CHAPTER 31

Horizontal Property Act

ARTICLE 1

General Provisions

**SECTION 27‑31‑10.** Short title.

 This chapter shall be known as the “Horizontal Property Act.”

HISTORY: 1962 Code Section 57‑494; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 2.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 3, Terminology.

S.C. Jur. Condominiums Section 7, Initial Legislation.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

Forms

South Carolina Legal and Business Forms Section 6:54 , Subscription and Purchase Agreement‑Condo/Hotel/Security and Rental Pool‑Financed or Cash Options‑Pre‑Development‑Seller Development Contingencies.

Treatises and Practice Aids

14 Causes of Action 2d 315, Cause of Action to Enforce, or Declare Invalid, Restriction on Use of Condominium Property.

LAW REVIEW AND JOURNAL COMMENTARIES

Condominiums in South Carolina: Possibilities and Pitfalls. 17 S.C. L. Rev. 334.

NOTES OF DECISIONS

In general 1

1. In general

Condominium development’s grant of access easement was limited to use of property to service water and sewer lines, and thus sewer and water company could not lease access easement to telecommunications company so that it could access sewer and water company’s landlocked adjoining property to install and maintain telecommunications antenna on top of water tower. Lighthouse Tennis Club Village Horizontal Property Regime LXVI v. South Island Public Service Dist. (S.C.App. 2003) 355 S.C. 529, 586 S.E.2d 146, rehearing denied. Municipal Corporations 712(1); Water Law 1956

In an action to compel a town to approve the conversion of an apartment building to a condominium building, pursuant to Sections 27‑31‑10 et seq., the trial court properly entered summary judgment against the town, on the basis that the proposed conversion constituted a change of ownership, over which the town held no control, and not a change of use, where the proposed change did not involve any structural changes in the subject building. Baker v. Town of Sullivan’s Island (S.C.App. 1983) 279 S.C. 581, 310 S.E.2d 433.

Cited in Hoffman v. Cohen (S.C. 1974) 262 S.C. 71, 202 S.E.2d 363.

**SECTION 27‑31‑20.** Definitions.

 Unless it is plainly evident from the context that a different meaning is intended, as used herein:

 (a) “Apartment” means a part of the property intended for any type of independent use (whether it be for residential, recreational, storage, or business) including one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building or if not in a building in a separately delineated place whether open or enclosed and whether for the storage of an automobile, moorage of a boat, or other lawful use, and with a direct exit to a public street or highway, or to a common area leading to such street or highway;

 (b) “Building” means an existing or proposed structure or structures, containing in the aggregate two or more apartments, comprising a part of the property;

 (c) “Condominium ownership” means the individual ownership of a particular apartment in a building and the common right to a share, with other co‑owners, in the general and limited common elements of the property;

 (d) “Co‑owner” means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the building;

 (e) “Council of co‑owners” means all the co‑owners as defined in subsection (d) of this section; but a majority, as defined in subsection (h) of this section, shall, except as otherwise provided in this chapter, constitute a quorum for the adoption of decisions;

 (f) “General common elements” means and includes:

 (1) The land whether leased or in fee simple and whether or not submerged on which the apartment or building stands; provided, however, that submerged land developed or used under this chapter is subject to any law enacted relating to the leasing of submerged lands by the State for the benefit of the public;

 (2) The foundations, main walls, roofs, halls, lobbies, stairways, moorages, walkway docks, and entrance and exit or communication ways in existence or to be constructed or installed;

 (3) The basements, flat roofs, yards, and gardens, in existence or to be constructed or installed, except as otherwise provided or stipulated;

 (4) The premises for the lodging of janitors or persons in charge of the property, in existence or to be constructed or installed, except as otherwise provided or stipulated;

 (5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like, in existence or to be constructed or installed;

 (6) The elevators, garbage incinerators, and, in general, all devices or installations existing or to be constructed or installed for common use;

 (7) All other elements of the property, in existence or to be constructed or installed, rationally of common use or necessary to its existence, upkeep, and safety;

 (g) “Limited common elements” means and includes those common elements which are agreed upon by all the co‑owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways, elevators, finger piers, sanitary services common to the apartments of a particular floor, and the like;

 (h) “Majority of co‑owners” means fifty‑one percent or more of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of Section 27‑31‑60.

 (i) “Master deed” or “master lease” means the deed or lease establishing and recording the property of the horizontal property regime;

 (j) “Person” means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof;

 (k) “Property” means and includes (1) the land whether leasehold or in fee simple and whether or not submerged, (2) the building, all improvements, and structures on the land, in existence or to be constructed, and (3) all easements, rights, and appurtenances belonging thereto;

 (l) “To record” means to record in accordance with the provisions of Sections 30‑5‑30 through 30‑5‑200, 30‑7‑10 through 30‑7‑90 and 30‑9‑10 through 30‑9‑80, or other applicable recording statutes.

HISTORY: 1962 Code Section 57‑495; 1962 (52) 1866; 1966 (54) 2314; 1967 (55) 449; 1970 (56) 2572; 1973 (58) 783; 1984 Act No. 463, Section 1; 1999 Act No. 86, Section 1.

CROSS REFERENCES

“Habitable structures” for purposes of beach protection, see Section 48‑39‑270.

Library References

Condominium 1.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 193 to 195, 198 to 203.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 3, Terminology.

S.C. Jur. Condominiums Section 4, Cotenancies and Cooperatives Distinguished.

S.C. Jur. Condominiums Section 7, Initial Legislation.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

NOTES OF DECISIONS

In general 1

1. In general

A clubhouse was a common element of a horizontal property regime and therefore could not be sold in foreclosure as separate property where (1) the master deed’s description of the real property submitted to the regime included the entire 6.9 acres and any improvements thereon, (2) while one plat attached to the master deed geographically depicted certain areas contiguous to the 20 units as common elements and did not show the clubhouse, another plat that was referred to in the legal description in the master deed did show the clubhouse as an improvement, and (3) the plat recorded with the first amendment to the master deed showed the clubhouse as an improvement. Heritage Federal Sav. and Loan v. Eagle Lake and Golf Condominiums (S.C.App. 1995) 318 S.C. 535, 458 S.E.2d 561, rehearing denied.

A nonprofit corporation that owned and administered common elements of a condominium project had standing to bring an action against various parties involved in the construction, development, and sale of the condominium complex for damages resulting from alleged defects in the construction of the roofs, since the roofs were common elements that had to be maintained by the corporation; but the corporation did not have standing to bring the action for the defects in the balconies. Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp. (S.C. 1984) 282 S.C. 415, 321 S.E.2d 46.

**SECTION 27‑31‑30.** Establishment of horizontal property regime.

 Whenever a lessee, sole owner, or the co‑owners of property expressly declare, through the recordation of a master deed or lease, which shall set forth the particulars enumerated in Section 27‑31‑100, their desire to submit their property to the regime established by this chapter, there shall thereby be established a horizontal property regime. Property may be submitted to a horizontal property regime prior to construction or the completion of any building or apartment, improvements, or structures on the property if all proceeds from its sale are deposited into an escrow account with an independent escrow agent until construction or completion of the proposed property as evidenced by issuance of a certificate of occupancy from the appropriate municipal or county authority. In lieu of any escrow required by this section, the escrow agent may accept a surety bond issued by a company licensed to do business in this State as surety in an amount equal to or in excess of the funds that would otherwise be placed in the escrow account with the South Carolina Real Estate Commission designated as beneficiary of any such surety bond.

HISTORY: 1962 Code Section 57‑496; 1962 (52) 1866; 1967 (55) 449; 1970 (56) 2572; 1999 Act No. 86, Section 2.

Library References

Condominium 3.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 3, Terminology.

S.C. Jur. Condominiums Section 10, Recording Master Deed.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

S.C. Jur. Covenants Section 8, by Declaration.

S.C. Jur. Covenants Section 32, Language Creating a Covenant of Title.

