

State of Alabama



Alabama Law Institute

Alabama Uniform Condominium Act of 1991

March 2017

ALABAMA LAW INSTITUTE

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March 2017

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

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SECTION 35-8A-313. INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds (including any deductible or retention under any contract of insurance) and reserves is a common expense. If the entire condominium is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium, (ii) except to the extent that other persons will be distributees under section 35-8A-205(a)(12)(ii),

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

(2) The remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 35-8A-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

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

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

Alabama Comment

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