

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 30 TO TITLE 27 SO AS TO ENTITLE THE CHAPTER "HOMEOWNERS ASSOCIATIONS"; TO DEFINE NECESSARY TERMS; TO REQUIRE OWNERS OF PROPERTY SUBJECT TO A HOMEOWNERS ASSOCIATION TO DISCLOSE THE ASSOCIATION'S GOVERNING DOCUMENTS TO PROSPECTIVE OWNERS, TO PROVIDE HOMEOWNERS ASSOCIATIONS SHALL PROVIDE HOMEOWNERS WITH PRINTED OR ELECTRONIC COPIES OF FINANCIAL INFORMATION AND THE GOVERNING DOCUMENTS OF THE ASSOCIATION UPON REQUEST AT NO CHARGE, TO PROVIDE HOMEOWNERS ASSOCIATION BOARDS MAY NOT TAKE ACTION TO ADD OR INCREASE FEES AND THE LIKE WITHOUT GIVING CERTAIN NOTICE TO HOMEOWNERS AND TO PROVIDE HOMEOWNERS MAY ATTEND MEETINGS AT WHICH SUCH ACTIONS ARE TO BE TAKEN, TO INSTRUCT THE SOUTH CAROLINA REAL ESTATE COMMISSION TO OFFER AN ONLINE INSTRUCTIONAL COURSE COVERING THE BASICS OF HOMEOWNERS' ASSOCIATION MANAGEMENT AND THE RIGHTS AND RESPONSIBILITIES OF HOMEOWNERS, TO GRANT CONCURRENT CIVIL JURISDICTION IN CERTAIN ACTIONS BETWEEN HOMEOWNERS ASSOCIATIONS AND HOMEOWNERS, AND TO CREATE THE OFFICE OF HOMEOWNERS ASSOCIATION OMBUDSMAN IN THE DEPARTMENT OF CONSUMER AFFAIRS, TO PROVIDE QUALIFICATIONS, POWERS, AND DUTIES OF THE OMBUDSMAN, AMONG OTHER THINGS; AND TO AMEND SECTION 275040, AS AMENDED, RELATING TO MANDATORY DISCLOSURE STATEMENTS SELLERS OF REAL PROPERTY MUST PROVIDE PURCHASERS, SO AS TO INCLUDE PROVISIONS CONCERNING DISCLOSURES OF PROPERTY SUBJECT TO HOMEOWNERS ASSOCIATION GOVERNANCE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 27 of the 1976 Code is amended by adding:

“CHAPTER 30

Homeowners Associations

Article 1

The South Carolina Homeowners Association Act

Section 2730110. This article may be cited as the ‘South Carolina Homeowners Association Act’.

Section 2730120. As used in this article:

(1) ‘Board’ means the representative body, regardless of name, designated in the governing documents to act on behalf of a homeowners association and govern the association.

(2) ‘Commission’ means the South Carolina Real Estate Commission, created by Section 405710.

(3) ‘Financial information’ means budgets, expenditures, debts, and debtors of a homeowners association.

(4) ‘Governing documents’ means any documents:

(a) establishing a homeowners association and governing its management or operation;

(b) providing for the duties and obligations of the board, the association, and the homeowners;

(c) creating or imposing assessments, fees, or fines by the board or the association on the homeowners; and

(d) including, but not limited to, the master deed or master lease, covenants, conditions, and restrictions, declarations, articles of incorporation, bylaws, rules and regulations, and any amendments thereto.

(5) ‘Homeowner’ means a declarant or other person who owns a unit in a homeowners association, but does not include a person having an interest in such a unit solely as security for an obligation.

(6) ‘Homeowners association’ or ‘association’ means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes,

insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration. A 'homeowners association' or 'association' does not include a vacation timesharing plan organized and subject only to the provisions of Chapter 32.

Section 2730130. (A) A homeowner selling his property that is subject to a homeowners association's governing documents must disclose the governing documents to a prospective owner upon request. A selling homeowner is solely responsible for the costs of providing the governing documents to a prospective owner in compliance with this section. A selling homeowner may provide the governing documents in an electronic or printed format.

(B) At the request of a homeowner, a homeowners association shall provide him, at no charge, copies of all governing documents and financial information of the association in either printed or electronic format. Such a request must be completed within three business days.

Section 2730140. A homeowners association shall provide members with notice to members before it may take any action to add or increase a fee, assessment, or other mandatory or optional financial obligation of property owners. This notice must be provided at least fortyeight hours before the meeting at which such action is to be taken. Property owners must be allowed to attend the meeting.

Section 2730150. (A) Beginning January 1, 2018, the commission shall offer an online instructional course covering the basics of homeowners association management, rights, and responsibilities. The online course is open to the public and may be taken by any interested person. The planning and development for the course must begin on or after July 1, 2017.

(B) The course must be offered at no charge.

