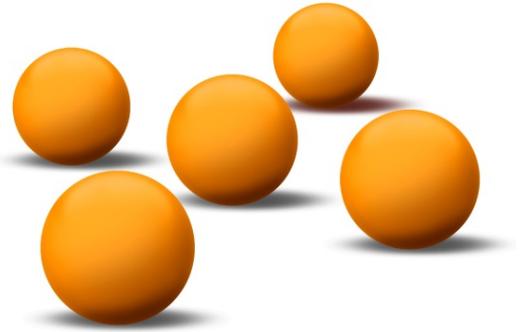


# The Condominium Form of Ownership

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In Alabama, contractors and subcontractors performing work involving common elements of the condominium at the request and direction of a condominium association should be aware of unique laws applicable to their lien rights and the rights and remedies available to the unit owners in the condominium. Typically a declaration of condominium defines the common elements as the structural components of a building including the roof and exterior materials. However, a developer has great flexibility in deciding what portions of the property are designated as common elements, limited common elements and units.

Most contractors are familiar with the Alabama Mechanic's Lien Statute set forth in Alabama Code § 35-11-210, *et seq.* The Alabama Mechanic's Lien Statute sets forth procedures for a contractor to lien property in an effort to obtain payment for material or labor provided by the contractor, including strict procedural and notice requirements for furnishing a notice of intent to claim a lien, filing a verified statement of lien, and commencing a lawsuit to enforce the lien. When performing work on the common elements of a condominium, the question arises, who is the "owner" of the common elements that must receive notice? Unlike common areas in a subdivision, common elements in a condominium are not owned by the association. The common elements in a condominium are owned in common by all of the unit owners, each having undivided interest in the common elements as described in the declaration of condominium. Therefore, any lien attributable to work performed or materials supplied in connection with the common elements of the condominium should be filed against each individual unit in the condominium. For example, if a contractor performs a common element roof replacement in a condominium at a cost of \$100,000, and the condominium contains one hundred units, the lien for the \$100,000 should be filed against all one hundred units in the condominium. As set forth below, the Alabama Uniform Condominium Act of 1991 does not require payment of the entire \$100,000 by a unit owner to obtain a release of the lien as it pertains to their specific unit.

Each unit owner may obtain a release of such lien upon payment of its proportionate share of the expense. Section 35-8A-317(c) of the Alabama Uniform Condominium Act of 1991 provides that the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. In some condominiums this ratio is equal for each unit and sometimes the developer establishes the ratios based on square footage or value of the unit. The contractor may obtain confirmation of the allocation before commencing work in the condominium from the association's Board of Directors or its own attorney regarding the applicable expense liability for each unit before releasing its lien.

**FOR MORE INFORMATION, PLEASE CONTACT:**

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