

# Steps to Form a Non-Profit Home Owner's Association in Shelby County, Alabama:

**Things to remember:** Unlike homeowners' associations set up at the start of a subdivision and governed by restrictive covenants and agreements, membership in these types of organizations is VOLUNTARY. It will not have the same enforcement powers of mandatory homeowners' associations. But, like the mandatory ones, these organizations are essentially and totally a voluntary commitment by neighbors and among neighbors to making your neighborhood a better place.

Remember, no person at the City can give you legal advice. This guide is not meant to replace your use of an attorney familiar with voluntary homeowners associations, but may help you cut some of the costs in starting one in your neighborhood.

## Step 1 Obtain a Name Reservation

- First pick a name. For example, the Lazy Acres subdivision may want to form the "Lazy Acres HOA, Inc." of "Lazy Acres Home Owners Association, Inc." or the "Lazy Acres Neighborhood Association, Inc."
- Next, check that your desired name is available. The legal name of your nonprofit corporation may not conflict with any other registered name.
- Search for name reservation with Alabama Secretary of State Database Search, <http://arc-sos.state.al.us/CGI/CORPNAME.MBR/INPUT>  
Example: The Lazy Acres subdivision, would search for "Lazy Acres" and see if any names come up that would conflict with yours. At the time this was written there are four companies with "Lazy Acres" in the name. You can use the same name so long as it won't be confused with the other names.
- Submit your name reservation to Alabama Secretary of State (as a non-subscriber), [www.alabamainteractive.org/sos\\_nameReservation/welcome.action](http://www.alabamainteractive.org/sos_nameReservation/welcome.action)
- Fee: \$28 online – You will need a credit card and an email address.

## Step 2 File Alabama Nonprofit Certificate of Formation with Name Reservation

- Fill out the attached .pdf form, or have a lawyer draw up your Certificate of Formation. (It's the first few pages. They won't need your Bylaws, but you MUST attach a copy of the Name Reservation from Step 1 to the Original and Copies).
- File and three copies with the Office of the Judge of Probate in Shelby County (Columbiana).
- Shelby County Probate Court will mail a copy of the Certificate of Formation to the Alabama Secretary of State. You must bring the following fees in **separate money orders**:
- Fee: \$100.00 payable to Alabama Secretary of State  
\$63.00 payable to the Shelby County Judge of Probate

**\* Procedures and processes may vary depending on the circumstances of the individual non-profit organization application. Please consult an attorney if there are any questions or concerns.**

### **Step 3 Hold Organizational Meeting of the Directors to adopt Bylaws and Take Minutes**

- Once the Certificate of Formation is filed, hold the first meeting of the board of directors to approve the bylaws, elect additional directors, appoint officers, and approve initial resolutions such as opening a company bank account.
- Always remember to keep minutes of each meeting. It is helpful to log attendance at each meeting, and to write a summary of each item that voted on at the meeting. It helps keep track of what has been happening and what plans there are for the neighborhood.

### **Step 4 Get a Federal Employer Identification Number (EIN)**

- Your nonprofit must obtain an EIN regardless of whether it will hire employees. It will require the use of one person's social security number to obtain the corporate number.
- Apply with the Internal Revenue Service, [http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-\(EIN\)-Online](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-(EIN)-Online)

### **Step 5 Apply for 501(c) (Optional)**

- Obtain the services of a certified public accountant familiar with non-profit status. The forms that need to be filled out are lengthy.
- Apply with the Internal Revenue Service, <http://www.irs.gov/Charities-&-Non-Profits/Application-for-Recognition-of-Exemption>
- The IRS will return a Determination Letter which officially recognized your exemption.
- Fee: \$400 to \$850

**\* Procedures and processes may vary depending on the circumstances of the individual non-profit organization application. Please consult an attorney if there are any questions or concerns.**

**CERTIFICATE OF FORMATION**

**OF**

An Alabama Nonprofit Corporation

The undersigned, desiring to form a nonprofit corporation in accordance with the Alabama Nonprofit Corporation Act, as set forth in Section 10A-3-3.01 *Code of Alabama* of 1975, adopt the following Articles of Incorporation:

**I. NAME**

The name of the Corporation is \_\_\_\_\_ an Alabama Nonprofit Corporation.

**II. PURPOSE**

The purpose for which the Corporation is organized is to represent the homeowners and owners in the \_\_\_\_\_ subdivision and the transaction of any or all lawful business for which corporations may be incorporated in the State of Alabama. The Corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes as the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future tax code.

**III. DURATION**

The term of existence of the Corporation is perpetual. The corporate existence will commence upon the filing of these Articles of Incorporation.

**IV. MEMBERS**

The Corporation shall have members each of whom shall be owners of property within the subdivision and have paid annual voluntary dues as set by the board of directors from time to time. Membership shall be from January 1 to December 31 of each year.

