CHAPTER 59

Residential Home Builders

ARTICLE 1

Residential Home Builders Generally

**SECTION 40‑59‑5.** Application of Chapter 1; conflicts.

 Unless otherwise provided for in this chapter, Article 1, Chapter 1 of Title 40 applies to any entities or individuals regulated by the Department of Labor, Licensing and Regulation. If there is a conflict between this chapter and Article 1, Chapter 1 of Title 40, the provisions of this chapter control.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 8(1).

Westlaw Topic No. 238.

C.J.S. Licenses Sections 23 to 24.

**SECTION 40‑59‑10.** South Carolina Residential Builders Commission; membership; oath.

 (A) There is created the South Carolina Residential Builders Commission which must be composed of eight persons who have been residents of the State for at least five years and two of whom must be consumers not engaged in the business of residential building, four of whom have been actively engaged in residential building for a period of at least five years before the date of their appointment, and who must be recommended to the Governor by the South Carolina Home Builders Association, and one of whom has been actively engaged in residential specialty contracting for a period of at least five years before the date of appointment. One member must be appointed from each congressional district, and one must be appointed from the State at large. Members of the commission must be appointed by the Governor with the advice and consent of the Senate for a term of four years or until their successors are appointed and qualify. A vacancy occurring by reason of death, resignation, removal for cause, or otherwise must be filled for the remainder of the unexpired term in the manner of the original appointment. The Governor may remove any member of the commission in accordance with Section 1‑3‑240.

 (B) Before entering upon the discharge of the duties of his office, each member of the commission shall take and file with the Secretary of State, in writing, an oath to perform properly the duties of his office as a member of the commission and to uphold the Constitution of this State and the United States.

 (C) Commission members from the general public may be nominated by an individual, group, or association and must be appointed by the Governor in accordance with Section 40‑1‑ 45.

HISTORY: 2002 Act No. 359, Section 1; 2012 Act No. 279, Section 11, eff June 26, 2012.

Editor’s Note

Prior Laws:1962 Code Section 56‑1545.31; 1974 (58) 1949; 1990 Act No. 595, Section 3; 1976 Code Section 40‑59‑20.

2012 Act No. 279, Section 33, provides as follows:

“Due to the congressional redistricting, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires. Further, the inability to hold an election or to make an appointment due to judicial review of the congressional districts does not constitute a vacancy.”

Effect of Amendment

The 2012 amendment in subsection (A), substituted “eight persons” for “seven persons”, and made other nonsubstantive changes.

CROSS REFERENCES

For regulations promulgated by the South Carolina Residential Builders Commission, see S.C. Code of Regulations R. 106‑1 et seq.

The state licensing board for contractors, see Section 40‑11‑10.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 22, Licensing.

**SECTION 40‑59‑20.** Definitions.

 As used in this chapter unless the context clearly indicates otherwise:

 (1) “Commission” means the South Carolina Residential Builders Commission.

 (2) “Department” means the Department of Labor, Licensing and Regulation.

 (3) “Director” means the Director of the Department of Labor, Licensing and Regulation.

 (4) “Firm” means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, joint venture or other legally constituted organization which practices or offers to practice residential building or residential specialty contracting.

 (5) “License” means a license, registration, or certification issued in accordance with this chapter.

 (6) “Residential builder” means one who constructs, superintends, or offers to construct or superintend the construction, repair, improvement, or reimprovement of a residential building or structure which is not over three floors in height and which does not have more than sixteen units in any single apartment building, when the cost of the undertaking exceeds five thousand dollars. Anyone who engages or offers to engage in such undertaking in this State is considered to have engaged in the business of residential building.

 (7) “Residential specialty contractor” means an independent contractor who is not a licensed residential builder, who contracts with a licensed residential builder, general contractor, or individual property owner to do construction work, repairs, improvement, or reimprovement which requires special skills and involves the use of specialized construction trades or craft, when the undertakings exceed two hundred dollars and are not regulated by the provisions of Chapter 11. Residential specialty contracting includes the following areas of contracting and other areas as the commission may recognize by regulation:

 (a) plumbers;

 (b) electricians;

 (c) heating and air conditioning installers and repairers;

 (d) vinyl and aluminum siding installers;

 (e) insulation installers;

 (f) roofers;

 (g) floor covering installers;

 (h) masons;

 (i) dry wall installers;

 (j) carpenters;

 (k) stucco installers;

 (l) painters/wall paperers.