LAW REVIEW AND JOURNAL COMMENTARIES

Condominiums in South Carolina: Possibilities and Pitfalls. 17 S.C. L. Rev. 334.

NOTES OF DECISIONS

In general 1

Actions by and against association 5

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Regime fees 4

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1. In general

Defendant property owner was not bound by the requirements of the horizontal property regime where he had inadvertently failed to delete an affidavit’s boilerplate language asserting that a declaration of horizontal property regime master deed had been recorded. Egrets Pointe Townhouses Property Owners Ass’n, Inc. v. Fairfield Communities, Inc., 1994, 870 F.Supp. 110.

A property’s conversion to a horizontal property regime (HPR) divides the ownership interest in the property but does not subdivide the land itself. Arkay, LLC v. City of Charleston (S.C.App. 2016) 418 S.C. 86, 791 S.E.2d 305, rehearing denied. Common Interest Communities 2

Because a condominium is a creature of statute, strict compliance with the Horizontal Property Act, Sections 27‑31‑10 et seq., is required to create a horizontal property regime. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 20

A Master‑in‑Equity erred in holding that a townhouse development was a “horizontal property regime” subject to the Horizontal Property Act, Section 27‑31‑20 et seq., where the master deed for the development neither stated the intention to create such a regime, as required by Section 27‑31‑30, nor expressly included the words “Horizontal Property Regime” in its name, as required by Section 27‑31‑100. Battery Homeowners Ass’n v. Lincoln Financial Resources, Inc. (S.C. 1992) 309 S.C. 247, 422 S.E.2d 93.

2. Description of plan of development

30.93 acres of a 43.75‑acre tract of land could not be considered part of the horizontal property regime where the master deed was indefinite as to what portion of the 43.75‑acre tract the developer intended to submit to the regime, nor did it contain a general description of the plan of development of the acreage; consequently, the master deed did not meet the requirements of the Horizontal Property Act, Sections 27‑31‑10 et seq. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47.

In an action arising out of a foreclosure sale of horizontal regime property, the failure of the master deed and allied documents to meet the statutory requirements of the Horizontal Property Act, Sections 27‑31‑10 et seq., did not invalidate all restrictions contained in the master deed where the deed contained a severability clause stating that “the invalidity of any provision of the condominium documents shall not affect the validity of the remaining portions,” and where the master’s order granting the foreclosure stated that the purchaser would take fee simple title subject to the provisions of the master deed. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47.

3. Recording of master deed

In order to establish a horizontal property regime, a master deed must be recorded, and compliance with $ 27‑31‑100 is mandatory. Egrets Pointe Townhouses Property Owners Ass’n, Inc. v. Fairfield Communities, Inc., 1994, 870 F.Supp. 110. Common Interest Communities 20; Common Interest Communities 27

In South Carolina, an owner of the fee or leasehold interest in real estate may declare it to be subject to a condominium form of ownership by recording a master deed and other required documents with the proper public authorities; on the proper recordation of these documents, the declarant’s interest in the property subject to the declaration is subdivided both horizontally and vertically. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 27; Common Interest Communities 28

4. Regime fees

The owners of individual townhouses in a development were subject to regime fees, even though the development was not a horizontal property regime pursuant to Section 27‑31‑20 et seq., where the owners had agreed to be bound by the development’s Declaration of Covenants, Conditions and Restrictions, and the Declaration provided for the assessment of regime fees. Battery Homeowners Ass’n v. Lincoln Financial Resources, Inc. (S.C. 1992) 309 S.C. 247, 422 S.E.2d 93.

An association formed by townhouse owners, after the original homeowner’s association created by the development’s deed had been dissolved, was the “successor” of the original homeowner’s association for purposes of assessing the regime fees provided for in the townhouse development’s Declaration of Covenants, Conditions and Restrictions, even though it was not “entitled” to succeed the original association, where the association had, in fact, actually succeeded it. Battery Homeowners Ass’n v. Lincoln Financial Resources, Inc. (S.C. 1992) 309 S.C. 247, 422 S.E.2d 93.

5. Actions by and against association

A member of an unincorporated condominium association, established pursuant to the Horizontal Property Act, may bring an action against the association either in contract or tort, including an action for personal injury resulting from the association’s negligent maintenance of common elements. Murphy v. Yacht Cove Homeowners Ass’n (S.C. 1986) 289 S.C. 367, 345 S.E.2d 709. Action 27(1); Common Interest Communities 141

A property regime has standing to bring an action for construction defects in common elements that the regime has a duty to maintain. Dockside Ass’n, Inc. v. Detyens, Simmons and Carlisle (S.C. 1985) 287 S.C. 287, 337 S.E.2d 887.

A property regime has standing to bring an action for construction defects in common elements that the regime has the duty to maintain, even if the regime does not own the common elements. Queen’s Grant Villas Horizontal Property Regimes I‑V v. Daniel Intern. Corp. (S.C. 1985) 286 S.C. 555, 335 S.E.2d 365. Common Interest Communities 144

6. Special use exceptions

Proposed horizontal property regime did not change status of building as a “stable” within meaning of ordinance prohibiting stables within 100 feet of residentially zoned district, as it would not vertically subdivide the building itself to separate horse stalls from rest of building; certain areas, including tack rooms, restrooms, and customer areas would all be underneath the roof of the building, and the building was within 100 feet of a residentially zoned district. Arkay, LLC v. City of Charleston (S.C.App. 2016) 418 S.C. 86, 791 S.E.2d 305, rehearing denied. Zoning And Planning 1497

**SECTION 27‑31‑40.** Apartments may be purchased, owned, and the like.

 Once the property is submitted to the horizontal property regime, an apartment in the property may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other apartments in the property of which it forms a part, and the corresponding individual titles and interests shall be recordable.

HISTORY: 1962 Code Section 57‑497; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 15.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 232 to 234.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 7, Initial Legislation.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

Attorney General’s Opinions

A waiting period of 180 days to protect tenants of structures being converted into condominiums does not unconstitutionally impair the obligations of contracts or deprive the owner of his property without due process of law. 1981 Op. Atty Gen, No. 81‑57, p 83.

NOTES OF DECISIONS

In general 1

1. In general

Pursuant to the Horizontal Property Act, Sections 27‑31‑10 et seq., individual subdivided apartments and appurtenant common elements may be individually conveyed and encumbered. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 48; Common Interest Communities 110

Those claiming an interest in horizontal regime property must acquire it through the declarant or his successors in interest. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 48; Common Interest Communities 113

After the establishment of a horizontal property regime, the newly created individual apartments and appurtenant common and limited elements continue to be owned by the declarant until such time as he conveys his interest in the apartments. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 43; Common Interest Communities 45; Common Interest Communities 90

**SECTION 27‑31‑50.** More than one person may own apartment.

 Any apartment may be held and owned by more than one person as tenants in common or in any other real estate tenancy relationship recognized under the laws of this State.

HISTORY: 1962 Code Section 57‑498; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 13, 15.

Joint Tenancy 3.

Tenancy in Common 11.

Westlaw Topic Nos. 226, 373, 89A.

C.J.S. Estates Sections 224 to 225, 232 to 234.

C.J.S. Joint Tenancy Sections 5 to 17.

C.J.S. Tenancy in Common Section 16.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 7, Initial Legislation.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

**SECTION 27‑31‑60.** Property rights of apartment owner.

 (a) An apartment owner shall have the exclusive ownership of his apartment and shall have a common right to a share, with the other co‑owners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property. This percentage shall be computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole.

 The percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co‑owners representing all the apartments of the property.

 The basic value, which shall be fixed for the sole purpose of this chapter and irrespectively of the actual value, shall not prevent each co‑owner from fixing a different circumstantial value to his apartment in all types of acts and contracts.

 (b) The owner of any apartment embraced in the master deed and building plan shall have the right to require specific performance of any proposed common elements for recreational purposes set out in the master deed which are included in the next stage of the development that applies to recreational facilities in the event the additional stages of erection do not develop.