## V. DIRECTORS

There shall be no less than three (3) members of the Board of Directors of the Corporation. The names and addresses of the persons who are to serve as the initial Directors until the first election thereof are as follows:

Name	Address
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No part of the net earnings of the Corporation shall inure to the benefit of, or be distributed to its Members, Directors, Officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Articles of Incorporation. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from the federal income tax under Section 501(c)(3) of the *Internal Revenue Code*, or the corresponding section of any future federal tax code, or (b) a corporation, contributions to which are deductible under Section 170(c)(2) of the *Internal Revenue Code* or the corresponding section of any future federal tax code.

## VI. REGISTERED OFFICE

The street address of the Corporation's initial registered office in this State

\_\_\_\_\_ The initial registered agent at the registered office is  
\_\_\_\_\_.

## VII. PRINCIPAL OFFICE

The mailing address of the initial principal office of the Corporation is \_\_\_\_\_.

### **VIII. INCORPORATORS**

The names and post office addresses of the incorporator(s) are the following:

#### **NAME & ADDRESS**

### **IX. DISSOLUTION**

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or any corresponding section of any future federal tax code, or shall be distributed to the federal, state or local government for use on a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine which are organized and operated exclusively for such purposes.

### **X. BYLAWS AND AMENDMENTS**

The Corporation shall be governed in accordance with the Bylaws of the Corporation. The Bylaws of the Corporation, and amendments thereto, and any amendments to these Articles of Incorporation, shall be adopted only by unanimous consent of the Board of Directors.

**IN WITNESS WHEREOF**, the undersigned incorporator has executed these Articles of Incorporation on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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, Incorporator

## Bylaws the

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### AN ALABAMA NONPROFIT CORPORATION

#### Article I. Name and Purpose

Section 1.01: NAME. The name of this organization shall be \_\_\_\_\_, hereafter referred to as “the Association”. It shall be a nonprofit organization incorporated under the laws of the State of Alabama.

Section 1.02: PURPOSE: The Bylaws shall govern the Corporation and its members and facilitate the fulfillment of the purposes provided in the Certificate of Formation.

#### Article II. MEMBERSHIP.

SECTION 2.01: ELIGIBILITY FOR MEMBERSHIP. Membership shall be voluntary and shall be open to any current resident of, or owner of property in the \_\_\_\_\_, located in Alabaster, Alabama, is eligible for Membership in the Association upon full payment of the annual dues, completion of an Application for Membership form, and a vote of the Officers of the Association. Any potential Member denied membership by the Officers of the Association may appeal to the active Membership by requesting such at the next meeting of the Members of the Association and receiving a majority vote of the Members present at such meeting.

Section 2.02: HONORARY MEMBERSHIP. Any person may acquire Honorary membership in the Association, upon full payment of the Association dues, by a majority vote of the Membership at a regularly scheduled meeting. Honorary Membership entitles the person to a mailed or e-mailed copy of each newsletter and free participation in neighborhood events for one year from the date of membership. Honorary Membership does not, however, include voting rights.

Section 2.03: ANNUAL DUES. The amount required for annual dues Members and Honorary Members shall be set in October each year for the upcoming year by the Board, unless changed by a majority vote of the members in attendance at the annual meeting of the full membership. Full payment of the annual Membership dues will entitle the Resident or Property Owner to full membership privileges for the calendar year in which paid, unless another year is directed by the Member. Dues may, on occasion, be paid by donation of comparable products or services to the Association, by prior approval of the Officers of the Association.

Section 2.04: VOTING RIGHTS. The full payment of the annual Member dues will entitle one person over age eighteen in the Member’s household (excluding Honorary Members) to vote in all Association elections.

Section 2.05: TERMINATION OF MEMBERSHIP. Membership in the Association is automatically terminated at midnight on December 31, if the Member has not yet paid the annual Association Dues and shall be reinstated by a vote of the Officers upon the payment of annual Member dues. A member may also be removed by a majority vote of the membership and in such event will not be entitled to a refund of any portion of their membership dues.

Section 2.06: RESIGNATION. Any Member may resign by filing a written resignation with the Secretary of the Association. Such resignation shall not relieve the resigning Member of the obligation to pay any dues, assessments, or other charges theretofore accrued and unpaid.

### **ARTICLE III. OFFICERS.**

Section 3.01: OFFICERS. The Association shall have the following officers:

- 1) President,
- 2) Vice-President,
- 3) Treasurer, and
- 4) Secretary.

Section 3.02: ELECTION OF OFFICERS. The Officers shall be elected by majority vote at the annual meeting of the full membership to be held on the first week of October of each year as set by the Board and noticed to the Members at least 30 days prior.

Section 3.03: TERM OF OFFICE. The Officers shall serve a one-year term, with no limitations on future terms. The term of office shall commence upon election and continue until successors are elected at the next annual meeting.

Section 3.04: DUTIES. The duties of the Officers are as follows:

1) The **PRESIDENT** shall be the principal executive officer of the Association and shall preside over all meetings, represent the Association on public occasions, and make such committee appointments from the membership as shall be deemed advisable for the effective conduct of the work of the Association.