 (8) As used in this chapter, the terms defined in Section 40‑1‑20 have the same meaning as stated in that section.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1962 Code Section 56‑1545.32; 1974 (58) 1949; 1990 Act No. 595, Section 1; 1976 Code Section 40‑59‑10.

CROSS REFERENCES

Certain businesses or individuals subject to licensing or registration under this chapter not included in term “alarm system business”, see Section 40‑79‑30.

Contractor licensing and regulation, see Section 40‑11‑10 et seq.

Emergency license and registration, Department of Labor, Licensing and Regulation, South Carolina Residential Builders Commission, see S.C. Code of Regulations R. 106‑5.

Regulation of engineers and land surveyors, see Section 40‑22‑10 et seq.

Residential builder regulations, see S.C. Code of Regulations R. 106‑1 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Latent defects: Subsequent home purchasers beware. G. Scott Lutz, 40S.C. L. Rev. 1017 (Summer 1989).

Liability for construction defects in residential realty: A re‑examination in light of Kennedy v. Columbia Lumber & Manufacturing Co. Richard C. Webb, 42 S.C. L. Rev. 503 (Winter 1991).

Attorney General’s Opinions

“Undertaking” is any instance where residential specialty contractor enters into contract with individual when aggregate amount exceeds $5,000. 1993 S.C. Op.Atty.Gen. 101, 1993 S.C. Op.Atty.Gen. No. 93‑43, (June 16, 1993) 1993 WL 720129.

Residential specialty contractor who simply registers in 5 or more classifications may be required to become licensed as residential builder unless he can show justification why he should not be so required. 1993 S.C. Op.Atty.Gen. 101, 1993 S.C. Op.Atty.Gen. No. 93‑43, (June 16, 1993) 1993 WL 720129.

When deemed necessary by S.C. Home Builders Residential Commission, applicant for registration as residential specialty contractor may be required to take and pass examination. 1993 S.C. Op.Atty.Gen. 101, 1993 S.C. Op.Atty.Gen. No. 93‑43, (June 16, 1993) 1993 WL 720129.

Neither a property owner nor his agent has to be licensed as a builder to build on his real estate holdings. 1983 S.C. Op.Atty.Gen. 134, 1983 S.C. Op.Atty.Gen. No. 83‑82, (Oct. 28, 1983) 1983 WL 142751.

NOTES OF DECISIONS

Residential home building 1

1. Residential home building

Addition of a sunroom containing a heated swimming pool onto a residence was properly classified as “residential home building” and therefore general contractor which performed the work, which was not licensed in South Carolina as a general contractor or residential home builder until after contract was signed and construction commenced, could not bring a suit to enforce his contract with owner. Code 1976, Section 40‑59‑10. Columbia Pools, Inc. v. Moon (S.C. 1985) 284 S.C. 145, 325 S.E.2d 540. Licenses 39.43(1)

**SECTION 40‑59‑25.** Roofing contract cancellation for insurance coverage denial.

 (A)(1) A person who enters into a written contract for goods or services related to a roofing system with a party who will be paid from proceeds of a property and casualty insurance policy and who subsequently receives written notice from the insurer that all or part of the claim or contract is not a covered loss under the policy may cancel the contract prior to midnight on the fifth business day after the insured has received the written notice of the denial of coverage.

 (2) This section applies to the following persons performing goods or services related to a roofing system:

 (a) a licensed residential builder;

 (b) a registered residential specialty contractor; and

 (c) a person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission.

 (3) Cancellation must be evidenced by the insured giving written notice of cancellation to the builder or contractor at the address provided in the contract. Notice of cancellation, if given by mail, must be effective upon deposit into the United States mail, postage prepaid and properly addressed to the builder or contractor. Notice of cancellation need not take a particular form and shall be sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

 (4) For purposes of this subsection, “roof system” means a roof covering, roof sheathing, roof weatherproofing, roof framing, roof ventilation system, or insulation.