HISTORY: 1962 Code Section 57‑499; 1962 (52) 1866; 1967 (55) 449; 1973 (58) 783.

Library References

Condominium 6.1, 13.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218, 224 to 225.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 7, Initial Legislation.

S.C. Jur. Condominiums Section 20, Common Amenities.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Property. 38 S.C. L. Rev. 178 Autumn, 1986.

NOTES OF DECISIONS

In general 1

1. In general

As a practical matter, the specific performance allowed by Section 27‑31‑60(b) would not be available unless Section 27‑31‑110 is substantially complied with. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47.

**SECTION 27‑31‑70.** Common elements shall not be divided.

 The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co‑ownership. Any covenant to the contrary shall be void.

HISTORY: 1962 Code Section 57‑500; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 6.1.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 18, Undivided Use and Ownership of Common Elements.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

NOTES OF DECISIONS

In general 1

1. In general

Condominium unit owners, rather than homeowners’ association, owned the common area in which mold was found, and thus unit owners could bring action against developer and builder for negligence and breach of warranty; master deed for the condominium development stated the owners of each unit owned “an undivided interest in the common elements,” and neither the master deed nor the homeowners’ association’s by‑laws granted the association an ownership interest in the common elements. Roland v. Heritage Litchfield, Inc. (S.C.App. 2007) 372 S.C. 161, 641 S.E.2d 465. Common Interest Communities 43; Common Interest Communities 143

A property regime has standing to bring an action for construction defects in common elements that the regime has a duty to maintain. Dockside Ass’n, Inc. v. Detyens, Simmons and Carlisle (S.C. 1985) 287 S.C. 287, 337 S.E.2d 887.

A property regime has standing to bring an action for construction defects in common elements that the regime has the duty to maintain, even if the regime does not own the common elements. Queen’s Grant Villas Horizontal Property Regimes I‑V v. Daniel Intern. Corp. (S.C. 1985) 286 S.C. 555, 335 S.E.2d 365. Common Interest Communities 144

**SECTION 27‑31‑80.** Use of common elements.

 Each co‑owner may use the elements held in common in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other co‑owners.

HISTORY: 1962 Code Section 57‑501; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 10.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218 to 219.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 18, Undivided Use and Ownership of Common Elements.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

LAW REVIEW AND JOURNAL COMMENTARIES

Condominiums in South Carolina: Possibilities and Pitfalls. 17 S.C. L. Rev. 334.

NOTES OF DECISIONS

In general 1

Rights of association as to sublessees 2

1. In general

A member of an unincorporated condominium association, established pursuant to the Horizontal Property Act, may bring an action against the association either in contract or tort, including an action for personal injury resulting from the association’s negligent maintenance of common elements. Murphy v. Yacht Cove Homeowners Ass’n (S.C. 1986) 289 S.C. 367, 345 S.E.2d 709. Action 27(1); Common Interest Communities 141

2. Rights of association as to sublessees

Rental agreement between a condominium owner and the owner’s tenant by which the tenant voluntarily agreed to pay the owner for any property damage caused by the tenant, his family, or guests, does not make a homeowners’ association a third‑party beneficiary of the contract, notwithstanding the fact that, by law, the tenant has the right to use the common areas. Windsor Green Owners Ass’n, Inc. v. Allied Signal, Inc. (S.C.App. 2004) 362 S.C. 12, 605 S.E.2d 750, rehearing denied. Contracts 187(1)

Horizontal Property Regime Act makes the lease of an individual condominium unit serve to also lease the owner’s undivided interest in the common elements to the lessee, whether or not use of the common elements is addressed in the lease; thus, a lessee has the same right to use the common areas of the condominium complex as has the owner. Windsor Green Owners Ass’n, Inc. v. Allied Signal, Inc. (S.C.App. 2004) 362 S.C. 12, 605 S.E.2d 750, rehearing denied. Common Interest Communities 46; Landlord And Tenant 1045

Condominium homeowners’ association was not third‑party beneficiary to rental agreement between tenant and real estate agent of condominium owners, and thus, was not entitled to award of damages to tenant for breach of contract claim arising from damage to common area of condominium complex caused by fire, even though lessee had right to use common area pursuant to Horizontal Property Regime Act; rental contract did not imply any contractual duty on tenant to be liable for damage to anyone other than to agent, and contract contained no language conferring beneficiary rights on homeowners’ association. Windsor Green Owners Ass’n, Inc. v. Allied Signal, Inc. (S.C.App. 2004) 362 S.C. 12, 605 S.E.2d 750, rehearing denied. Contracts 187(1)

**SECTION 27‑31‑90.** Incorporation of co‑owners.

 Nothing herein contained shall prohibit any council of co‑owners from incorporating pursuant to the laws of South Carolina for the purpose of the administration of the property constituted into a horizontal property regime. In the event of such incorporation, the percentage of stock ownership of each co‑owner in the corporation shall be equal to the percentage of his right to share in the common elements as computed in accordance with the provisions of this chapter.

HISTORY: 1962 Code Section 57‑502; 1967 (55) 449.

Library References

Condominium 1.

Corporations 4.

Westlaw Topic Nos. 101, 89A.

C.J.S. Corporations Sections 19 to 23.

C.J.S. Estates Sections 193 to 195, 198 to 203.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 24, Incorporation.

**SECTION 27‑31‑100.** Master deed or lease; contents.

 The master deed or lease creating and establishing the horizontal property regime shall be executed by the owner or owners of the real property making up the regime and shall be recorded with the register of mesne conveyance or clerk of court of the county where such property is located. The master deed or lease shall express the following particulars:

 (a) The description of the land whether leased or in fee simple, and the building or buildings in existence or to be constructed, if applicable, expressing their respective areas;

 (b) The general description and number of each apartment, expressing its area, location and any other data necessary for its identification;

 (c) The description of the general common elements of the property, and, in proper cases, of the limited common elements restricted to a given number of apartments, expressing which are those apartments;

 (d) The value of the property and of each apartment, and, according to these basic values, the percentage appertaining to the co‑owners in the expenses of, and rights in, the elements held in common; and

 (e) The name by which the horizontal property regime is to be known followed by the words “HORIZONTAL PROPERTY REGIME.”

 (f) A description of the full legal rights and obligations, both currently existing and which may occur, of the apartment owner, the co‑owners, and the person establishing the regime. The master deed of any horizontal property regime developed under the provisions of this chapter that contains any submerged land shall contain a notice of restriction stating that all activities on or over and all uses of the submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to, the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. The notice shall further state that any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters, or any other critical area.

 (g) In the event the owner of property submitting it for establishment of a horizontal property regime proposes to develop the property as a single regime but in two or more stages or proposes to annex additional property to the property described in the master deed, the master deed shall also contain a general description of the plan of development, including:

 (1) The maximum number of units in each proposed stage of development;

 (2) The dates by which the owner submitting such property to condominium ownership will elect whether or not he will proceed with each stage of development;

 (3) A general description of the nature and proposed use of any additional common elements which the owner submitting property to condominium ownership proposes to annex to the property described in the master deed, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners;

 (4) A chart showing the percentage interest in the common elements of each original unit owner at each stage of development if the owner submitting property to condominium ownership elected to proceed with all stages of development.

 (h) Any restrictions or limitations on the lease of a unit including, but not limited to, the amount and term of the lease.

HISTORY: 1962 Code Section 57‑503; 1962 (52) 1866; 1967 (55) 449; 1970 (56) 2572; 1973 (58) 783; 1984 Act No. 463, Sections 2, 6; 1987 Act No. 143, Section 1; 1993 Act No. 181, Section 488; 1999 Act No. 86, Section 3.

Library References

Condominium 3.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 7, Initial Legislation.

S.C. Jur. Condominiums Section 10, Recording Master Deed.

S.C. Jur. Condominiums Section 12, Plot Plan and Floor Plans.

S.C. Jur. Condominiums Section 16, Identification of Apartments.

S.C. Jur. Covenants Section 8, by Declaration.

