

SB121 INTRODUCED



1 SB121
2 V7DTWLV-1
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 13-Jan-26



4 SYNOPSIS:

5 Existing law requires consent from a specified
6 percentage of condominium unit owners to amend a
7 condominium declaration and prohibits obtaining consent
8 through powers of attorney. In addition a unit owners'
9 association is limited in the legal proceedings in
10 which they can intervene and the courts are limited in
11 the equitable remedies they can provide.

12 This bill would prohibit the use of consents,
13 waivers, and powers of attorney, to obtain unit owners'
14 authorization to alter a condominium declaration. This
15 bill would allow a unit owners' association to
16 intervene in arbitration and mediation, in addition to
17 litigation, and would give courts the authority to
18 apply equitable remedies such as reformation,
19 injunction, and declaratory actions to disputes
20 involving the condominium declaration.

21 This bill would also make nonsubstantive,
22 technical revisions to update the existing code
23 language to current style.

24
25
26 A BILL
27 TO BE ENTITLED
28 AN ACT



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Relating to condominiums; to amend Sections 35-8A-104, 35-8A-108, 35-8A-110, 35-8A-205, 35-8A-216, 35-8A-302, 35-8A-308, 35-8A-309, 35-8A-403, 35-8A-408, and 35-8A-414, Code of Alabama 1975; to prohibit the use of consents, and waivers, in addition to powers of attorney, to obtain unit owners authorization to alter a condominium declaration; to require reports of material changes to be fully and accurately reported; to allow a unit owners' association to intervene in arbitration and mediation; to apply equitable remedies such as reformation, injunction, and declaratory actions to disputes involving the condominium declaration; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 35-8A-104, 35-8A-108, 35-8A-110, 35-8A-205, 35-8A-216, 35-8A-302, 35-8A-308, 35-8A-309, 35-8A-403, 35-8A-408, and 35-8A-414 of the Code of Alabama 1975, is amended to read as follows:

"§35-8A-104

Except as expressly provided in this chapter, the provisions of this chapter may not be varied by agreement, and the rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney, consent, waiver, or ~~use~~ any other device, to evade the limitations or prohibitions of this chapter or the declaration."

"§35-8A-108

The principles of law and equity, including the law of



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corporations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating ~~cause~~ causes of action, as well as remedies of reformation, injunction, and declaratory judgment, supplement the provisions of this chapter, except to the extent inconsistent with this chapter."

"§35-8A-110

(a) Notwithstanding a finding that this chapter ~~is in derogation of~~ modifies the common law, it should be liberally construed to ~~effectuate its purpose of encouraging~~ promote the development and construction of condominium ~~property~~ properties under ~~the provisions of~~ this chapter. The remedies provided by this chapter shall be liberally administered to ~~the end that~~ ensure the aggrieved party is put in as good a position as if the other party had fully performed. These remedies shall be available in addition, and not contrary to, the remedies otherwise available at common law.

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

"§35-8A-205

(a) The declaration for a condominium must contain:

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

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



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

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

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

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

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

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

(9) If any development right may be exercised ~~with respect to~~ on different parcels of real estate at different times, a statement to that effect ~~together with~~ that includes:
(i) either a statement ~~fixing the boundaries of those portions and regulating~~ describing each parcel's boundaries and the



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order in which ~~those portions may be subjected to the exercise~~
~~of each development right~~ the development rights may be
exercised on them, or a statement that no such assurances are
~~made in those regards~~ provided; and (ii) a statement ~~as to~~
~~whether, if any development right is exercised in any portion~~
~~of the real estate subject to that development right, that~~
~~development right must be exercised in all or in any other~~
~~portion of the remainder of that real estate~~ exercising a
development right in one part of the real estate requires
exercising it in all or any other parts of the remaining
property;

