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CHAPTER 1

General Provisions

**SECTION 27‑1‑10.** Real estate made liable for debts, duties and demands.

 Houses, lands and other hereditaments and real estate situated or being within this State, belonging to any person indebted, (a) shall be liable to and chargeable with all just debts, duties and demands, of whatever nature or kind whatsoever, owing by any such person, (b) shall and may be assets for the satisfaction thereof and (c) shall be subject to the like remedies, proceedings and process as personal estates.

HISTORY: 1962 Code Section 57‑451; 1952 Code Section 57‑451; 1942 Code Section 9066; 1932 Code Section 9066; Civ. C. ‘22 Section 5475; Civ. C. ‘12 Section 3696; Civ. C. ‘02 Section 2612; G. S. 1983; R. S. 2112; 1712 (2) 571.

**SECTION 27‑1‑15.** Recovery of attorney is fees and interest on claims for improvement of real estate.

 Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty‑five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney’s fees and interest at the judgment rate from the date of the demand.

HISTORY: 1987 Act No. 134, Section 1.

**SECTION 27‑1‑20.** Appointment of surveyors where land title in dispute; nomination by parties.

 If any cause be pending in any circuit court or within its jurisdiction wherein the title or boundaries of lands shall be brought into dispute, the judge of the court shall appoint surveyors at the nomination of the parties, to survey such lands, at the charge of such parties, and to return such survey, on oath, at the next sitting of the court.

HISTORY: 1962 Code Section 57‑452; 1952 Code Section 57‑452; 1942 Code Section 8867; 1932 Code Section 8867; Civ. C. ‘22 Section 5308; Civ. C. ‘12 Section 3538; Civ. C. ‘02 Section 2452; G. S. 1823; R. S. 1964; 1722 (7) 177.

**SECTION 27‑1‑30.** Appointment of surveyors where land title in dispute; nomination by court.

 In case either of the parties shall refuse to nominate a surveyor duly sworn and qualified, the court shall proceed to nominate two or more such surveyors, as it shall think fit, in order for the better finding out and discovering the truth of the matter in difference. If the court shall acquiesce in the return of the surveyors so given in on oath as aforesaid it shall be allowed as evidence.

HISTORY: 1962 Code Section 57‑453; 1952 Code Section 57‑453; 1942 Code Section 8868; 1932 Code Section 8868; Civ. C. ‘22 Section 5309; Civ. C. ‘12 Section 3539; Civ. C. ‘02 Section 2453; G. S. 1834; R. S. 1965; 1722 (7) 177.

**SECTION 27‑1‑40.** Party walls in cities and towns.

 Every person who shall erect in a city or town any building with brick shall have liberty to set half his partition wall on his next neighbor’s ground, providing he leave a toothing in the corner of such wall for his neighbor to adjoin unto.

HISTORY: 1962 Code Section 57‑454; 1952 Code Section 57‑454; 1942 Code Section 8869; 1932 Code Section 8869; Civ. C. ‘22 Section 5310; Civ. C. ‘12 Section 3540; Civ. C. ‘02 Section 2454; G. S. 1842; R. S. 1966; 1713 (7) 58.

**SECTION 27‑1‑50.** Party walls in cities and towns; expense.

 When the owner of such adjoining land shall build, he shall pay for one half of such partition wall, so far as he makes use of it.

HISTORY: 1962 Code Section 57‑455; 1952 Code Section 57‑455; 1942 Code Section 8870; 1932 Code Section 8870; Civ. C. ‘22 Section 5311; Civ. C. ‘12 Section 3541; Civ. C. ‘02 Section 2455; G. S. 1843; R. S. 1967; 1713 (7) 58.

**SECTION 27‑1‑60.** Right of homeowner or tenant to fly United States flag; restrictive covenants and rental agreements; definitions.

 (A) Regardless of any restrictive covenant, declaration, rule, contractual provision, or other requirement concerning flags or decorations found in a deed, contract, lease, rental agreement, or homeowners’ association document, any homeowner or tenant may display one portable, removable United States flag in a respectful manner, consistent with 36 U.S.C. Sections 171‑178, as amended, on the premises of the property of which he is entitled to use.

 (B)(1) No homeowners’ association document may preclude the display of one portable, removable United States flag by homeowners. However, the flag must be displayed in a respectful manner, consistent with 36 U.S.C. Sections 171‑178, as amended.

 (2) No restrictive covenant in a deed may preclude the display of one portable, removable United States flag on the property. However, the flag must be displayed in a respectful manner, consistent with 36 U.S.C. Sections 171‑178, as amended.