S.C. Jur. Covenants Section 32, Language Creating a Covenant of Title.

NOTES OF DECISIONS

In general 1

Amendment of master deed 3

Covenants 5

Description 2

Management 6

Regime fees 4

1. In general

When master deeds and bylaws show a homeowner’s association has the obligation to maintain the common elements, the association has a duty to pursue a recovery for any alleged construction defects in the common elements. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C.App. 2014) 409 S.C. 164, 760 S.E.2d 121, rehearing denied, on remand 2014 WL 11264781, certiorari granted, affirmed as modified 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 54

A homeowners association is bound to follow its covenants and bylaws and cannot defend something that violates those documents on the basis that is a reasonable alternative. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C.App. 2014) 409 S.C. 164, 760 S.E.2d 121, rehearing denied, on remand 2014 WL 11264781, certiorari granted, affirmed as modified 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 68(4)

When a controversy regarding the rights of condominium unit owners arises, the court must examine all relevant provisions of the Horizontal Property Act, Sections 27‑31‑10 et seq., master deed and allied documents; these sources of rights and obligations of the condominium owners must be read together, in relation to each other, and harmonized, if possible. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 28

Because a condominium is a creature of statute, strict compliance with the Horizontal Property Act, Sections 27‑31‑10 et seq., is required to create a horizontal property regime. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 20

The Horizontal Property Act, Sections 27‑31‑10 et seq., requires a developer of a horizontal regime to record a master deed that expresses a comprehensive list of particulars. Heritage Federal Sav. and Loan v. Eagle Lake and Golf Condominiums (S.C.App. 1995) 318 S.C. 535, 458 S.E.2d 561, rehearing denied. Common Interest Communities 27

A Master‑in‑Equity erred in holding that a townhouse development was a “horizontal property regime” subject to the Horizontal Property Act, Section 27‑31‑20 et seq., where the master deed for the development neither stated the intention to create such a regime, as required by Section 27‑31‑30, nor expressly included the words “Horizontal Property Regime” in its name, as required by Section 27‑31‑100. Battery Homeowners Ass’n v. Lincoln Financial Resources, Inc. (S.C. 1992) 309 S.C. 247, 422 S.E.2d 93.

2. Description

30.93 acres of a 43.75‑acre tract of land could not be considered part of the horizontal property regime where the master deed was indefinite as to what portion of the 43.75‑acre tract the developer intended to submit to the regime, nor did it contain a general description of the plan of development of the acreage; consequently, the master deed did not meet the requirements of the Horizontal Property Act, Sections 27‑31‑10 et seq. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47.

A master deed and its amendments did not comply with the requirements of the Horizontal Property Act, Sections 27‑31‑10 et seq., where the amendment failed to (1) specify the maximum number of units in each phase, (2) specify the dates the developer would elect to proceed with each stage, (3) provide a general description of the nature and use of any additional common elements to be added to the regime, and (4) provide a chart with the percentage ownership interest of each unit owner in common elements at each stage of development. Heritage Federal Sav. and Loan v. Eagle Lake and Golf Condominiums (S.C.App. 1995) 318 S.C. 535, 458 S.E.2d 561, rehearing denied. Common Interest Communities 33

3. Amendment of master deed

A developer had authority to amend the master deed without the consent of all of the apartment owners where the master deed stated that changes were permitted “on advice of counsel,” “as may be required by law,” and that such changes could not prejudice the rights of a unit owner by increasing his “share of the common expenses nor increase the purchase price of the Apartment unit.” Heritage Federal Sav. and Loan v. Eagle Lake and Golf Condominiums (S.C.App. 1995) 318 S.C. 535, 458 S.E.2d 561, rehearing denied.

Inferentially, the provisions in a master deed stating that changes were permitted “on advice of counsel” and “as may be required by law” were designed to permit changes to the master deed necessary to carry out the intentions of the developer in establishing the regime, and to ensure that recorded documents complied with the requirements of the Horizontal Property Act, Sections 27‑31‑10 et seq. Heritage Federal Sav. and Loan v. Eagle Lake and Golf Condominiums (S.C.App. 1995) 318 S.C. 535, 458 S.E.2d 561, rehearing denied. Common Interest Communities 28

4. Regime fees

The owners of individual townhouses in a development were subject to regime fees, even though the development was not a horizontal property regime pursuant to Section 27‑31‑20 et seq., where the owners had agreed to be bound by the development’s Declaration of Covenants, Conditions and Restrictions, and the Declaration provided for the assessment of regime fees. Battery Homeowners Ass’n v. Lincoln Financial Resources, Inc. (S.C. 1992) 309 S.C. 247, 422 S.E.2d 93.

An association formed by townhouse owners, after the original homeowner’s association created by the development’s deed had been dissolved, was the “successor” of the original homeowner’s association for purposes of assessing the regime fees provided for in the townhouse development’s Declaration of Covenants, Conditions and Restrictions, even though it was not “entitled” to succeed the original association, where the association had, in fact, actually succeeded it. Battery Homeowners Ass’n v. Lincoln Financial Resources, Inc. (S.C. 1992) 309 S.C. 247, 422 S.E.2d 93.

5. Covenants

Homeowners association’s claim for pre‑petition assessments, costs, expenses, and post‑petition attorney fees would be allowed as a secured claim; covenants for properties of the association stated that the covenants would run with and bind the land and be binding on all parties having right, title or interest in the described properties, and covenants specifically provided that a lien would attach to property for assessments, and by accepting deed, debtors accepted that their property would serve as security for payment of homeowners association assessments. In re Foster (Bkrtcy.D.S.C. 2016) 552 B.R. 102. Covenants 84

Failure of master deed, which created multi‑family horizontal property regime, to reference new covenants did not render those covenants void under the Horizontal Property Act, as master deed reserved all rights under the declaration of covenants, and subsequent purchasers of units in regime received notice of the new covenants in the manner prescribed by those covenants, which stated they would apply to dwellings conveyed “by deeds or other instruments” following the recording of the new covenants. Queen’s Grant II Horizontal Property Regime v. Greenwood Development Corp. (S.C.App. 2006) 368 S.C. 342, 628 S.E.2d 902. Covenants 53

6. Management

The business judgment rule applied to all of condominium management council’s actions, except for those that were ultra vires, and thus, any investigation of the council’s actions would be looked at under the business judgment rule to determine if the council met its duties under the master deed and bylaws. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C.App. 2014) 409 S.C. 164, 760 S.E.2d 121, rehearing denied, on remand 2014 WL 11264781, certiorari granted, affirmed as modified 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 64

In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the business judgment rule and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C.App. 2014) 409 S.C. 164, 760 S.E.2d 121, rehearing denied, on remand 2014 WL 11264781, certiorari granted, affirmed as modified 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 64

In a dispute between a homeowners association and aggrieved homeowners, the burden of proving good faith under the business judgment rule is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board’s actions. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C.App. 2014) 409 S.C. 164, 760 S.E.2d 121, rehearing denied, on remand 2014 WL 11264781, certiorari granted, affirmed as modified 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 158

The business judgment rule would not allow condominium management council to deviate from its duties, as specified under the association bylaws and the master deed, simply because the actions the council took to determine whether to assess individual co‑owners for damages to the common elements were reasonable. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C.App. 2014) 409 S.C. 164, 760 S.E.2d 121, rehearing denied, on remand 2014 WL 11264781, certiorari granted, affirmed as modified 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 64

Summary judgment evidence that condominium management council hired many construction and engineering companies and consultants to determine what was causing water problems, utilized several different construction companies over the years in an attempt to resolve the problems, and was informed by its attorneys that initiating a lawsuit regarding the water problems would be expensive and likely unproductive, constituted at least a scintilla of evidence that the council did not breach its duty to investigate to determine whether to assess individual co‑owners for damages to the common elements, as an element of condominium co‑owners’ negligence claim. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C.App. 2014) 409 S.C. 164, 760 S.E.2d 121, rehearing denied, on remand 2014 WL 11264781, certiorari granted, affirmed as modified 415 S.C. 256, 781 S.E.2d 903. Judgment 185.3(1)