 (B) Before entering a contract as provided in subsection (A), the builder or contractor shall:

 (1) provide the insured a statement in boldface type of a minimum size of ten points, in substantially the following form:

“You may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of this claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See attached notice of cancellation form for an explanation of this right”; and

 (2) provide each insured a fully completed form, in duplicate, prominently captioned “NOTICE OF CANCELLATION”, which must be attached to the contract but easily detachable, and which must contain in boldface type of a minimum size of ten points the following statement:

“NOTICE OF CANCELLATION

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (insert name of contractor) at (insert address of contractor’s place of business) any time prior to midnight on the fifth business day after you have received such notices from your insurer.

I HEREBY CANCEL THIS TRANSACTION

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DATE

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SIGNATURE OF INSURED”

 (C) In circumstances in which payment may be made from the proceeds of a property and casualty insurance policy, a builder or contractor shall not require any payments from an insured until the five‑day cancellation period has expired. If, however, the builder or contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the builder or contractor must be entitled to collect the amount due for the emergency services at the time they are rendered. A provision in a contract as provided in subsection (A) that requires payment of any fee for anything except emergency services must not be enforceable against an insured who has canceled a contract under this section.

 (D)(1) A builder or contractor shall not represent or negotiate, or offer or advertise to represent or negotiate, on behalf of an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems.

 (2) Notwithstanding item (1), or any other provision of state law, an owner is not prevented from consulting with a builder, contractor, or other person of his choice to provide an evaluation of the condition of his roof system and using the evaluation he receives in the negotiation for the repair or replacement of his roof system.

 (E)(1) A builder or contractor shall not advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of goods or services.

 (2) A person who violates a provision of this subsection is guilty of a misdemeanor. The violation is grounds for suspension or revocation of licenses issued pursuant to this chapter.

 (3) As used in this subsection, the term “promise to pay or rebate” means:

 (a) granting any allowance or offering any discount against the fees to be charged, including, but not limited to, an allowance or discount in return for displaying a sign or other advertisement at the insured’s premises; or

 (b) paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason.

HISTORY: 2013 Act No. 77, Section 1, eff July 1, 2013.

CROSS REFERENCES

Revocation, suspension, or restriction of license, misconduct, determination of compliance with applicable professional standards, see Section 40‑59‑110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 30, Termination of Construction Contracts‑Wrongful Termination by Owner.

**SECTION 40‑59‑30.** License requirement; enforcement of contracts; restraining orders.

 (A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

 (B) Notwithstanding Section 29‑5‑10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics’ lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

 (C) Pursuant to Article 5, Chapter 23, Title 1, the commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent.

HISTORY: 2002 Act No. 359, Section 1; 2009 Act No. 40, Section 4.

Editor’s Note

Prior Laws:1962 Code Section 56‑1545.37; 1974 (58) 1949; 1990 Act No. 595, Section 6; 1993 Act No. 72, Section 1; 1976 Code Section 40‑59‑70.

CROSS REFERENCES

Contractor licensing requirement, see Section 40‑11‑30.

Library References

Licenses 11(5), 20 to 35, 39.43, 40.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 72, 77, 101 to 114, 119 to 120, 125 to 126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mechanics’ Liens Section 9, General Requirements.

Attorney General’s Opinions

“Undertaking” is any instance where residential specialty contractor enters into contract with individual when aggregate amount exceeds $5,000. 1993 S.C. Op.Atty.Gen. 101, 1993 S.C. Op.Atty.Gen. No. 93‑43, (June 16, 1993) 1993 WL 720129.

Applicant for registration as residential specialty contractor may be required to provide written account of his work history. 1993 S.C. Op.Atty.Gen. 101, 1993 S.C. Op.Atty.Gen. No. 93‑43, (June 16, 1993) 1993 WL 720129.

Residential specialty contractor who simply registers in 5 or more classifications may be required to become licensed as residential builder unless he can show justification why he should not be so required. 1993 S.C. Op.Atty.Gen. 101, 1993 S.C. Op.Atty.Gen. No. 93‑43, (June 16, 1993) 1993 WL 720129.

When deemed necessary by S.C. Home Builders Residential Commission, applicant for registration as residential specialty contractor may be required to take and pass examination. 1993 S.C. Op.Atty.Gen. 101, 1993 S.C. Op.Atty.Gen. No. 93‑43, (June 16, 1993) 1993 WL 720129.

