

Background of South Carolina Legislative Proposals

Session Prior to 2015

A number of bills have been proposed for consideration by the General Assembly. Senator Darrell Jackson of Richland County has introduced bills since the 2003-2004 legislative session.

Late in the 2007-2008 session, Senator Jackson introduced S. 1283, which provided for the following:

Registration with the Dept. of Consumer Affairs: This included a nonrefundable application fee of \$100 and then annual nonrefundable fees of \$10 per lot or unit.

Meetings: Meetings would have to be held in accordance with the bylaws at least once a year and with certain notice requirements.

Quorum: A quorum would be established by the presence of 1/3 of the voting interests (in person or proxy) at the beginning of the meeting.

Amendments: Amendments to the governing documents would require approval by 2/3 of the voting interests, voting either in person or by proxy.

Records/Reports: The association would have to maintain complete and accurate books, accounts, and records the department requires to determine compliance with the provisions of the bill in accordance with generally accepted accounting principles for at least three years.

Assessments: Assessments would have to be set forth in the governing documents.

Suspension of Privileges: An association could not suspend privileges or services for unpaid assessments of late fees.

Notice of Unpaid Assessments: The bill would specify how an association would have to send notice to members who have not paid assessments.

Adjudicatory Panel Hearings: The bill would require an adjudicatory process and an opportunity to be heard before the association could file suit or take other action against a homeowner for a violation of governing documents other than failure to pay assessments.

Nonbinding Mediation: The bill would provide that members may seek nonbinding mediation through the department for the following:

- Disputes involving the association's governing documents, or
- Disputes involving at least \$250.

Disclosure: This bill would require members of homeowners' associations to provide disclosure of the existence of the association to prospective buyers.

Duties of the Association: The bill would provide that homeowners' associations owe members a "duty of utmost care, honesty, and loyalty, including the duty of due diligence when handling matters of the association."

Departmental Enforcement: The bill would authorize the Department of Consumer Affairs to enforce the provisions of the South Carolina Homeowners' Association Act and investigate suspected violations.

Regulations: The bill would provide that the Department of Consumer Affairs could promulgate relevant regulations.

Fees collected by the Department: The department would retain all of the fees that it collected.

Following its introduction, S. 1283 was referred to a Senate Judiciary subcommittee of Senators Larry Martin (ch), Malloy, Campsen, Williams, and Massey. The subcommittee had a meeting at the end of the session, heard from a number of concerned parties, and asked that further work be done over the summer and a new bill introduced the next session.

The next session, that being the 2009-2010 session, S. 1283 was reintroduced and numbered S. 30. S. 30 was referred to a Senate Judiciary subcommittee of Senators Malloy (ch), Ford, Massey, Mulvaney, and Shane Martin.

After six meetings, the subcommittee proposed a strike-all amendment that would rewrite the bill to provide for:

- (1) a duty of care equivalent with the nonprofit corporations act;
- (2) transparency and inspection rights of nine types of documents for members of homeowners' associations;
- (3) assessments and fees to be based on the authority of the governing documents and, upon the recommendation of the Realtors' Association, that fees be applied uniformly except in certain circumstances;
- (4) members of homeowners' associations to have the right to attend meetings and remove board members;
- (5) the Department of Consumer Affairs to register homeowners' associations, investigate their activities, and provide mediation for homeowners' disputes through a three-tier structure [the per unit registration fee was lowered since the subcommittee received information that the \$10 per member-owned-lot or unit charge was more than needed to administer the program -- a \$1 per member-owned-lot or unit charge was provided in the subcommittee amendment]; and
- (6) disclosure of information to buyers who are purchasing property within a homeowners' association.

The subcommittee amendment was reported to the full committee for consideration and was referred back to the subcommittee for additional work. The subcommittee met once more to ask interested parties to submit recommendations.

In the fall of 2014, the Horry County Legislative Delegation held a public hearing. The meeting was attended by approximately 300 interested parties, many of whom testified about HOA concerns.

During the 2015 Session

Several bills were introduced in the Senate and House concerning HOAs.

S. 13, sponsored by Senator Rankin, would create a Commission for Common Interest Community Education and Manager Certification as a part of the Department of Administration and enact The South Carolina Common Interest Community Association Act to require that: (1) each association file the association's governing documents with the county clerk of court or register of deeds; (2) persons serving on an association's board must complete educational requirements; (3) certain information of the association would be exempt from disclosure; (4) association meetings be generally open, recordable by property owners, and closed under only certain conditions; and (5) the bill's provisions could be enforced by an action in magistrates court.