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

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

(12) Any restrictions on: (i) the use, occupancy,
leasing, or alienation of the units, provided that reasonable
rules and regulations ~~related to~~ concerning conduct by unit
owners or aesthetic ~~considerations~~ standards, ~~which are~~
~~adopted by the association from time to time~~ periodically by
the association ~~need do~~ not need to be included in the
declaration; and (ii) the ~~amount for which a unit may be sold~~
sale price of the unit or the amount ~~that may be received by a~~
~~unit owner on~~ a unit owner may receive upon sale,
condemnation, casualty loss ~~to the unit or to the condominium,~~
~~or on the,~~ or termination of the condominium;

(13) The recording data for recorded easements and



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licenses appurtenant to or included in the condominium, or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration;

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

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

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

"§35-8A-216

Subject to the provisions of the declaration, a declarant only has an easement through the common elements as may be reasonably necessary ~~for the purpose of discharging to~~ discharge a declarant's obligations or ~~exercising~~ exercise special declarant rights, whether arising under this chapter or reserved in the declaration."

"§35-8A-302

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

(1) Adopt and amend bylaws and rules and regulations;

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

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

(4) Institute, defend, or intervene in litigation, arbitration, mediation, or administrative proceedings in its



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169 own name on behalf of itself or two or more unit owners on
170 ~~matters~~ any matter affecting the condominium;

171 (5) Make contracts and incur liabilities;

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

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

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

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

183 (10) Impose and receive any payments, fees, or charges
184 for the use, rental, or operation of the common elements,
185 other than limited common elements described in Section
186 35-8A-202(2) and (4), and for services provided to unit
187 owners;

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

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



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

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

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

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

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

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

"§35-8A-308

~~A-There must be at least one~~ meeting of the association ~~must be held at least once~~ each year. Special meetings of the association may be called by the president, a majority of the board or by unit owners having 20 percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent



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prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove an officer or a member of the board."

"§35-8A-309

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

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

"§35-8A-403

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

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

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

(3) A general description of the condominium, including to the extent possible, number and types of buildings,



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structures, and amenities the declarant is obligated to build, and the declarant's schedule of commencement and completion of construction of buildings, structures, and amenities the declarant is obligated to include in the condominium;

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

(5) A projected budget for the association for at least one year after the date or anticipated date of the first conveyance to a purchaser, and thereafter the current budget along with the current balance sheet of the association, a statement of who prepared the budget, and a statement of the budget's assumption concerning occupancy. The budget must include, without limitation:

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

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

c. The projected common expenses by category of



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expenditures for the association; and

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

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

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

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

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

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

(11) A statement that:



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

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

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

(12) A statement of any unsatisfied judgments or pending lawsuits against the association; ~~and~~ including the status of any pending lawsuits ~~material~~ related to the condominium ~~of which that~~ a declarant ~~has actual knowledge is~~ aware of;

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

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

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

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

(15) A brief description of the insurance coverage



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provided for the benefit of unit owners;

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

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

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

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

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

(c) A declarant shall promptly amend the offering statement to ~~report~~ fully and accurately disclose any material change in the information required by this section."

"§35-8A-408

(a) A person required to deliver the required documents or report pursuant to Section 35-8A-402(c) or 35-8A-407 shall provide a purchaser of a unit with a copy of the offering statement and all amendments ~~thereto~~ not later than the date of any contract of sale. Unless a purchaser is given the



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required documents more than seven days before execution of a contract for the purchase of a unit, the purchaser may cancel the contract within seven days after first receiving the required documents or report.

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

(c) If a person required to deliver an offering statement or report pursuant to Section 35-8A-402(c) or 35-8A-407 willfully fails to provide a purchaser to whom a unit is conveyed with the documents required by subsection (a), the purchaser, ~~at the purchaser's option and in lieu of~~ in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to five percent of the sales price of the unit if the purchaser provides notice of the election to that person in the same manner as described in subsection (b) within six months of the date of conveyance of the unit."

"§35-8A-414

If a declarant or any other person subject to this chapter fails to comply with any provision ~~hereof~~ of this chapter or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for actual damages or appropriate



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393 equitable relief, which may include. ~~The court, in an~~
394 ~~appropriate case, may award~~ reasonable ~~attorney's~~ attorney
395 fees ~~to either party.~~"

396 Section 2. This act shall become effective on October
397 1, 2026.