NOTES OF DECISIONS

In general 1

Damages 2

1. In general

Unlicensed builder’s use of one hourly employee who had license was not substantial compliance with statute requiring residential builder to be licensed in order to enforce building contract, where licensed employee worked on house for only two days and did not use his license to do work. Code 1976, Section 40‑59‑130; Rules Civ.Proc., Rule 56(e). Burry & Son Homebuilders, Inc. v. Ford (S.C. 1992) 310 S.C. 529, 426 S.E.2d 313.

Maintenance of general contractor’s license by principal of contractor was sufficient compliance with statute exempting any person licensed as a general contractor from requirements of residential home builders statutes and therefore contractor was not precluded from bringing suit by virtue of statute prohibiting a licensed residential home builder from bringing an action to enforce provisions of a contract. Code 1976, Sections 40‑59‑130, 40‑59‑140. Costa and Sons Const. Co., Inc. v. Long (S.C.App. 1991) 306 S.C. 465, 412 S.E.2d 450. Judgment 377

Contractor could not maintain mechanics’ lien foreclosure action against homeowner because contractor did not have license issued by state Residential Homebuilders Commission, notwithstanding that homeowner was aware that contractor did not have license, as statute explicitly barred any contractor without a license from bringing action in law or equity to enforce provisions of contract for residential home building. Code 1976, Section 40‑59‑130. Wagner v. Graham (S.C.App. 1988) 296 S.C. 1, 370 S.E.2d 95.

Unlicensed builder could not bring action to recover for amounts paid by it to third parties in performance of building contract. Code 1976, Sections 40‑59‑70, 40‑59‑130. Roberta, Inc. v. Trust (S.C. 1979) 274 S.C. 53, 260 S.E.2d 818. Licenses 39.43(1)

Any residential home builder who enters into a contract for home construction without obtaining the required license cannot enforce the contract even though he subsequently obtains a license. Code 1976, Sections 40‑59‑10 et seq., 40‑59‑70, 40‑59‑130. Duckworth v. Cameron (S.C. 1978) 270 S.C. 647, 244 S.E.2d 217. Licenses 39.43(1)

Where at time contractor entered into contract for construction of residence he was an established residential home builder, and where he completed construction of residence within 12‑month period allowed for obtaining a license, there was no legal infirmity in contract at its inception or at completion when contractual obligation became due. Code 1962, Section 56‑1545.37. Henderson v. Evans (S.C. 1977) 268 S.C. 127, 232 S.E.2d 331.

Legislature intended only penal sanction for violation of act requiring licensing of residential home builders to be a misdemeanor fine. Code 1962, Sections 56‑5145.31 et seq., 56‑1545.37, 56‑1545.43. Henderson v. Evans (S.C. 1977) 268 S.C. 127, 232 S.E.2d 331.

2. Damages

Homeowners were not entitled to recover damages from unlicensed contractor for amounts they personally expended for construction of house and for alleged delays in construction; homeowners’ damages did not exceed the final payment of $18,000 that homeowners refused to pay to contractor. Lenz v. Walsh (S.C.App. 2005) 362 S.C. 603, 608 S.E.2d 471. Licenses 39.43(1)

**SECTION 40‑59‑50.** Compensation of members; chairman; bylaws and seal; administrator and staff; meetings; roster of licensees.

 (A) The members of the commission must be compensated for their services at the regular per diem, mileage, and subsistence rates as provided by law for members of state boards, committees, and commissions and must be reimbursed for actual and necessary expenses incurred in connection with, and as a result of, their work on the commission. Compensation paid and costs and expenses incurred must be paid only from the fees received by the commission pursuant to the provisions of this chapter.

 (B) The commission, at its first meeting after appointment, shall organize by electing a chairman and a vice‑chairman and other officers as the commission considers appropriate who shall serve for a term of one year and until their successors are appointed and qualify. The commission shall adopt bylaws for the governance of its proceedings and shall adopt a commission seal on which shall appear the words “South Carolina Residential Builders Commission”.

 (C) The Director of the Department of Labor, Licensing and Regulation, pursuant to Section 40‑1‑50, may employ an administrator to serve at the discretion of the director of the department. The duties of the administrator must be prescribed by the director.