Condominium management council had a duty to investigate to determine whether to assess individual co‑owners for damages to the common elements, pursuant to the master deed and bylaws which provided that the manager or the board was responsible for the maintenance and repair of the common elements, and that all maintenance, repair, and replacement expenses were common elements except when not fully reimbursed by insurance proceeds or necessitated by the failure of a co‑owner to provide maintenance as required by the bylaws. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C.App. 2014) 409 S.C. 164, 760 S.E.2d 121, rehearing denied, on remand 2014 WL 11264781, certiorari granted, affirmed as modified 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 74

**SECTION 27‑31‑110.** Plot plan and building plan.

 There must be attached to the master deed or lease, at the time it is filed for record, a map or plat showing the horizontal and vertical location of any building which is proposed or in existence and other improvements within the property boundary, which shall have the seal and signature of a registered land surveyor licensed to practice in this State. There must also be attached a plot plan of the completed or proposed construction showing the location of the building which is proposed or in existence and other improvements, and a set of floor plans of the building which must show graphically the dimensions, area, and location of each apartment therein and the dimension, area, and location of common elements affording access to each apartment. Other common elements, both limited and general, must be shown graphically insofar as possible and must be described in detail in words and figures. The building plans must be certified to by an engineer or architect authorized and licensed to practice his profession in this State.

HISTORY: 1962 Code Section 57‑504; 1962 (52) 1866; 1967 (55) 449; 1970 (56) 2572; 1984 Act No. 463, Section 3; 1999 Act No. 86, Section 4.

Library References

Condominium 3.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 12, Plot Plan and Floor Plans.

NOTES OF DECISIONS

In general 1

1. In general

30.93 acres of a 43.75‑acre tract of land could not be considered part of the horizontal property regime where the master deed was indefinite as to what portion of the 43.75‑acre tract the developer intended to submit to the regime, nor did it contain a general description of the plan of development of the acreage; consequently, the master deed did not meet the requirements of the Horizontal Property Act, Sections 27‑31‑10 et seq. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47.

Section 27‑31‑110 requires the filing of plot plans with the master deed even as to future stages of development where the developer seeks to develop the property as a single regime but in 2 or more stages. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 25; Common Interest Communities 33

As a practical matter, the specific performance allowed by Section 27‑31‑60(b) would not be available unless Section 27‑31‑110 is substantially complied with. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47.

Section 27‑31‑110 permits the developer of a horizontal property regime to reserve the right to amend the master deed to implement subsequent stages of development; it therefore follows that if such right is adequately reserved, there is no reason why the developer cannot, at the time he amends the master deed, comply with Section 27‑31‑110 as to additional phases. Harrington v. Blackston (S.C.App. 1995) 319 S.C. 1, 459 S.E.2d 309, rehearing denied, vacated 322 S.C. 470, 473 S.E.2d 47. Common Interest Communities 33

**SECTION 27‑31‑120.** Designation of apartments on plans; conveyance or lease of apartment.

 Each apartment must be designated, on the plans referred to in Section 27‑31‑110, by letter or number or other appropriate designation and any conveyance, lease, or other instrument affecting title to the apartment, which describes the apartment by using the letter or number followed by the words “in Horizontal Property Regime,” is deemed to contain a good and sufficient description for all purposes. Any conveyance or lease of an individual apartment is deemed to also convey or lease the undivided interest of the owner in the common elements, both general and limited, appertaining to the apartment without specifically or particularly referring to same.

HISTORY: 1962 Code Section 57‑505; 1962 (52) 1866; 1967 (55) 449; 1973 (58) 783; 1984 Act No. 463, Section 4.

Library References

Condominium 3, 15.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 232 to 234, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Contracts Section 68, Persons Entitled to Sue‑Third‑Party Beneficiaries.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

**SECTION 27‑31‑130.** Waiver of regime and merger of apartment records with principal property.

 (A) All the co‑owners or the sole owner of the property constituted into a horizontal property regime may waive the regime and regroup or merge the records of the individual apartments with the principal property, if the individual apartments are unencumbered, or if encumbered, if the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

 (B) Notwithstanding subsection (A), in the case of nonprofit long‑term care retirement or life care facilities where there are co‑owners, a two‑thirds vote of the co‑owners suffices to waive the regime and regroup or merge the records of the individual apartments with the principal property if the individual apartments are unencumbered, or if encumbered, if the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

HISTORY: 1962 Code Section 57‑506; 1962 (52) 1866; 1967 (55) 449; 1999 Act No. 25, Section 1.

Library References

Condominium 16.

Westlaw Topic No. 89A.

**SECTION 27‑31‑140.** Merger as bar to subsequent horizontal property regime.

 The merger provided for in Section 27‑31‑130 shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this chapter.

HISTORY: 1962 Code Section 57‑507; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 16.

Westlaw Topic No. 89A.

**SECTION 27‑31‑150.** Administration of property; bylaws.

 The administration of the property constituted into horizontal property, whether incorporated or unincorporated, shall be governed by bylaws which shall be inserted in or appended to and recorded with the master deed or lease.

HISTORY: 1962 Code Section 57‑508; 1962 (52) 1866; 1967 (55) 449; 1970 (56) 2572.

Library References

Condominium 7.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 13, Contents of By‑Laws.

S.C. Jur. Condominiums Section 21, Maintenance of Common Elements.

NOTES OF DECISIONS

In general 1

1. In general

Genuine issue of material fact existed regarding whether management council of condominium association breached duty to investigate claims related to faulty windows and sliding doors, and therefore summary judgment in favor of unit owners on unit owners’ negligence claim was precluded; in the years preceding the initiation of lawsuit, council hired numerous engineers and consultants to determine the cause of the water intrusion in common elements, and, in addition to citing leaks around the windows and doors, these engineers and consultants’ reports attributed the water intrusion problems to the common elements, including the stucco and various components of the building envelope system. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C. 2016) 415 S.C. 256, 781 S.E.2d 903. Judgment 185.3(1)

Alleged ultra vires acts of management council of condominium association did not preclude council from asserting protection of business judgment rule in negligence action by unit owners stemming from faulty windows and sliding doors for other intra vires acts made in good faith. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C. 2016) 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 64

Existence of master deed, bylaws, and Horizontal Property Act did not prohibit application of business judgment rule to protect management council of condominium association from negligence action by unit owners stemming from faulty windows and sliding doors. Fisher v. Shipyard Village Council of Co‑Owners, Inc. (S.C. 2016) 415 S.C. 256, 781 S.E.2d 903. Common Interest Communities 64

A provision of the bylaws of a homeowners association, calling for a majority of the association’s board of administration to vote on behalf of unit owners, was valid and enforceable under Section 33‑7‑310 where the complaining homeowner had consented to the voting agreement, as evidenced by her signature on the indenture deed. Ortega v. Kingfisher Homeowners Ass’n, Inc. (S.C.App. 1994) 314 S.C. 180, 442 S.E.2d 202.

**SECTION 27‑31‑160.** Provisions required in bylaws; modification of system of administration.

 The bylaws must necessarily provide for at least the following:

 (a) Form of administration, indicating whether this shall be in charge of an administrator or of a board of administration, or otherwise, and specifying the powers, manner of removal and, where proper, the compensation thereof;

 (b) Method of calling or summoning the co‑owners to assemble; that a majority of at least fifty‑one percent is required to adopt decisions; who is to preside over the meeting and who will keep the minutes book wherein the resolutions shall be recorded;

 (c) Care, upkeep and surveillance of the property and its general or limited common elements and services;

 (d) Manner of collecting from the co‑owners for the payment of the common expenses;

 (e) Designation and dismissal of the personnel necessary for the works and the general or limited common services of the property.

