

1 HB78
2 164053-1
3 By Representative Pringle
4 RFD: State Government
5 First Read: 02-FEB-16

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8 SYNOPSIS: This bill would establish the Alabama
9 Cooperative Housing Corporation Act of 2016, to
10 regulate cooperatives, a form of ownership of real
11 property in which legal title is vested in a
12 corporation or other entity, and the cooperative
13 unit's occupants receive an exclusive right to
14 occupy the unit.

15 This bill would require any cooperative
16 housing corporation formed after January 1, 2017,
17 to organize under the Alabama Nonprofit Corporation
18 Act, and be subject to all the duties,
19 requirements, obligations, rights, and privileges
20 under the act, and would require the filing of
21 certain cooperative documents with the Secretary of
22 State.

23 This bill would require the Secretary of
24 State to implement and maintain an electronic
25 database, organized by cooperative name and
26 accessible by the public through the Secretary of

1 State's website, with the capability to search and
2 retrieve cooperative filings.

3 The bill also provides requirements for the
4 adoption of certain governing documents of the
5 cooperative, including the master declaration,
6 bylaws, and master list; provides for the transfer
7 or sale of shares of the cooperative under certain
8 conditions and allows for the exercise of a right
9 of first refusal; and authorizes cooperative
10 housing corporations to claim a homestead exemption
11 on cooperative property, with the tax reduction to
12 be apportioned among the owners on a per unit
13 basis.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To create the Alabama Cooperative Housing
20 Corporation Act; to add Chapter 8C to Title 35, Code of
21 Alabama 1975, to define terms; to require certain cooperatives
22 to organize under the Alabama Nonprofit Corporation Act; to
23 require the filing of certain cooperative documents with the
24 Secretary of State; to require the Secretary of State to
25 implement and maintain a public searchable electronic database
26 of cooperative filings; to provide for the adoption of
27 governing documents, including requirements for master

1 declarations, bylaws, and master lists; to provide for the
2 transfer or sale of shares of the cooperative under certain
3 conditions; to provide for obligations of owners toward the
4 association; to authorize a cooperative to amend cooperative
5 documents under certain conditions; to provide for liens; to
6 provide for the right of first refusal under certain
7 conditions; and to add Section 40-9-19.2 to Chapter 9 of Title
8 40, Code of Alabama 1975; to authorize cooperatives to claim a
9 homestead exemption under certain conditions.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. A new Chapter 8C is added to Title 35 of
12 the Code of Alabama 1975, to read as follows:

13 Chapter 8C. ALABAMA COOPERATIVE HOUSING CORPORATION
14 ACT OF 2016.

15 §35-8C-1.

16 This chapter shall be known and may be cited as the
17 Alabama Cooperative Housing Corporation Act of 2016.

18 §35-8C-2.

19 For the purposes of this chapter, the following
20 terms shall have the following meanings:

21 (1) ASSESSMENT. A share of the funds required for
22 the payment of common expenses, which from time to time is
23 assessed against the unit owner.

24 (2) ASSOCIATION. The nonprofit corporation that is
25 responsible for the administration of a cooperative.

1 (3) BUYER. A person who purchases a share or shares
2 of a cooperative. The term may be used interchangeably with
3 the term purchaser.

4 (4) BYLAWS. The governing regulations adopted under
5 this chapter for the administration and management of the
6 property.

7 (5) COMMON ELEMENTS. Includes all of the following:

8 a. The land described in the master deed,
9 declaration, and other documents creating the cooperative.

10 b. As to any improvement, the foundations,
11 structural and bearing parts, supports, main walls, roofs,
12 basements, halls, corridors, lobbies, stairways, elevators,
13 entrances, and exits and other means of access, excluding any
14 specifically reserved or limited to a particular unit or group
15 of units.

16 c. Yards, gardens, walkways, parking areas, and
17 driveways, excluding any specifically reserved or limited to a
18 particular unit or group of units.

19 d. Portions of the land or any improvement or
20 appurtenance reserved exclusively for the management,
21 operation, or maintenance of the common elements.

22 e. Installations of all central services and
23 utilities.

24 f. All apparatus and installations existing or
25 intended for common use.

26 g. All other elements of any improvement necessary
27 or convenient to the existence, management, operation,

1 maintenance, and safety of the cooperative property or
2 normally in common use.

3 h. Other elements and facilities that are designated
4 in the master deed as common elements.