 (D) The director may also employ clerical and stenographic assistance and other personnel as may be necessary to effectuate the provisions of this chapter. The compensation of all employees of the commission must be fixed by the director and paid from the fees received by the commission pursuant to the provisions of this chapter.

 (E) The Department of Labor, Licensing and Regulation shall administer the commission as a revenue funded commission in accordance with Section 40‑1‑50.

 (F) The commission shall meet quarterly and at other times as the chairman may designate; however, the commission shall meet within thirty days after appointment for the purpose of organizing and transacting business. Four members of the commission constitute a quorum at all meetings. The administrator shall keep records of each meeting as required by the commission.

 (G) A roster including the names and places of business of the residential builders and residential specialty contractors licensed or registered by the commission during the preceding year must be prepared annually by the commission and forwarded to and filed with the clerk of court for each county.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1962 Code Sections 56‑1545.33, 56‑1545.34, 56‑1545.35, 56‑1545.36; 1974 (58) 1949; 1990 Act No. 595, Sections 4, 5; 1993 Act No. 181, Sections 933, 934; 1976 Code Sections 40‑59‑30, 40‑59‑40, 40‑59‑60.

CROSS REFERENCES

Regulation of contractors generally, see Section 40‑11‑10 et seq.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑59‑60.** Additional commission operations.

 In addition to the commission operations provided in this chapter, the commission may act in accordance with those set forth in Section 40‑1‑60.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑59‑70.** Promulgation of regulations.

 The commission may promulgate regulations as may be necessary to effectuate the provisions of this chapter.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1962 Code Section 56‑1545.42; 1974 (58) 1949; 1990 Act No. 595, Section 14; 1976 Code Section 40‑59‑120.

Cross references—

For regulations promulgated by the South Carolina Residential Builders Commission, see S.C. Code of Regulations R. 106‑1 et seq.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 84, Chapter 59 Residential Home Builders.

Attorney General’s Opinions

The Residential Home Builders Commission may promulgate a regulation requiring building officials in the various municipalities and counties to report nonlicensed applicants for building permits to the Commission. 1976 S.C. Op.Atty.Gen. 387, 1976 S.C. Op.Atty.Gen. No. 4524, (Nov. 22, 1976) 1976 WL 23141.

NOTES OF DECISIONS

In general 1

Bonds 2

1. In general

Builder’s allegation that rules and regulations of Residential Home Builders Commission were unconstitutional was irrelevant defense in surety’s indemnification action against builder under application for license bond which required builder to indemnify surety for any losses incurred on bond, where surety was required by Commission to pay homeowner to correct deficiencies in house built by builder. Code 1976, Sections 15‑13‑440, 40‑59‑70. Aetna Cas. & Sur. Co. v. Golightly (S.C. 1985) 289 S.C. 408, 338 S.E.2d 153.

2. Bonds

To state cause of action under terms of surety bond requiring compliance with construction standard or health and safety requirement, complaint must allege or imply actual violation of such rules and regulations, since bond of this type is neither performance bond guaranteeing completion of work contracted, nor payment bond guaranteeing that all material suppliers will be paid. Overruling Brailsford v. Lawyers Sur.Corp., 302 S.C. 515, 397 S.E.2d 254 (Ct.App.1990). Code 1976, Sections 40‑59‑70, 40‑59‑80; S.C.Code Reg. 106‑1. Lite House, Inc. v. North River Ins. Co. (S.C. 1996) 322 S.C. 26, 471 S.E.2d 166. Licenses 26

Regulation authorizing residential building commissioner to revoke builder’s license pertained to construction standards, within meaning of surety bond, in that regulation cited various building codes used by commission as guides in determining if builder violated proper structural, mechanical, and workmanship standards. S.C.Code Reg. 106‑7. Lite House, Inc. v. North River Ins. Co. (S.C.App. 1994) 316 S.C. 326, 450 S.E.2d 63, rehearing denied, certiorari granted, affirmed as modified 322 S.C. 26, 471 S.E.2d 166.

Principal’s failure to refund money advanced for building, which was not constructed, was misconduct which fell outside the scope of coverage of a surety bond statutorily required of licensed builders as a method of complying with rules and regulations pertaining to construction standards and health and safety requirements. Kennedy v. Henderson (S.C. 1986) 289 S.C. 393, 346 S.E.2d 526.