2) The **VICE-PRESIDENT** shall assist the President as the President requests, and represent the Association on appropriate occasions. The Vice-President shall also, in the absence or disability of the President, perform the duties and exercise the powers of the President of the Association.

3) The **TREASURER** shall collect, safeguard, disburse and make periodic reports of all funds collected in the name of the Association.

4) The **SECRETARY** shall keep attendance records and record the proceedings of all meetings, maintain adequate records of the Association activities, and conduct such official correspondence as shall be required.

5) The duties of the officers shall not be limited as enumerated above, but they may in addition be charged with such duties as are assigned by the Association Membership.

6) Unless so authorized by resolution of the Board, no officer shall have any power or authority to bind the Association by any contract or engagement, to pledge its credit, or to render it liable for any purpose or in any amount.

Section 3.05: VACANCIES AND REMOVAL FROM OFFICE. Any Officer may be removed by a majority vote of the members of the Association (excluding the Officer to be removed). Upon the death, removal, resignation, or incapacity of an Officer of the Association, a majority of the Association shall elect a successor at a meeting called for that purpose.

Section 3.06: MANAGEMENT. The Association shall be managed by the Officers so elected, with powers consistent with the Articles of Incorporation and these Bylaws of the Association. The Officers shall design and implement projects for the Association, solicit volunteers, and interact with city, county, and government bodies on behalf of the Association.

#### **ARTICLE IV. MEETINGS OF MEMBERS.**

Section 4.01: PLACE OF MEETINGS. Meetings of the Members shall be held at the principal business office of the Association or at any other place the President or a majority of the Members may from time to time select and announce.

Section 4.02: REGULAR MEETINGS. Regular meetings of the Association shall be held quarterly, at a time and place designated by the President.

Section 4.03: ANNUAL MEETING. An annual meeting of the Members shall be held the first week of October of each year. At such meeting the Members shall receive reports on the affairs of the Association, and transact any other business which is within the power of the Members. If an annual meeting has not been called and held within twenty days after the time designated for it, any Member may call the annual meeting

Section 4.04: SPECIAL MEETINGS. Special meetings of the Members may be called by the President, by a majority of the Officers of the Association, or by five percent (5%) or more of the Members entitled to vote.

Section 4.05: NOTICE OF MEETINGS. A written or printed notice of each meeting, stating the place, day, and hour of the meeting, shall be given by the Secretary of the Association, or by the person authorized to call the meeting, to each Member of record entitled to vote at the meeting. This notice shall be given at least seven (7) days before the date named for the meeting, with the exception of Regular Monthly Meetings for which, once a firm date, time and place have been publicized to all the members, no further notice shall be required. Electronic delivery to each Member for which an e-mail address is on file shall be sufficient notice to those Members.

Section 4.06: QUORUM. The Members present at any properly announced meeting shall constitute a quorum at such meeting.

#### **ARTICLE V. VOTING.**

Section 5.01: VOTING. All issues shall be decided by a majority vote of Members present at the meetings.

Section 5.02: VOTING BY MAIL. Where Officers are to be elected by Members, or any changes in the Bylaws are to be voted on, or any other election is to be made whereby a count of the votes of all members may be desired, such election may be conducted by mail or by distribution ballot in such manner as the Officers of the Association shall determine advisable.

#### **ARTICLE VI. COMMITTEES.**

Section 6.01: AUTHORIZATION TO ESTABLISH COMMITTEES. The Association may establish committees as deemed necessary to pursue its stated objectives. Members of Committees shall be appointed by the President.

#### **ARTICLE VII. FINANCES.**

Section 7.01: EXPENDITURES. Expenditures of funds amounting to over \_\_\_\_ Hundred Dollars (\$\_\_\_\_\_) in any month must be approved by majority vote of the Membership present at any

properly-announced meeting of the Membership.

Section 7.02: FINANCIAL REPORTS. Quarterly and Annual Financial Reports shall be prepared by the Treasurer and presented to the Members at annual meetings. Quarterly reports may be disseminated by electronic means to all Members for which an e-mail address is on file.

**ARTICLE VII. AMENDMENTS.**

Section 8.01: PROCEDURE. These Bylaws may be amended by a two-thirds majority vote of those present at any regular meeting of the Members of the Association, provided seven days written notice of the proposed amendment and of the meeting is given.

**ARTICLE IX. ACCEPTANCE OF BYLAWS**

Section 9.01: VOTING. Acceptance of these Bylaws shall be by a two-thirds majority vote of those present at any regular meeting of the Members of the Association, provided written copies of the Bylaws and written notice of the meeting is given to all Members at least seven days prior to the meeting.

**ARTICLE X. NON-COMPLIANCE WITH BYLAWS.**

Section 10.01: NON-COMPLIANCE PENALTIES. Noncompliance with the Bylaws of the Association may result in termination of membership for the offender, upon a two-thirds majority vote by the membership of the Association. Under no circumstance will noncompliance with any section of these Bylaws constitute the forfeiture of the rights of the Association to exist or the rights of the Association to enforce the Bylaws of the Association.

Adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Secretary