 (3) No rental agreement, lease, or contract may preclude the display of one portable, removable United States flag on the premises of any tenant. However, the flag must be displayed in a respectful manner, consistent with 36 U.S.C. Sections 171‑178, as amended.

 (C) For purposes of this section:

 (1) “homeowner” means a person who holds title to real property, in fee simple or otherwise including, but not limited to, an owner of real property subject to a homeowners’ association, an owner of an interest in a vacation time sharing plan, and a co‑owner under a horizontal property regime;

 (2) “homeowners’ association” has the same meaning as provided in Section 12‑43‑230;

 (3) “homeowners” association document’ includes, but is not limited to, declarations of covenants, articles of incorporation, bylaws, or any similar document concerning the rights of property owners to use their property; and

 (4) “tenant” means any tenant under a rental agreement executed pursuant to Chapter 40, Title 27, any tenant under a rental agreement executed pursuant to Chapter 47, Title 27, any tenant under a vacation time sharing plan, any tenant under a horizontal property regime, and any person who leases commercial or residential real property under a contractual agreement.

HISTORY: 2002 Act No. 344, Section 1.

**SECTION 27‑1‑70.** Real property transfer fee covenants unenforceable; definitions; policy; requirements for enforceability of prior transfer fee covenants.

 (A) As used in this section:

 (1) “Association” means a nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant, or other applicable law.

 (2) “Transfer” means the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in real property located in this State.

 (3) “Transfer fee” means a fee or charge imposed by a transfer fee covenant, but does not include any tax, assessment, fee, or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations.

 (4) “Transfer fee covenant” means a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners or successors in title to specified real property located in this State, and which obligates a transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting this transfer. A “transfer fee covenant” does not include:

 (a) a provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement which obligates one party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement, if that amount:

 (i) is payable on a one‑time basis only upon the next transfer of an interest in the specified real property and, once paid, does not bind successors in title to the property;

 (ii) constitutes a loan assumption or similar fee charged by a lender holding a lien on the property;

 (iii) constitutes a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid; or

 (iv) is the actual cost to copy governing documents of a community association and is charged by the association to a transferee or transferor for governing documents delivered to a real estate closing, provided cost is not passed through to a third party other than the agent of the association;

 (b) any provision in a deed, memorandum, or other document recorded for the purpose of providing record notice of an agreement described in subsection (A)(4)(a);

 (c) a provision of a document requiring payment of a fee or charge to an association to be used exclusively for purposes authorized in the document if no portion of the fee is required to be passed through to a third party designated or identifiable by description in the document or another document referenced in it;

 (d) a provision of a document requiring payment of a fee or charge to an organization described in Section 501(c)(3), 501(c)(4), or 501(c)(7) of the Internal Revenue Code, to be used exclusively to support cultural, educational, charitable, recreational, environmental, conservation, social, or other similar activities benefiting the real property affected by the provision or the community of which the property is a part; or

 (e) any fee, charge, assessment, or other amount payable in connection with a “conservation easement” as defined in Section 27‑8‑80 in the Conservation Easement Act, or a preservation easement as described in Sections 170 (h)(4)(B) and (C) of the Internal Revenue Code of 1986, as amended, whether the conservation easement or preservation easement is donated or purchased, or part donated and part purchased; whether paid contemporaneously with the recording of the conservation easement or the preservation easement or at some future date during its term and existence; and whether paid by the original grantor or any successor or assign in the legal chain of title to the real property subject to the conservation easement or preservation easement.

 (B) The General Assembly finds:

 (1) the public policy of this State favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property; and

 (2) a transfer fee covenant violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

 (C) A transfer fee covenant recorded after the effective date of this section, or a lien to the extent that it purports to secure the payment of a transfer fee, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee of an interest in the property.

 (D) In order for a transfer fee covenant recorded before the effective date of this section to be valid and enforceable, a separate document that complies with the following requirements of this subsection must be filed in each county in which the real property subject to the transfer fee covenant is located within one hundred eighty days of the effective date of this section.

 (1) The title of the document must be “Notice of Transfer Fee Covenant” in at least fourteen‑point boldface type.

 (2) The document must list the amount or basis by which the transfer fee covenant is calculated.

 (3) The actual dollar‑cost examples for a home priced at two hundred fifty thousand dollars, five hundred thousand dollars, and seven hundred fifty thousand dollars must be included in the document.

 (4) The document must contain the date or circumstances under which the transfer fee covenant expires, if any.

 (5) The document must contain instructions and contact information concerning the payment of the fee required by the transfer fee covenant.

HISTORY: 2012 Act No. 106, Section 1, eff February 1, 2012.