Although neither bond nor Residential Home Builders Act expressly confers upon member of public a right to maintain action against surety on bond of home builder, the right of action nonetheless exists by clear implication from whole of law and language of bond, considered together with Residential Home Builders Commission’s rules and regulations regarding revocation of home builder licenses; thus, plaintiff homeowners whose home was damaged by negligence of builder had right to institute action against surety to recover on builder’s bond. Code 1976, Section 40‑59‑90; Code 1976, R 106‑7. Watson v. Harmon (S.C.App. 1984) 280 S.C. 214, 312 S.E.2d 8. Licenses 26

Purpose of statute and regulations governing licensing of residential home builders is to protect home‑buying public from financially irresponsible builders; such purpose is manifested by requirement in statute that an applicant for a home builder’s license submit either proof of financial responsibility or a bond in amount of $10,000. Code 1976, Section 40‑59‑70(b). Watson v. Harmon (S.C.App. 1984) 280 S.C. 214, 312 S.E.2d 8.

Home builder’s surety was obligated, under bond home builder was required to execute by Residential Home Builders Act, for any failure by its principal to comply with Residential Home Builders Commission’s rules and regulations pertaining to construction standards of homes. Code 1976, Section 40‑59‑10 et seq. Watson v. Harmon (S.C.App. 1984) 280 S.C. 214, 312 S.E.2d 8. Licenses 26

**SECTION 40‑59‑80.** Investigation of complaints; initial complaints.

 The Department of Labor, Licensing and Regulation shall investigate complaints and violations of this chapter as provided for in Section 40‑1‑80. A person, including the commission, may file an initial complaint against a licensee or registrant. The complaint must be in writing and sworn to by the person filing the complaint.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100.

**SECTION 40‑59‑90.** Hearing before commission; notice; appearance; order; appeal.

 Charges, unless dismissed without hearing by the commission as unfounded or trivial, must be heard by the commission in an open hearing. A copy of the charges and a notice of the time and place of the hearing must be served on the respondent at least thirty days before the fixed date for the hearing. At the hearing the respondent may appear personally or be represented by counsel and may cross‑examine witnesses against him and produce evidence and witnesses in his defense. After the commission issues its order, the respondent has thirty days to file with the commission written notice of his intention to appeal to an administrative law judge from the order of the commission. An appeal from an order of the commission is governed by the provisions of Article 3, Chapter 23 of Title 1, the Administrative Procedures Act.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100.

**SECTION 40‑59‑100.** Cease and desist order; temporary restraining order.

 In addition to other remedies provided for in this chapter or Chapter 1, Title 40, the commission in accordance with Section 40‑1‑100 may issue a cease and desist order or may petition an administrative law judge for a temporary restraining order or other equitable relief to enjoin a violation of this chapter.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Injunction 89(5).

Licenses 41.

Westlaw Topic Nos. 212, 238.

C.J.S. Injunctions Sections 242 to 243, 245 to 247.

C.J.S. Licenses Sections 121 to 124.

**SECTION 40‑59‑105.** Administrative citations and penalties; appeal.

 (A) The department may refer reports of violations of this chapter and Article 1, Chapter 1 or any reports of violations of regulations promulgated under this chapter directly to the commission or may issue administrative citations and cease and desist orders in person or by certified mail and may assess administrative penalties against an entity or individual, including unlicensed persons, for violations of this chapter as specified by the commission.

 (B) Separate citations may be issued and separate administrative penalties may be assessed for each violation; however, no more than two thousand five hundred dollars in administrative penalties may be assessed against an entity or an individual per day.

 (C) Administrative penalties authorized under this section are separate from and in addition to all other remedies, either civil or criminal, and these penalties may not exceed the following limits:

 (1) for a first offense, not more than a five‑hundred dollar penalty;

 (2) for a second offense in a five‑year period, the citation must be referred to the commission for action in accordance with Sections 40‑59‑90 and 40‑59‑110.

 (D) An entity or individual assessed administrative penalties may appeal those penalties to the commission within ten days of receipt of the citation. If an appeal is filed, the department shall schedule a hearing before the commission, which shall make a determination in the matter. If no appeal is filed, the citation is deemed a final order and the administrative penalties must be paid within thirty days of receipt of the citation or other written demand.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100.