As introduced, **S. 18**, sponsored by Senator Jackson, would enact the "South Carolina Homeowners' Protection Act" to provide that: (1) in a disclosure statement, a property owner would have informed if he were required to be a member of an association, of the association's assessments and fees and whether they were subject to change, and that he might be subject to a foreclosure action for unpaid assessments and fees; (2) a property owner would be entitled to inspect and review governing documents, participate in at least 1 meeting annually, and receive notice of a meeting and its purpose and information about candidates for board elections; (3) fees and assessments could not be charged if they were not in the governing documents and late fees could not be in excess of 15 dollars or 10% of the assessment; and (4) a suspension of privileges or services would not be allowed during the assessment period. Any suspension or action

against the homeowner would have to be accompanied with notice of the alleged violation and the time and place of a hearing regarding the violation.

A Senate Judiciary Committee subcommittee of Senators Rankin (chair), Coleman, Johnson, and Hembree considered S. 13 and S. 18. S. 18 was amended, first by the subcommittee, then by the full Senate Judiciary Committee, and reported out to provide that: (1) homeowners association cases may be brought in magistrates court, (2) the Real Estate Commission would provide, free of charge, an online instructional course covering the basics of association governance and the rights and responsibilities of owners that may be taken by any interested person; and (3) sellers would be responsible for providing governing documents to purchasers. S. 18 is pending on the contested calendar on the Senate floor.

As initially introduced, **H. 3248**, sponsored by Reps. Ryhal, Hardwick, Long, M.S. McLeod, Felder and Hardee, had provisions that: (1) governing documents be filed with various government offices, (2) board membership be determined when sixty percent of the lots have been sold; (3) education be provided for board members; (4) homeowners having certain rights to inspect documents; (5) certain matters being exempt from disclosure; (6) processes for providing notice of public meetings and placing a lien on a homeowner's property; and (7) jurisdiction for certain homeowners association cases being in magistrates court. As passed in the House and sent to the Senate, H. 3248 was similar to a Senate concurrent resolution, S. 679, sponsored by Senators Hembree, Rankin, Coleman and Johnson (the members of the Senate subcommittee), to create a "Study Committee on Homeowners Associations" to consider: (1) disclosure of governing documents to prospective buyers; (2) education for homeowners and board members; (3) manager certification or licensing; (4) time period for developer control of an association; and (5) need for a comprehensive or uniform planned community act. After S. 679 received objection on the Senate floor, the Study Committee was established by Proviso 117.135 in R. 127, H. 3701, the 2015-2016 General Appropriations Act. A report is due to the General Assembly by December 31, 2015.

H. 3217, sponsored by Representatives Long, Felder, Pope, Yow, Toole and Bowers and referred to the House Labor, Commerce and Industry Committee, would provide that a declarant must transfer control of the board to unit owners so that no later than 60 days after conveyance of:

- (1) 33% of the units, at least 25% of the voting interest of the executive board is elected by unit owners;
- (2) 50% of the units, at least 33 and 1/3% of the voting interest of the executive board is elected by unit owners; and
- (3) 66 and 2/3s% of the units, over 50% of the voting interest of the executive board is elected by unit owners.

This measure is endorsed by Change the Board, a group of Lancaster County citizens, some of whom have submitted comments for the Study Committee. The organization's website is:

<http://www.changetheboard.org>.

S. 860, sponsored by Senator Hembree, was introduced June 3, 2015, and has been referred to the Senate Judiciary Committee. A similar bill, **H. 4208**, sponsored by Representatives Atwater and Long, was introduced May 20, 2015, referred to the House Judiciary Committee, and then recalled and referred to the House Labor, Commerce and Industry Committee. These bills would: (1) require that homeowners associations be organized under the Nonprofit Corporation Act; (2) authorize the Real Estate Commission to offer free online educational programs for interested homeowners and board members; (3) provide for meetings and financial matters concerning homeowners associations; (4) require that homeowners provide prospective buyers with governing documents; and (5) authorize actions for specific performance of covenants and restrictions to be under the jurisdiction of the magistrates court.

H. 4165, sponsored by Representative King, and **S. 707**, sponsored by Senators Shealy and McElveen, concern homeowners association fees and assessments for deployed individuals and their dependents.