 The sole owner of the property or, if there be more than one, the co‑owners representing two thirds of the total value of the property, may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. No such modification may be operative until it is embodied in a recorded instrument which shall be recorded in the same office and in the same manner as was the master deed or lease and original bylaws of the horizontal property regime involved.

HISTORY: 1962 Code Section 57‑509; 1962 (52) 1866; 1967 (55) 449; 1970 (56) 2572.

Library References

Condominium 7.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 7, Initial Legislation.

S.C. Jur. Condominiums Section 13, Contents of By‑Laws.

S.C. Jur. Condominiums Section 16, Identification of Apartments.

S.C. Jur. Condominiums Section 22, Form of Management.

**SECTION 27‑31‑170.** Compliance with bylaws, rules, and regulations; remedy for noncompliance.

 Each co‑owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the master deed or lease or in the deed or lease to his apartment. Failure to comply with any of the same shall be grounds for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the administrator or the board of administration, or other form of administration specified in the bylaws, on behalf of the council of co‑owners, or in a proper case, by an aggrieved co‑owner.

HISTORY: 1962 Code Section 57‑510; 1967 (55) 449; 1973 (58) 783.

CROSS REFERENCES

Civil remedies generally, see Sections 15‑1‑10 et seq.

Library References

Condominium 7, 10.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218 to 219.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 18, Undivided Use and Ownership of Common Elements.

S.C. Jur. Condominiums Section 25, Promulgation of Rules.

S.C. Jur. Condominiums Section 27, Collection of Common Expenses.

S.C. Jur. Covenants Section 8, by Declaration.

S.C. Jur. Covenants Section 32, Language Creating a Covenant of Title.

S.C. Jur. Intoxicating Liquors Section 7, Grants, Denials, Suspensions and Revocation.

LAW REVIEW AND JOURNAL COMMENTARIES

Agency. 39 S.C. L. Rev. 215, Autumn, 1987.

NOTES OF DECISIONS

In general 1

Covenants 2

1. In general

Administrative Law Court (ALC) lacked authority to resolve issue in contested liquor license case regarding grant of commercial rights to restaurant, which was located in condominium complex, allegedly reserved for homeowners’ association members under master deed through use of common space; noncompliance with master deed was to be resolved by filing suit in circuit court. Be Mi, Inc. v. South Carolina Dept. of Revenue (S.C.App. 2014) 408 S.C. 290, 758 S.E.2d 737. Intoxicating Liquors 69

A provision of the bylaws of a homeowners association, calling for a majority of the association’s board of administration to vote on behalf of unit owners, was valid and enforceable under Section 33‑7‑310 where the complaining homeowner had consented to the voting agreement, as evidenced by her signature on the indenture deed. Ortega v. Kingfisher Homeowners Ass’n, Inc. (S.C.App. 1994) 314 S.C. 180, 442 S.E.2d 202.

2. Covenants

Decline in real estate market following owners’ purchase of condominium was not a change in conditions sufficient to warrant voiding of restrictive covenant in master deed and bylaws for horizontal property regime that prohibited rental to college students unrelated to unit owner; restrictive covenant’s purpose was to ensure safety of complex’s residents as well as value of investment, and condominium’s decrease in value had no effect on owners’ association’s need to minimize risk that complex might develop a dormitory‑like atmosphere. SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla (S.C.App. 2015) 415 S.C. 72, 781 S.E.2d 115, rehearing denied. Common Interest Communities 118

Evidence that owners’ association for horizontal property regime failed to monitor rental of units and allowed college students to live at complex did not prohibit association from enforcing restrictive covenant in master deed and bylaws of horizontal property regime, which prohibited rental to college students unrelated to owner, under doctrine of waiver, where association took action to enforce restrictive covenant upon receiving complaint. SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla (S.C.App. 2015) 415 S.C. 72, 781 S.E.2d 115, rehearing denied. Common Interest Communities 122

Restrictive covenant in master deed and bylaws for horizontal property regime, which prohibited rental of unit to college students unrelated to owner, was binding on owners who purchased unit, where owners admitted that they were subject to master deed and bylaws, and South Carolina Horizontal Property Act required compliance with master deed and bylaws. SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla (S.C.App. 2015) 415 S.C. 72, 781 S.E.2d 115, rehearing denied. Common Interest Communities 118

Failure of master deed, which created multi‑family horizontal property regime, to reference new covenants did not render those covenants void under the Horizontal Property Act, as master deed reserved all rights under the declaration of covenants, and subsequent purchasers of units in regime received notice of the new covenants in the manner prescribed by those covenants, which stated they would apply to dwellings conveyed “by deeds or other instruments” following the recording of the new covenants. Queen’s Grant II Horizontal Property Regime v. Greenwood Development Corp. (S.C.App. 2006) 368 S.C. 342, 628 S.E.2d 902. Covenants 53

**SECTION 27‑31‑180.** Records of receipts and expenditures.

 The administrator or the board of administration, or other form of administration specified in the bylaws, shall keep a book with a detailed account, in chronological order, of the receipts and expenditures affecting the property and its administration, and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the co‑owners at convenient hours on working days that shall be set and announced for general knowledge.

HISTORY: 1962 Code Section 57‑511; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 8.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 211 to 216, 218, 230.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 13, Contents of By‑Laws.

S.C. Jur. Condominiums Section 23, Functions of Management.

**SECTION 27‑31‑190.** Expenses shall be shared.

 The co‑owners of the apartments are bound to contribute pro rata in the percentages computed according to Section 27‑31‑60 toward the expenses of administration and of maintenance and repair of the general common elements and, in the proper case, of the limited common elements of the property and toward any other expense lawfully agreed upon.

 No co‑owner may exempt himself from contributing toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the apartment belonging to him.

HISTORY: 1962 Code Section 57‑512; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 12.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218, 221.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 26, Liability for Common Expenses.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

Treatises and Practice Aids

Restatement (3d) of Property (Servitudes) Section 6.5, Power to Raise Funds: Assessments, Fees, and Borrowing.

**SECTION 27‑31‑200.** Unpaid assessments; payment upon sale.

 Upon the sale or conveyance of an apartment, all unpaid assessments against a co‑owner for his pro rata share in the expenses to which Section 27‑31‑190 refers shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

 (a) Assessments, liens and charges for taxes past due and unpaid on the apartment; and

 (b) Payments due under mortgage instruments or encumbrances duly recorded.

HISTORY: 1962 Code Section 57‑513; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 12.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218, 221.

**SECTION 27‑31‑210.** Lien for unpaid assessments; right of mortgagee or purchaser acquiring title at foreclosure sale.

 (a) All sums assessed by the administrator, or the board of administration, or other form of administration specified in the bylaws, but unpaid, for the share of common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (i) tax liens on the apartment in favor of any assessing unit, and (ii) mortgage and other liens, duly recorded, encumbering the apartment. Such lien may be foreclosed by suit by the administrator, or the board of administration, or other form of administration specified in the bylaws, acting on behalf of the council of co‑owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment after the commencement of the foreclosure action and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect such rents. The administrator, or the board of administration, or other form of administration specified in the bylaws, acting on behalf of the council of co‑owners, shall have the power to bid in the apartment at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses may be maintainable without instituting foreclosure proceedings.

 (b) Where the mortgagee of any mortgage of record or other purchaser of an apartment obtains title at the foreclosure sale of such a mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the co‑owners chargeable to such apartment accruing after the date of recording such mortgage but prior to the acquisition of title to such apartment by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including such acquirer, his successors and assigns.

HISTORY: 1962 Code Section 57‑514; 1967 (55) 449.

Library References

Condominium 12.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218, 221.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 27, Collection of Common Expenses.

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

NOTES OF DECISIONS

In general 1

Discretion of trial court 3

Regime fees 2

1. In general

Section 27‑31‑210(a) necessitates treatment of assessment lien foreclosures as actions in equity, which allows reviewing courts to find facts in accordance with their own view of evidence and not to be bound by factual findings of trial judge. Dockside Ass’n, Inc. v. Detyens (S.C. 1987) 294 S.C. 86, 362 S.E.2d 874.