(C) The course may include, but is not limited to, the following subjects:

- (1) federal and state laws concerning governance of homeowners associations;
- (2) ethical and fiduciary duties;
- (3) rules of parliamentary procedure;
- (4) procedure for conducting public hearings;
- (5) state and local governmental structures;
- (6) relationships with developers;
- (7) insurance;
- (8) infrastructure; and
- (9) security.

(D) A person who takes and passes the course shall receive a notice of certification from the commission. The commission shall maintain an online list of certified persons and the year they passed the course. Certification is not required for a person to serve on a homeowners association board.

(E) A person is not limited in the number of times he may take the course, however, he may be certified only once each year.

(F) The commission shall review and update the course annually.

Section 2730160. (A) Magistrates have concurrent civil jurisdiction in the following actions between associations and homeowners regarding:

(1) payment of dues, assessments, fines, or fees if the amount being claimed does not exceed the civil jurisdictional amount in magistrates court as provided in Section 22310(1);

(2) actions for specific performance arising out of the governing documents provided the cost of the specific performance would not exceed the civil jurisdictional amount in magistrates court as provided in Section 22310(1);

(3) actions for injunctive relief, including temporary injunctive relief pending a hearing, arising out of the governing documents; and

(4) access to the governing documents, financial records, and homeowner's membership list that includes each homeowner's contact addresses; however, under no circumstances may the homeowner's membership list be released or used for commercial purposes.

(B) The magistrates court, in its discretion, may award to the prevailing party costs associated with bringing or defending an action under this section, including reasonable attorney's fees, not to exceed the civil jurisdictional amount in magistrates court as provided in Section 22310(1).

Article 3

Homeowners Association Ombudsman

Section 2730310. This article must be known and may be cited as the 'Homeowners Association Ombudsman Act'.

Section 2730320. For the purposes of this article:

(1) 'Board' means the representative body, regardless of name, designated in the governing documents to act on behalf of a homeowners association and govern the association.

(2) 'Bylaws' means the recorded document, and recorded amendments to it, that contain the procedures for conducting the affairs of a homeowners association, regardless of the form of the association's legal entity or the name by which the document comprising the bylaws is identified.

(3) 'Declarant' means a person or group of persons acting in concert who:

(a) as part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or

(b) reserves or succeeds to a special declarant right, which means a right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration or bylaws of the association.

(4) 'Declaration' means the recorded instruments, however denominated, that create a homeowners association, including amendments to those instruments.

(5) 'Department' means the Department of Consumer Affairs.

(6) 'Director' means the Director of the Department of Consumer Affairs.

(7) 'Homeowner' means a declarant or other person who owns a unit in a homeowners association, but does not include a person having an interest in such a unit solely as security for an obligation.

(8) 'Homeowners association' or 'association' means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration. A 'homeowners association' or 'association' does not include a vacation timesharing plan organized and subject only to the provisions of Chapter 32.

(9) 'Office' means the Office of the Homeowners Association Ombudsman established in this article.

(10) 'Ombudsman' means the homeowners association ombudsman established in this article.

(11) 'Rule' or 'rules' mean a rule, procedure, or regulation of a homeowners association, however denominated, that does not appear in the declaration or bylaws and that governs either the management of the homeowners association or the conduct of persons or property within the homeowners association and adopted by the association.

(12) 'Unit' means a tract or parcel of land governed by the homeowners association and designated for separate ownership or occupancy, including all improvements contained within the space except those excluded in the declaration. A unit may include two or more noncontiguous spaces. The association's interest in a unit is unaffected if the unit is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner.

Section 2730330. (A) There is established within the department the Office of the Homeowners Association Ombudsman.

(B) The director shall appoint the ombudsman, consistent with the qualifications set forth in Section 2730340.

(C) The ombudsman is the head of the office and is charged with managing the office consistent with the powers and duties vested in the ombudsman by this article, within the limitations of the funds appropriated by the General Assembly.

(D) The ombudsman shall serve at the pleasure of the director.

(E) A vacancy in the ombudsman position is filled in the same manner as the original appointment.

Section 2730340. The ombudsman must:

- (1) be a licensed attorney in good standing in this State;
- (2) have at least five years of experience in the practice of law in this State;
- (3) have experience in real estate law;
- (4) be a certified civil mediator;
- (5) not engage in any other business or profession that conflicts with the powers and duties of the position or the office; and
- (6) satisfy any additional criteria established by the director.