5 (6) COMMON EXPENSES. Expenses for which the unit
6 leases are proportionately liable, including, but not limited
7 to, all of the following:

8 a. All expenses of administration, maintenance,
9 repair, and replacement of the common elements.

10 b. Expenses agreed upon as common by all lessees or
11 owners.

12 c. Expenses declared common by this chapter or by
13 master deed or bylaws.

14 (7) COOPERATIVE HOUSING CORPORATION OR COOPERATIVE.
15 Any system of land ownership and possession in which the fee
16 title to the land and structure is owned by a corporation in
17 which the shareholders or other owners each have a long term
18 proprietary lease or other long term arrangement of exclusive
19 possession for a specific unit of occupancy within the
20 structure.

21 (8) LIMITED COMMON ELEMENTS. Those common elements
22 which are for the use of one or more specified units to the
23 exclusion of other units.

24 (9) MASTER DECLARATION. The master declaration as
25 amended and recorded under the terms of this chapter by which
26 the owner in fee simple or lessee of the property submits to a
27 cooperative plan of ownership.

1 (10) OWNER. A person listed in the master register
2 as a holder of a share in a cooperative.

3 (11) PROPRIETARY LEASE. A grant of a long term
4 exclusive right of possession and occupancy of a designated
5 unit to a owner or a grant of a leasehold of the cooperative
6 structure.

7 (12) UNIT. A part of the cooperative structure
8 designed or intended for occupancy and includes the
9 proportionate undivided interest in the common elements and in
10 any limited common elements as assigned in the provisions of
11 the master declaration or any amendment thereof.

12 §35-8C-3.

13 (a) The principles of law and equity, including, but
14 not limited to, the law of nonprofit corporations in Chapter 3
15 of Title 10A (commencing with Section 10A-3-1), the law of
16 real estate, and the law relative to the capacity to contract,
17 principal and agent, eminent domain, estoppel, negligence,
18 fraud, misrepresentation, duress, coercion, mistake,
19 receivership, substantial performance, or other validating or
20 invalidating cause supplement this chapter, except to the
21 extent inconsistent with this chapter.

22 (b) Every duty governed by this chapter imposes an
23 obligation of good faith in its performance or enforcement.

24 (c) The remedies provided in this chapter shall be
25 liberally administered so that the aggrieved party is put in
26 as good a position as if the other party had fully performed.

27 §35-8C-4.

1 (a) On or after January 1, 2017, a cooperative
2 housing corporation created pursuant to a master declaration
3 shall be organized as a nonprofit corporation pursuant to
4 Chapter 3 of Title 10A (commencing with Section 10A-3-1), and
5 shall be governed in all respects as a nonprofit corporation.

6 (b) (1) A cooperative housing corporation, its
7 members, and directors shall be subject to all of the
8 obligations, duties, and responsibilities of and shall have
9 all of the rights and benefits provided in Chapter 3 of Title
10 10A (commencing with Section 10A-3-1).

11 (2) In addition or supplemental to any other filing
12 required in Chapter 3 of Title 10A (commencing with Section
13 10A-3-1), a cooperative housing corporation shall file the
14 master declaration with the Secretary of State.

15 (3) The Secretary of State shall implement and
16 maintain an electronic database, organized by cooperative name
17 and accessible by the public through the Secretary of State's
18 website, with the capability to search and retrieve the master
19 declaration required in subdivision (2). Any documents filed
20 with the Secretary of State shall be filed in accordance with
21 Division 4 of Article 3, Chapter 4 of this title (commencing
22 with Section 35-4-120), provided such documents filed with the
23 Secretary of State pursuant to this chapter shall not be
24 deemed to provide notice pursuant to Chapter 4 of this title
25 (commencing with Section 35-41-1).

1 (c) The Secretary of State may adopt rules necessary
2 for the implementation of this section, including reasonable
3 fees for the filing of documents.

4 §35-8C-5.

5 (a) The master declaration of a cooperative housing
6 corporation shall contain all of the following information:

7 (1) A legal description by metes and bounds and tax
8 lot and block of the lands to be dedicated to the cooperative
9 form of ownership.

10 (2) A statement dedicating the land described in the
11 master declaration to the cooperative form of ownership.

12 (3) The name by which the cooperative is to be
13 identified, which name shall include the words "Cooperative
14 Housing Corporation," "Cooperative," or "Coop."

15 (4) A copy of the recorded deed that vests ownership
16 in the person who signs the master declaration to create the
17 cooperative.

18 (5) The bylaws that regulate the cooperative.

19 (6) The master register containing all cooperative
20 units allocated for separate occupancy.