2. Regime fees

A homeowners’ association’s judgment was subordinate to the plaintiff’s mortgage lien where the assessments giving rise to the association’s judgment were fixed subsequent to the plaintiff’s lien; judgments for assessments constitute liens against property only from the time the amounts of the respective assessments represented by the judgments become fixed and due. First Federal Sav. and Loan Ass’n of Charleston v. Bailey (S.C.App. 1994) 316 S.C. 350, 450 S.E.2d 77, rehearing denied, certiorari denied.

A purchaser at a foreclosure sale was not exempted under Section 27‑31‑210(b) from liability for accrued regime fees imposed by Section 27‑31‑220. Council of Co‑Owners of Forest Beach Villas Horizontal Property Regime v. Smith (S.C. 1994) 314 S.C. 134, 442 S.E.2d 173. Common Interest Communities 77

3. Discretion of trial court

Determination of whether to set aside a foreclosure sale that was initiated by a homeowners’ association for unpaid assessments is a matter within the discretion of the trial court. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Common Interest Communities 77

**SECTION 27‑31‑220.** Liability of purchaser of apartment.

 The purchaser of an apartment (other than a purchaser at a foreclosure sale as described above in Section 27‑31‑210(b)) shall be jointly and severally liable with the seller for the amounts owing by the latter under Section 27‑31‑190 up to the time of the conveyance, without prejudice to the purchaser’s right to recover from the other party the amounts paid by him as such joint debtor. The council of co‑owners shall provide for the issuance and shall issue to any purchaser, upon his request, a statement of such amounts due by the seller and the purchaser’s liability under this section shall be limited to the amount as set forth in the statement.

HISTORY: 1962 Code Section 57‑515; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 12, 15.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218, 221, 232 to 234.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 26, Liability for Common Expenses.

NOTES OF DECISIONS

In general 1

1. In general

A purchaser at a foreclosure sale was not exempted under Section 27‑31‑210(b) from liability for accrued regime fees imposed by Section 27‑31‑220. Council of Co‑Owners of Forest Beach Villas Horizontal Property Regime v. Smith (S.C. 1994) 314 S.C. 134, 442 S.E.2d 173. Common Interest Communities 77

**SECTION 27‑31‑230.** Liens arising subsequent to recording of master deed or lease.

 (a) No lien arising subsequent to recording the master deed or lease as provided in this chapter, and while the property remains subject to this chapter, shall be effective against the property. During such period liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common elements appurtenant to such apartment, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; provided, that no labor performed or materials furnished with the consent or at the request of a co‑owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a mechanic’s or materialman’s lien against the apartment or any other property of any other co‑owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. Labor performed or materials furnished for the common elements, if duly authorized by the council of co‑owners, the administrator or board of administration or other administration specified by the bylaws, in accordance with this chapter, the master deed, lease or bylaws, shall be deemed to be performed or furnished with the express consent of each co‑owner and shall be the basis for the filing of a mechanic’s or materialman’s lien against each of the apartments and shall be subject to the provisions of subparagraph (b) hereunder.

 (b) In the event a lien against two or more apartments becomes effective, the owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the percentages appearing in the master deed or lease. Subsequent to any such payment, discharge or other satisfaction, the apartment and the percentage of undivided interest in the common elements appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common elements appurtenant thereto not so paid, satisfied or discharged.

HISTORY: 1962 Code Section 57‑516; 1967 (55) 449; 1970 (56) 2572.

Library References

Condominium 5, 15.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 210, 232 to 234.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 34, Mortgages of Apartments.

S.C. Jur. Condominiums Section 35, Mechanics’ Liens.

NOTES OF DECISIONS

In general 1

1. In general

A mortgage given by a condominium developer on the entire project, after the filing of the master deed, was void pursuant to Section 27‑31‑230 since the purpose of the statute was to prevent either an individual condominium owner, or the developer, from encumbering the interest of others once the master deed is filed. Resolution Trust Corp. v. Eagle Lake and Golf Condominiums (S.C. 1993) 310 S.C. 473, 427 S.E.2d 646, rehearing denied.

**SECTION 27‑31‑240.** Insurance.

 The council of co‑owners shall insure the property against risks, without prejudice to the right of each co‑owner to insure his apartment on his own account and for his own benefit.

HISTORY: 1962 Code Section 57‑517; 1962 (52) 1866; 1967 (55) 449.

CROSS REFERENCES

Regulation of the insurance industry, see Sections 38‑1‑10 et seq.

Library References

Condominium 6.1.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 23, Functions of Management.

S.C. Jur. Condominiums Section 29, Mandatory Insurance of Common Property.

S.C. Jur. Condominiums Section 30, Repair and Reconstruction.

S.C. Jur. Condominiums Section 31, Individual Co‑Owner Insurance.

Attorney General’s Opinions

Discussion of the financial responsibility of co‑owners to pay the expenses of reconstruction and repair of property damage after insurance proceeds have been exhausted. S.C. Op.Atty.Gen. (January 18, 2017) 2017 WL 569541.

**SECTION 27‑31‑250.** Repair or reconstruction; vote of co‑owners; application of insurance proceeds.

 (A) A portion of the property for which insurance is required pursuant to Section 27‑31‑240 and which is damaged or destroyed must be repaired or replaced promptly by the council of co‑owners unless:

 (1) repair or replacement is illegal under a state statute or local health ordinance; or

 (2) eighty percent of the co‑owners, including the owner of an apartment which is not to be rebuilt, vote not to rebuild; except that the property bylaws may expressly require a percentage greater, but not less than, eighty percent of the co‑owners.

 (B) The cost of repair or replacement in excess of insurance proceeds and reserve must be considered a common expense.

 (C) If the entire property is not repaired or replaced, the insurance proceeds:

 (1) attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the property;

 (2) attributable to apartments and limited common elements that are not rebuilt must be distributed to the owners of those apartments and to the owners of those apartments to which limited common elements were allocated, or to the lienholders, as their interests may appear;

 (3) remaining must be distributed to all of the co‑owners or lienholders, as their interests may appear, in proportion to the percentage as described in Section 27‑31‑60.

 (D) If the co‑owners vote not to rebuild an apartment, that apartment’s allocated interest must be reallocated automatically upon the vote and the council of co‑owners promptly shall prepare, execute, and record an amendment to the master deed reflecting the reallocations.

HISTORY: 1962 Code Section 57‑518; 1962 (52) 1866; 1967 (55) 449; 1984 Act No. 463, Section 5; 2006 Act No. 250, Section 1, eff March 24, 2006.

Editor’s Note

2006 Act No. 250, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies to all horizontal properties governed by the Horizontal Property Act, notwithstanding a provision in the master deed or bylaws to the contrary.”

Effect of Amendment

The 2006 amendment rewrote this section.

CROSS REFERENCES

Regulation of the insurance industry, see Sections 38‑1‑10 et seq.

Library References

Condominium 6.1.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 23, Functions of Management.

S.C. Jur. Condominiums Section 30, Repair and Reconstruction.

Attorney General’s Opinions

Discussion of the financial responsibility of co‑owners to pay the expenses of reconstruction and repair of property damage after insurance proceeds have been exhausted. S.C. Op.Atty.Gen. (January 18, 2017) 2017 WL 569541.

**SECTION 27‑31‑260.** Sharing expenses in case of fire or other disaster.

 Where the property is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction, the rebuilding costs shall be paid by all the co‑owners directly affected by the damage, in proportion to the value of their respective apartments, or as may be provided in the bylaws; and if any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co‑owners benefited thereby, upon proper resolution setting forth the circumstances of the case and the cost of the works, with the intervention of the council of co‑owners.

 The provisions of this section may be changed by unanimous resolution of the parties concerned, adopted subsequent to the date on which the fire or other disaster occurred.

HISTORY: 1962 Code Section 57‑519; 1962 (52) 1866; 1967 (55) 449.