**SECTION 40‑59‑110.** Revocation, suspension, or restriction of license; misconduct; determination of compliance with applicable professional standards.

 In addition to the grounds provided for in Section 40‑1‑110, the commission, upon a majority vote, may revoke, suspend, or restrict the license or registration of a licensee or registrant who the commission finds has committed fraud or deceit in obtaining a license or registration under this chapter or has engaged in misconduct in the practice of residential building or residential specialty contracting. For purposes of this section, misconduct includes a violation of Section 40‑59‑25, or a pattern of repeated failure by a residential builder or residential specialty contractor to pay labor or material bills. For purposes of disciplinary matters, or otherwise, compliance with the construction standards adopted by the commission is prima facie evidence of compliance with applicable professional standards.

HISTORY: 2002 Act No. 359, Section 1; 2013 Act No. 77, Section 2, eff July 1, 2013.

Editor’s Note

Prior Laws:1962 Code Section 56‑1545.39; 1974 (58) 1949; 1989 Act No. 62, Section 2; 1990 Act No. 595, Section 10; 1993 Act No. 72, Section 5; 1993 Act No. 181, Section 935; 1976 Code Section 40‑59‑90.

Effect of Amendment

The 2013 amendment inserted “a violation of Section 40‑59‑25, or”.

CROSS REFERENCES

Contractor disciplinary actions, see Section 40‑11‑110.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 22, Licensing.

LAW REVIEW AND JOURNAL COMMENTARIES

Liability for construction defects in residential realty: a re‑examination in light of Kennedy v. Columbia Lumber & Manufacturing Co. Richard C. Webb, 42 S.C. L. Rev. 503 (Winter 1991).

**SECTION 40‑59‑115.** Jurisdiction over actions of licensees and former licensees.

 The commission has jurisdiction over the actions of licensees and former licensees as provided for in Section 40‑1‑115.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑59‑120.** Fines.

 Upon a determination by the commission that one or more of the grounds for discipline of a licensee exists, as provided in Section 40‑59‑110 or 40‑1‑110, the commission, in addition to the actions provided for in Section 40‑1‑120, may impose a fine of not more than two thousand five hundred dollars per offense.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 124.

**SECTION 40‑59‑130.** Grounds for denial of license.

 As provided for in Section 40‑1‑130, the commission may deny licensure to an applicant based on the same grounds for which the commission may take disciplinary action against a licensee.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 20.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 62 to 66.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 23, Penalties and Defenses in Civil Actions Relating to Non‑Licensed Entities.

S.C. Jur. Implied Contracts Section 17, Illegality and Duress.

**SECTION 40‑59‑140.** Prior criminal record.

 A person may be denied licensure or registration based on a person’s prior criminal record only as provided for in Section 40‑1‑140.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 20.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 62 to 66.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Construction Law Section 22, Licensing.

S.C. Jur. Implied Contracts Section 17, Illegality and Duress.

**SECTION 40‑59‑150.** Voluntary surrender of license.

 A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Section 40‑1‑150.

HISTORY: 2002 Act No. 359, Section 1.

**SECTION 40‑59‑160.** Appeal.

 A person aggrieved by a final action of the commission may seek review of the decision in accordance with Section 40‑1‑160.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 20, 38, 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 62 to 66, 80, 82 to 100, 121 to 124.

RESEARCH REFERENCES

ALR Library

24 ALR 5th 200 , Municipal Liability for Negligent Performance of Building Inspector’s Duties.

Encyclopedias

S.C. Jur. Construction Law Section 22, Licensing.

**SECTION 40‑59‑170.** Costs.

 A person found in violation of this chapter or regulations promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 124.

**SECTION 40‑59‑180.** Collection and enforcement.

 All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 124.

**SECTION 40‑59‑190.** Confidentiality.

 Investigations and proceedings conducted under the provisions of this chapter are confidential and all communications are privileged as provided for in Section 40‑1‑190.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Privileged Communications and Confidentiality 423.

Westlaw Topic No. 311H.

C.J.S. Witnesses Sections 370 to 371.

