Chapter 4, provided such documents
56 filed with the Secretary of State pursuant to this chapter



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57 shall not be deemed to provide notice pursuant to Chapter 4.

58 (4) The Secretary of State may adopt rules necessary
59 for the implementation of this section, including reasonable
60 fees for the filing of documents.

61 (c) The organizational documents of a homeowners'
62 association shall provide for all of the following:

63 (1) Methods of efficient communications with the
64 members of the association unless a different method is
65 required by Chapter 3 of Title 10A.

66 (2) Rules and regulations for the conduct of any
67 meetings of the association.

68 (3) The compilation, organization, and maintenance of
69 full and complete financial records of the association
70 available to any member at a reasonable time and place upon
71 the payment of reasonable associated costs.

72 (4) Reasonable rules and regulations for the use,
73 maintenance, repair, replacement, or modification of any
74 common areas, if any, including penalties for violations.

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

77 (6) Statements regarding the payment of dues and
78 assessments to be provided to any person having an interest,
79 upon the payment of reasonable associated costs.

80 (7) Preparation and submission of the annual budgets of
81 the association to the members.

82 (8) Any other act a nonprofit corporation is required
83 to do under law.

84 (d) In addition to the requirements set forth in



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85 subsection (c), the organizational documents of a homeowners'
86 association may provide for the following:

87 (1) Indemnification and insurance for the association,
88 its officers, and directors.

89 (2) Fidelity bonds for any person or entity having
90 custody or control of any funds of the association.

91 (3) Periodic audits of the financial records of the
92 association.

93 (4) Power to acquire real and personal property for the
94 benefit of the association and its members.

95 (5) Power to hire and discharge managing agents and
96 other employees, agents, and independent contractors."

97 Section 2. This act shall become effective on the first
98 day of the third month following its passage and approval by
99 the Governor, or its otherwise becoming law.