Library References

Condominium 12.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218, 221.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 30, Repair and Reconstruction.

Attorney General’s Opinions

Discussion of the financial responsibility of co‑owners to pay the expenses of reconstruction and repair of property damage after insurance proceeds have been exhausted. S.C. Op.Atty.Gen. (January 18, 2017) 2017 WL 569541.

**SECTION 27‑31‑270.** Assessment and collection of taxes.

 Taxes, assessments and other charges of this State, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole. No forfeiture or sale of the building or property as a whole for delinquent taxes, assessments or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessments and charges on the individual apartment are currently paid.

HISTORY: 1962 Code Section 57‑520; 1962 (52) 1866; 1967 (55) 449.

CROSS REFERENCES

Taxation generally, see Title 12.

Library References

Condominium 1.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 193 to 195, 198 to 203.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 28, Collection of Taxes.

Attorney General’s Opinions

A municipality is authorized to levy assessments for permanent improvements on individually owned apartment units comprising a horizontal housing property (condominium regime) or apartment building under the provisions of this section. 1962‑63 Op. Atty Gen, No. 1604, p 184.

**SECTION 27‑31‑280.** Council of co‑owner’s right of access.

 The council of co‑owners shall have the irrevocable right, to be exercised by the administrator or the board of administration, or other form of administration specified in the bylaws, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

HISTORY: 1962 Code Section 57‑521; 1967 (55) 449.

Library References

Condominium 13.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 224 to 225.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 21, Maintenance of Common Elements.

**SECTION 27‑31‑290.** Limitation on liability of co‑owners for common expenses.

 The liability of each co‑owner for common expenses shall be limited to the amounts for which he is assessed from time to time in accordance with this chapter, the master deed or lease and the bylaws.

HISTORY: 1962 Code Section 57‑522; 1967 (55) 449; 1970 (56) 2572.

Library References

Condominium 12.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 198, 218, 221.

**SECTION 27‑31‑300.** Effect on contracts entered into before June 6, 1967.

 The provisions of this chapter shall in no way impair, alter or revise any contract entered into with regard to horizontal properties or condominiums prior to June 6, 1967.

HISTORY: 1962 Code Section 57‑523; 1967 (55) 449.

Library References

Condominium 2.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 57, Condominiums, Timeshares, Planned Unit Developments, and Cooperatives.

Forms

South Carolina Legal and Business Forms Section 6:54 , Subscription and Purchase Agreement‑Condo/Hotel/Security and Rental Pool‑Financed or Cash Options‑Pre‑Development‑Seller Development Contingencies.

Treatises and Practice Aids

14 Causes of Action 2d 315, Cause of Action to Enforce, or Declare Invalid, Restriction on Use of Condominium Property.

ARTICLE 2

Conversion of Rental Units to Condominium Ownership

**SECTION 27‑31‑410.** “Conversion of rental units to condominium ownership” defined.

 As used in this chapter, “conversion of rental units to condominium ownership” means the establishment of a horizontal property regime encompassing a preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis other than persons who, at the time of such recording, had contractual rights to acquire condominium ownership within the building.

HISTORY: 1983 Act No. 37, Section 2.

Library References

Condominium 3.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 36, Conversion of Rental Units to Condominiums.

**SECTION 27‑31‑420.** Rights and duties of owners, landlords, and tenants when rental units are converted to condominiums; notices; offers; vacation; phased conversions.

 (A) Whenever a lessee, sole owner, or co‑owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, within thirty days of the date of recordation the lessee or owner shall deliver in writing to each tenant in possession of an apartment within the building to be converted:

 (1) the disclosure items required by Section 27‑31‑430;

 (2) written notice of the planned conversion which shall set forth generally the rights of tenants under this section;

 (3) an offer to convey to the tenant the apartment occupied by the tenant at a specified price and upon specified terms.

 The tenant shall not be required to vacate the apartment until expiration of his lease or for one hundred twenty days, or ninety days if the tenant is under the age of sixty, following delivery of the notice, whichever is longer, and the terms of the tenancy shall not be altered during that period. Any notice which under the terms of such tenancy is required to be given to prevent the automatic renewal or extension of the term of such tenancy may be given during such period. Failure to give notice as required by this section shall constitute a defense to an action by the lessee or owner for possession if initiated less than one hundred twenty days, or ninety days if the tenant is under the age of sixty, after delivery of the notice, except as provided in subsection (E).

 (B) The price and terms offered to each tenant in possession shall be at least as favorable as the price and terms offered to prospective purchasers who are not tenants in possession of apartments in the building to be converted. The tenant shall be allowed sixty days in which to accept such offer and, in the event the tenant shall not have accepted the offer within the sixty days, the lessee or owner of the building shall be prohibited for an additional fifty days, or fifteen days if the tenant is under the age of sixty, from making an offer to convey the apartment to any other person at a price or upon terms more favorable then those offered to the tenant, unless such more favorable offer first shall have been extended to the tenant for his exclusive consideration for a period of ten days. Acceptance of an offer by a tenant in possession shall be in writing. If a declarant, in violation of this subsection, conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under the subsection to purchase that unit if the deed states that the seller has complied with the subsection, but does not affect the right of a tenant to recover damages from the declarant for a violation of this subsection.

 (C) Where the conversion is to be accomplished on a phase‑in basis, the notices required shall be given within thirty days of the undertaking of the conversion of each building.

 (D) Notices and offers required or permitted to be delivered to a tenant by this article may be:

 (1) hand delivered to the tenant; or

 (2) hand delivered to the apartment; or

 (3) posted in the United States mails, postage prepaid, addressed to the tenant at the individual’s apartment address.

 Acceptances of offers of a lessee or owner may be:

 (1) hand delivered to the lessee or owner; or

 (2) hand delivered to an authorized representative of the lessee or owner; or

 (3) posted in the United States mails, postage prepaid, properly addressed to the lessee or owner. If registered or certified mail is used, the postmark date of the registered or certified mail receipt received upon posting shall be the date of delivery for purposes of this article.

 (E) Nothing in this section shall prevent termination of a lease according to law for violation of its terms.

 (F) In the event of extended occupancy by the tenant pursuant to subsection (A), the rights and obligations of the landlord and tenant during the period of extended occupancy shall remain the same as prior to the period.

HISTORY: 1983 Act No. 37, Section 2.

Library References

Condominium 1, 3.

Landlord and Tenant 278.2(1), 278.7(8).

Westlaw Topic Nos. 233, 89A.

C.J.S. Estates Sections 193 to 195, 197 to 203, 244.

C.J.S. Landlord and Tenant Sections 1361, 1403 to 1404, 1424, 1427 to 1428, 1435, 1440, 1452 to 1453, 1493 to 1496.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 37, Notices Required.

**SECTION 27‑31‑430.** Disclosure of physical condition of building.

 Whenever the lessee, sole owner, or co‑owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. The report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations. The good faith estimate of useful life shall not constitute a warranty and, as to an independent registered architect or engineer licensed to practice his profession in this State, shall not be deemed a representation of material fact or an inducement to purchase and shall not give rise to any cause of action at law or in equity against such architect or engineer. A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.

HISTORY: 1983 Act No. 37, Section 2.

CROSS REFERENCES

Items required to be delivered to tenants in possession, see Section 27‑31‑420.

South Carolina Unfair Trade Practices Act, generally, see Sections 39‑5‑10 et seq.

Library References

Condominium 3.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 37, Notices Required.

**SECTION 27‑31‑440.** Abandoning conversion program.

 Nothing contained in this article shall require the lessee, sole owner, or co‑owner to convert to a condominium if, after recording the master deed or master lease and giving the required notices, the lessee, sole owner, or co‑owner finds that he cannot meet any presale requirements that he has established or that he no longer wishes to convert the property.

HISTORY: 1983 Act No. 37, Section 3.

Library References

Condominium 3.

Westlaw Topic No. 89A.

C.J.S. Estates Sections 197 to 203, 244.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Condominiums Section 7, Initial Legislation.