**South Carolina General Assembly**

125th Session, 2023-2024

**S. 1085**

**STATUS INFORMATION**

General Bill

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Introduced in the Senate on February 22, 2024

Currently residing in the Senate Committee on **Judiciary**

Summary: Property exempt from attachment, levy, or sale

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/22/2024 Senate Introduced and read first time ([Senate Journal‑page 4](h:\sj\20240222.docx))

2/22/2024 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 4](h:\sj\20240222.docx))

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**VERSIONS OF THIS BILL**

[02/22/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1085_20240222.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 15‑41‑30, RELATING TO PROPERTY EXEMPT FROM ATTACHMENT, LEVY, AND SALE, SO AS TO PROVIDE THAT A DEBTOR’S INTEREST IN REAL PROPERTY USED AS A PRIMARY RESIDENCE MAY NOT BE SOLD IF THE ACTION WAS INSTITUTED BY A HOMEOWNERS ASSOCIATION ATTEMPTING TO COLLECT UNPAID DUES, FEES, OR FINES; BY AMENDING SECTION 27‑30‑130, RELATING TO THE ENFORCEABILITY OF A HOMEOWNERS ASSOCIATION’S GOVERNING DOCUMENTS, SO AS TO PROHIBIT THE ENFORCEABILITY OF A PROVISION GRANTING A HOMEOWNERS ASSOCIATION THE AUTHORITY TO FORECLOSE ON PROPERTY; AND BY ADDING SECTION 29‑3‑810 SO AS TO PROHIBIT A FORECLOSURE ACTION NOT AUTHORIZED BY STATUTE.

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

SECTION 1. Section 15‑41‑30(A) of the S.C. Code is amended to read:

(A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:

(1)(a) The debtor's aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars. If there are multiple owners of such a living unit exempt as a homestead, the value of the exemption of each individual owner may not exceed his fractional portion of one hundred thousand dollars.

(b) In addition to the aggregate interest as provided in subsection (A)(1)(a), a surviving spouse may also exempt the aggregate interest to which the surviving spouse succeeded by inheritance, testamentary transfer, or nonprobate transfer on the death of the decedent spouse, not to exceed fifty thousand dollars. For purposes of this subsection, a surviving spouse means a spouse married to the decedent at the time of death, who is entitled to the homestead property tax exemption as provided in Section 12‑37‑250, who has not remarried, and who is living in the residence or cooperative that is used as a residence.

(2) The debtor's interest, not to exceed five thousand dollars in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four thousand dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in cash and other liquid assets to the extent of a value not exceeding five thousand dollars, except that this exemption is available only to an individual who does not claim a homestead exemption. The term “liquid assets” includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

(6) The debtor's aggregate interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) The debtor's aggregate interest in any property, not to exceed five thousand dollars in value of an unused exemption amount to which the debtor is entitled pursuant to subsection (A), items (1) through (6).

(8) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(9) The debtor's aggregate interest, not to exceed in value four thousand dollars less any amount of property of the estate transferred in the manner specified in Section 542(d) of the Bankruptcy Code of 1978, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(10) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(11) The debtor's right to receive or property that is traceable to:

(a) a social security benefit, unemployment compensation, or a local public assistance benefit;

(b) a veteran's benefit;

(c) a disability benefit, except as provided in Section 15‑41‑33, or an illness or unemployment benefit;

(d) alimony, support, or separate maintenance; or

(e) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless:

(i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(ii) the payment is on account of age or length of service; and

(iii) the plan or contract does not qualify under Sections 401(a), 403(a), 403(b), or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), or 409).

(12) The debtor's right to receive or property that is traceable to:

(a) an award under a crime victim's reparation law;

(b) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent; or

(c) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(13) The debtor's right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, “Internal Revenue Code” has the meaning provided in Section 12‑6‑40(A). The interest of an individual under a retirement plan shall be exempt from creditor process and is an exception to Section 15‑41‑35. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.

(14) The debtor's interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974, as amended.

(15) The debtor's aggregate interest, not to exceed three thousand dollars in value in any rifle, shotgun, pistol, or any combination not to exceed three firearms.

(16) The debtor’s interest in real property that the debtor uses as a primary residence if the sale under a mesne or final process issued by a court was solely instituted by a homeowners association attempting to collect unpaid dues, fees, or fines.

SECTION 2. Section 27‑30‑130 of the S.C. Code is amended to read:

Section 27‑30‑130. (A)(1) Except as otherwise provided in this section, in order to be enforceable, a homeowners association's governing documents must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.

(2) To continue to be enforceable, any governing document not recorded prior to the effective date of this section must be recorded by January tenth of the year following the effective date of this section in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.

(B)(1) Rules, regulations, and amendments to rules and regulations:

(a) are effective upon passage or adoption; and

(b) must be made accessible to a homeowners association member upon the request of that member of the homeowners association, and, at the option of the homeowners association, via electronic mail or through methods provided by the homeowners association's bylaws that ensure actual notice, unless they are:

(i) posted in a conspicuous place in a common area in the community; or

(ii) available on an Internet website maintained by the homeowners association, where they may be downloaded by the homeowner.

(2) In order to remain enforceable, a homeowners association's rules, regulations, and amendments to rules and regulations must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county in which the property is located by January tenth of each year following their adoption or amendment.

(C) Homeowners associations in existence on the effective date of this section must record the documents required by subsections (A)(1) and (B)(2) by January tenth following the effective date of this section.

(D) Effective July 1, 2023, any provision in a homeowners association’s governing documents granting the homeowners association the authority to foreclose on the property of a homeowners association member may not be enforced. However, a homeowners association may place a lien on the property for unpaid dues, fines, or other fees. Such liens shall be no more than ten percent of the assessed value of the property at the time the lien is placed.

(E) The recording of the rules, regulations, bylaws, and amendments to rules and regulations are not subject to the requirements of witnesses and acknowledgements required under Section 30‑5‑30.

SECTION 3. Article 7, Chapter 3, Title 29 of the S.C. Code is amended by adding:

Section 29‑3‑810. Effective July 1, 2024, all foreclosure actions must be authorized by statute. Nothing in this section affects a cause of action existing before July 1, 2024.

SECTION 4. This act takes effect upon approval by the Governor.

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