21 (7) A written description and architectural plans
22 prepared to scale by an architect or engineer licensed in this
23 state which detail the improvements existing or to be erected
24 on the lands to create the cooperative and identify the
25 locations and dimensions of the common elements, limited
26 common elements, and each unit. The written description and
27 architectural plans shall be signed, certified, and sealed by

1 an engineer or architect authorized to practice his or her
2 profession in this state. The certification shall state that
3 the description and plans are a correct and accurate
4 representation of the improvements described and shown on the
5 plans.

6 (8) A statement of existing financing that is a lien
7 on the building and the manner in which the financing will be
8 paid and discharged as a lien before or after closing of
9 units.

10 (9) Other provisions, including, but not limited to,
11 restrictions or limitations upon the use, occupancy, transfer,
12 leasing, or other disposition of any unit, if the restriction
13 or limitation is otherwise permitted by law, and limitations
14 upon the use of common elements.

15 (10) A method of amending the master declaration
16 which requires recording of any amendment with the Secretary
17 of State before it becomes effective.

18 (b) The bylaws of a cooperative housing corporation
19 may provide for any or all of the following:

20 (1) The election of directors and other officials by
21 unit or district.

22 (2) Voting by owners on the basis of one vote per
23 member or one vote per unit rather than one vote per share.

24 (3) Action required or permitted to be taken at a
25 meeting of owners may be taken by mail ballot.

26 (4) A method of proportional membership
27 representation of owner meetings by delegates from units.

1 (5) Redemption or recall of stock.

2 (6) Termination of membership rights and privileges
3 of owners, including the forced sale of a share or shares of
4 the cooperative for continuing and unresolved violations,
5 restrictions, limitations, or requirements after all other
6 remedies provided in the bylaws have been exhausted.

7 (7) Standards for eligibility to become an owner.

8 (8) Allocation of net savings of the corporation
9 among the permitted uses.

10 (9) A right of first refusal by the association.

11 (c) The master register shall contain all of the
12 following information:

13 (1) Separate identification of each unit by
14 distinctive letter, name, or number or combination thereof.

15 (2) The percentage of common ownership representing
16 each owner's proportionate undivided interest in the common
17 elements; the interests shall be stated as percentages
18 aggregating 100 percent.

19 (3) The name and present address of each present
20 owner and occupant of each identified unit.

21 §35-8C-6.

22 The master declaration or master register may be
23 amended in the manner set forth in this chapter, provided that
24 no amendment shall affect any cooperative unit unless the
25 possessor of record thereof and the holders of record of any
26 liens thereon join in the execution of the amendment or
27 execute a consent thereto with the formalities of a deed.

1 §35-8C-7.

2 (a) The association, to the extent authorized by the
3 bylaws, may do any of the following:

4 (1) Suspend an owner's right to use facilities,
5 common elements, or services provided directly through the
6 cooperative for nonpayment of assessments, to the extent that
7 access to the owner's unit is not denied.

8 (2) Assess reasonable penalties against an owner for
9 any violation of the rules adopted by the association and
10 included in the bylaws after the owner is afforded the
11 opportunity to be heard and represented by counsel before the
12 association.

13 (b) The amount of any penalty assessed under this
14 section shall be considered an assessment for purposes of
15 Section 35-8C-8.

16 §35-8C-8.

17 (a) Except as may be otherwise provided in the
18 master declaration or bylaws of the cooperative housing
19 corporation, the cooperative has, and there is declared, a
20 lien on every unit for unpaid assessments levied against the
21 unit arising on and from the date the assessment is due as
22 fixed and determined by the association at an annual meeting
23 after giving notice as provided in Chapter 3 of Title 10A
24 (commencing with Section 10A-3-1). The lien may be enforced or
25 foreclosed as provided in the master declaration or bylaws or
26 as provided in this section. Written notice of the assessment
27 and lien shall be given to the owner of any unit on which the

1 assessment and lien is claimed by personal delivery or first
2 class United States mail, postage prepaid.

3 (b) A lien declared by this section shall have
4 priority, except as may be otherwise provided in Chapters 4
5 and 11 of this title, over all other subsequent liens and
6 encumbrances except state and county ad valorem taxes,
7 municipal improvement assessments, UCC fixture filings,
8 mortgages, and deeds of trust securing an indebtedness.