Section 2730350. The ombudsman:

(1) shall maintain a publicly available Internet website containing information about the office, contact information, services available through the office, information required to be placed on the website by other provisions of this article, and other information considered appropriate by the ombudsman;

(2) shall assist declarants, homeowners, homeowners associations, executive boards of homeowners associations, and other interested parties in understanding their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective homeowners association; provided, however, that:

(a) the ombudsman is not the attorney for declarants, homeowners associations, executive boards of homeowners associations, or other interested parties;

(b) no attorney-client relationship may be implied or established by the ombudsman's communication with those persons; and

(c) the ombudsman may not act as or appear to act as an attorney in a legal action brought by those persons;

(3) may organize and conduct meetings to educate declarants, homeowners associations, executive boards of homeowners associations, and other interested parties about their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective homeowners association;

(4) shall prepare, publish, and make available online educational and reference materials about homeowners communities, including general information about the roles, rights, and responsibilities of the various parties, suggestions for the orderly operation of the homeowners association, mechanisms for internal dispute resolution, and other information considered appropriate by the ombudsman;

(5) shall develop and publicize procedures intended to result in fair elections for members and officers of a homeowners association;

(6) shall assist with meetings, mediations, or other forms of alternative dispute resolution as requested by declarants, homeowners, homeowners associations, executive boards of homeowners associations, or other interested parties;

(7) shall receive complaints from declarants, homeowners associations, executive boards of homeowners associations, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective homeowners association;

(8) shall receive complaints and, if meritorious and appropriate, arrange for meetings, mediation, or other forms of alternative dispute resolution to those parties involved in order to assist in the resolution of the complaint;

(9) may request the attendance and testimony of witnesses, administer oaths and affirmations, take evidence, and request the production of books, papers, records, or other evidence needed to exercise the powers or the performance of the duties vested in the ombudsman or his designee, who must be an employee of the office and who is a licensed attorney in good standing in this State;

(10) shall establish and publish, in print and on the office's website:

(a) procedural rules for meetings, mediation, or other forms of alternative dispute resolution organized pursuant to this section; and

(b) procedures and forms for accepting complaints from declarants, homeowners associations, executive boards of homeowners associations, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective homeowners association;

(11) shall make an annual report of the office's activities to the Governor and the General Assembly before December first, provided this report must include:

(a) statistics on the number of inquiries and complaints handled by the office;

(b) information on education and outreach efforts by the office;

(c) concerns expressed to the office by declarants, homeowners, homeowners associations, executive boards of homeowners associations, or other interested parties, including input received in county meetings conducted pursuant to item (15);

(d) legal developments impacting homeowners communities, associations, or both;

(e) recommendations to the General Assembly for changes to state law to improve the regulation and operation of homeowners communities; and

(f) other information considered appropriate by the ombudsman;

(12) shall direct the work of the office consistent with the powers and duties established by this section;

(13) shall employ and supervise staff necessary to assist in carrying out the powers and duties established by this section, within the limitations of funds appropriated by the General Assembly; and

(14) shall perform any other function necessary to fulfill the powers and duties outlined in this section.

Section 2730360. (A) When a declarant, homeowner, homeowners association, executive board of a homeowners association, or other interested party contacts the office to make an inquiry, request services, or file a complaint, the declarant, homeowner, homeowners association, executive board, or other interested party shall provide the office with the:

(1) name, address, telephone number, and any other contact information for the homeowners association;

(2) name of the person engaged in property management for the homeowners association or the name of the person who manages the property at the site of the homeowners association;

(3) name, mailing address, telephone number, and other contact information for those on the executive board of the homeowners association;

(4) name, mailing address, telephone number, and other contact information for the declarant;

(5) declaration, bylaws, and rules for the homeowners association; and

(6) number of units in the homeowners association.

(B) The ombudsman may waive the requirement created in subsection (A), and shall make such a waiver if the complainant provides any reasonable evidence that an adverse party that possesses the information is failing to timely provide the information in good faith.”

SECTION 2. Section 275040(A) of the 1976 Code, as last amended by Act 141 of 2010, is further amended to read:

“(A) The owner of the real property shall furnish to a purchaser a written disclosure statement. The disclosure statement must contain the language and be in the form promulgated by the commission and the form may be delivered electronically through the Internet or other similar methods. The commission may charge a reasonable fee for the printed form but shall post the form for free downloading on its public website. The disclosure statement must include, but is not limited to, the following characteristics and conditions of the property:

(1) the water supply and sanitary sewage disposal system;

(2) the roof, chimneys, floors, foundation, basement, and other structural components and modifications of these structural components;

(3) the plumbing, electrical, heating, cooling, and other mechanical systems;

(4) present infestation of wooddestroying insects or organisms or past infestation, the damage from which has not been repaired;

(5) the zoning laws, restrictive covenants, building codes, and other land use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from a governmental agency affecting this real property;

(6) presence of leadbased paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material, buried or covered, and other environmental contamination; or

(7) existence of a rental, rental management, vacation rental, or other lease contract in place on the property at the time of closing, and, if known, any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property the tenant leases;

(8) existence of a meter conservation charge, as permitted by Section 583750, that applies to electricity or natural gas service to the property; or

(9) whether the property is subject to governance of a homeowners association, as provided in Chapter 30 of this title, which carries certain rights and obligations that may limit the use of his property and involve financial obligations, and that he is entitled to receive copies of all homeowners association governing documents from the selling homeowner at no charge, as provided in Chapter 20 of this title.”

SECTION 3. This act takes effect upon approval by the Governor.

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