**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 AUTHORIZE THE OMBUDSMAN 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; TO AMEND SECTION 27-50-30, RELATING TO CERTAIN TRANSFERS THAT DO NOT REQUIRE RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENTS, SO AS TO PROVIDE THAT IF THE PROPERTY IS SUBJECT TO A HOMEOWNERS ASSOCIATION, THE DISCLOSURE STATEMENT MUST BE PROVIDED TO ANY PURCHASER, INCLUDING THE FIRST SALE OF A DWELLING NEVER INHABITED; AND TO AMEND SECTION 27‑50‑40, 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 27‑30‑110. This article may be cited as the ‘South Carolina Homeowners Association Act’.

Section 27‑30‑120. 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) ‘Financial information’ means budgets, expenditures, and debts of a homeowners association.

(3) ‘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.

(4) ‘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.

(5) ‘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 time sharing plan organized and subject only to the provisions of Chapter 32 of this title or a voluntary organization entered into by individual agreement that does not pass with the sale of the property and is not required by the deed, covenants, conditions, or restrictions upon property.

(5) ‘Office’ means the Office of the Homeowners Association Ombudsman established in Article 3, Chapter 30 of the title.

(6) ‘Ombudsman’ means the homeowners association ombudsman established in Article 3, Chapter 30 of this title.

Section 27‑30‑130. (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 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. The homeowners association may charge the homeowner for the actual cost of printed documents; however, documents provided in electronic format must be provided at no charge.

Section 27‑30‑140. A homeowners association shall provide members with notice 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 forty‑eight hours before the meeting at which such action is to be taken. Property owners must be allowed to attend the meeting.

Section 27‑30‑150. (A) Beginning January 1, 2018, the ombudsman 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 office. The office 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 office shall review and update the course annually.

Section 27‑30‑160. (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 22‑3‑10(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 22‑3‑10(1); and

(3) 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 22‑3‑10(1).

Article 3

Homeowners Association Ombudsman

Section 27‑30‑310. This article must be known and may be cited as the ‘Homeowners Association Ombudsman Act’.

Section 27‑30‑320. 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 time sharing plan organized and subject only to the provisions of Chapter 32 of this title or a voluntary organization entered into by individual agreement that does not pass with the sale of the property and is not required by the deed, covenants, conditions, or restrictions upon property.

(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 27‑30‑330. (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 27‑30‑340.

(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.

(F) Nothing in this section may be construed to allow the department, director, or ombudsman to charge a fee on an association, declarant, or residential builder to fund the Office of the Homeowners Association Ombudsman.

Section 27‑30‑340. 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 27‑30‑350. 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) 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;

(3) 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;

(4) 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 received 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 meetings conducted pursuant to item (2);

(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;

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

(6) 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

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

SECTION 2. Section 27-50-30 of the 1976 Code is amended to read:

“Section 27‑50‑30. (A) This article does not apply to transfers:

(1) pursuant to court order including transfers in administration of an estate, pursuant to a writ of execution, by foreclosure sale, by a trustee in bankruptcy, by a receiver, by eminent domain, and resulting from a decree for specific performance;

(2) to a mortgagee from the mortgagor or his successor in interest in a mortgage if the indebtedness is in default, by a trustee pursuant to a deed of trust or to a mortgagee pursuant to a mortgage if the indebtedness is in default, by a trustee under a mortgagee pursuant to a foreclosure sale, or by a mortgagee who has acquired the real property at a sale conducted pursuant to a judgment and order of foreclosure;

(3) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(4) from one or more co‑owners solely to one or more other co‑owners;

(5) made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors;

(6) between spouses resulting from a divorce decree or support order or marital property distribution order;

(7) made by virtue of the record owner's failure to pay federal, state, or local taxes;

(8) to or from the federal government;

(9) to the State, its agencies and departments, and its political subdivisions including school districts;

(10) involving the first sale of a dwelling never inhabited, except as provided in subsection (B);

(11) real property sold at public auction;

(12) to a residential trust;

(13) between parties when both parties agree in writing not to complete a disclosure statement;

(14) of a vacation time sharing plan as defined in Section 27‑32‑10(9); and

(15) of a vacation multiple ownership interest as described in Section 27‑32‑250.

(B) A disclosure statement developed by the commission for purchasers of property subject to a homeowners association, a property owners association, a condominium owners association, a horizontal property regime, or similar organizations subject to covenants, conditions, restrictions, bylaws, or rules must be provided by an owner to any purchaser, including the first sale of a dwelling never inhabited.”

SECTION 3. Section 27‑50‑40(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 wood‑destroying 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 lead‑based 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 58‑37‑50, 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 30 of this title.”

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

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