9 (c) The cooperative, within 12 months from the date
10 any assessment becomes due, shall record a statement of lien,
11 verified by an officer or director of the association having
12 personal knowledge of the facts, in the office of the judge of
13 probate of the county in which a unit subject to the
14 assessment is located. The statement of lien shall contain all
15 of the following:

16 (1) A description of the unit on which the lien is
17 claimed.

18 (2) The name of the cooperative claiming the lien.

19 (3) The name of the owner or owners of the unit on
20 which the lien is claimed.

21 (4) The amount of any unpaid assessments together
22 with the date of the assessments.

23 (5) The amount of any other interests and costs
24 claimed by the cooperative.

25 (d) At least 30 days prior to recording a statement
26 of lien, the cooperative shall give written notice by
27 certified mail to the owner of the unit or other person

1 obligated for the lien, as shown on the books and records of
2 the cooperative, that the statement will be recorded in the
3 office of the judge of probate.

4 (e) A cooperative may bring an action in a court
5 having jurisdiction to enforce a lien declared in this section
6 in the county where the unit is located by filing a verified
7 complaint, attaching a copy of the statement of the lien,
8 alleging those facts showing it is entitled to a lien for the
9 claimed unpaid assessment in accordance with the Alabama Rules
10 of Civil Procedure.

11 §35-8C-9.

12 (a) The sale or transfer of a cooperative share or
13 an assignment thereof or other like instrument is achieved by
14 the recording of the transfer document or a short form
15 memorandum thereof with the Secretary of State, which is
16 executed and acknowledged in recordable form and which
17 contains the following information:

18 (1) All information set forth in subsection (a) of
19 Section 35-8C-5.

20 (2) The name of the cooperative housing corporation
21 as set forth in the master declaration and master register,
22 including the name of the political subdivision and county in
23 which the property is located.

24 (3) The unit designation as set forth in the master
25 declaration and register.

26 (4) A reference to the last prior transfer of the
27 unit, if previously transferred.

1 (5) A statement of the proportionate undivided
2 interest in the common elements appurtenant to the unit as set
3 forth in the master declaration and master register or any
4 amendments thereof.

5 (6) The full name and address of the transferor and
6 transferee of the unit.

7 (7) An executed and acknowledged consent of the
8 cooperative board authorizing and approving the transfer or
9 assignment.

10 (8) The number of shares transferred.

11 (9) A statement of the full consideration paid for
12 the cooperative unit which includes the purchase price paid
13 plus the amount derived from application of the percentage of
14 ownership held in conjunction with the unit to the unpaid
15 balance of the fee or leasehold mortgage encumbering the
16 entire structure as of the date of the transfer or assignment.

17 (10) All other information, consistent with this
18 chapter, which the parties may deem appropriate.

19 §35-8C-10.

20 A cooperative housing corporation may exercise a
21 right of first refusal to buy a unit pursuant to a right of
22 first refusal provision included in the bylaws of the
23 cooperative, provided that the exercise of the right of first
24 refusal does not otherwise violate state or federal law.

25 §35-8C-11.

26 (a) Any cooperative property may be exempted from
27 this chapter by a deed of revocation duly executed by all unit

1 lessees or the sole owner of the property and the holders of
2 all mortgages or other liens affecting all units and recorded
3 in the master register.

4 (b) The exemption of any property from this chapter
5 does not bar the subjection of the property to this chapter at
6 a later date.

7 Section 2. Section 40-9-19.2 is added to Chapter 9
8 of Title 40 of the Code of Alabama 1975, to read as follows:

9 §40-9-19.2.

10 (a) A cooperative housing corporation organized
11 under Chapter 8C of Title 35 (commencing with Section 35-8C-1)
12 may apply for an exemption under Section 40-9-19, to be
13 applied against the valuation of property of the corporation
14 that is occupied by owners.

15 (b) The application for the homestead exemption must
16 include a list of all owners and must be updated annually to
17 reflect changes in the ownership and residency of qualifying
18 shareholders.

19 (c) The exemption shall be equal to the amount
20 specified in subsection (a) of Section 40-9-19, multiplied by
21 the number of units in the cooperative property occupied by
22 owners.

23 (d) A cooperative housing corporation that receives
24 an exemption pursuant to this section shall apportion the
25 property tax reduction resulting from the exemption among the
26 owners on a per unit basis.

1 (e) Any supplemental assessment resulting from
2 ineligibility for the homestead exemption must be applied in
3 the same manner against the owners for whom the ineligibility
4 applies.

5 Section 3. This act shall become effective on
6 January 1, 2017, following its passage and approval by the
7 Governor, or its otherwise becoming law.