**SECTION 40‑59‑200.** Penalties.

 A person who knowingly violates the provisions of this article or regulations promulgated pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than two years, or both.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1962 Code Section 56‑1545.43; 1974 (58) 1949; 1990 Act No. 595, Section 15; 1993 Act No. 72, Section 9; 1993 Act No. 181, Section 937; 1976 Code Section 40‑59‑130.

Library References

Licenses 40, 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 126.

**SECTION 40‑59‑210.** Cease and desist orders; penalties; injunction.

 (A) In addition to all other remedies provided by law, when it appears to the commission, either upon complaint or otherwise, that a person or combination of persons has engaged, or is engaging, in an act of contracting, practice, or transaction which constitutes a violation of this chapter or any regulation or order of the commission, whether or not the person is properly licensed or registered with the commission, the commission may:

 (1) serve upon the person not licensed or registered under the chapter, by certified mail or by personal service, a cease and desist order requiring the person to cease and desist from engaging in the act, practice, or transaction immediately upon receipt of the order. If the person fails to comply with the order, the director or a designee may file an action with an administrative law judge for enforcement of the cease and desist order or file an action pursuant to item (2) for wilful violation of the order. If the administrative law judge finds that the person wilfully failed to obey a valid cease and desist order, the court shall impose a civil penalty of not less than two hundred fifty dollars and not more than two thousand dollars for each violation. Any amount collected as a civil penalty must be remitted pursuant to subsection (B);

 (2) apply, on its behalf, through the Attorney General, the Director of the Department of Consumer Affairs, the county attorney, or solicitor of the county in which the violation is alleged to have been committed, to the court of common pleas of that county for an injunction restraining the person from further violation. Upon a proper showing, a temporary restraining order, a preliminary injunction, or a permanent injunction may be granted without bond. Process in the action may be served upon the defendant in any county of this State where the defendant transacts business or is found.

 (B) In actions brought under item (2) of subsection (A), each violation of this chapter or regulation or order of the commission constitutes a separate offense, and the court may impose a civil penalty not to exceed two thousand dollars for each violation which is in addition to all other penalties provided by law.

HISTORY: 2002 Act No. 359, Section 1.

CROSS REFERENCES

Injunctions pursuant to the South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

Library References

Licenses 40 to 42.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 132.

**SECTION 40‑59‑220.** Licenses and certificates of registration; application; qualifications; bonds; examinations; reciprocity.

 (A) All residential builders must be licensed, and all residential specialty contractors must be registered, by the commission for a period established by the commission in regulation. Licensees and registrants must pay an annual fee established by the department and based upon the department’s costs in carrying out the provisions of this chapter.

 (B) An applicant for a license or certificate shall file with the commission a written application on a form as may be prescribed by the commission. The application must be accompanied by the payment of all applicable fees required by the commission. A prerequisite for taking the examination for a residential builder’s license is a minimum of one year of actual experience under the supervision of a licensed residential builder, or other appropriately licensed professional who is engaged in residential building construction involving the trades or crafts for which the license is desired, or other education or experience or a combination of these as may be approved by the commission. The commission, in examining an applicant, may consider the following qualifications of the applicant:

 (1) experience;

 (2) ability;

 (3) character;

 (4) financial condition;

 (5) equipment;

 (6) workers’ compensation insurance; and

 (7) other pertinent information the commission may require.

 (C) The commission shall issue a residential builder’s license if, as a result of examination, the commission finds that the applicant is qualified to engage in residential building in South Carolina, and the applicant submits an executed bond in the form and with a surety approved by the commission in the sum of not less than fifteen thousand dollars or proof of financial responsibility acceptable to the commission.

 (D) The commission shall issue a residential specialty contractor’s license for which the applicant is qualified if, as a result of examination, the commission finds that the applicant is qualified to engage in residential specialty contracting in South Carolina. When the cost of an undertaking performed by a residential specialty contractor for an individual property owner exceeds five thousand dollars, the residential specialty contractor must obtain an executed bond with a surety in an amount approved by the commission.

 (E) An applicant who fails the examination must be given the opportunity to be reexamined after payment of an additional examination fee; however, if the applicant fails the examination three times, the applicant shall wait twelve months before being examined again. A record must be made and preserved by the commission of each examination of an applicant and the findings of the commission pertaining to the examination. A certified copy of the record must be furnished to an applicant requesting the record upon the payment of a fee to the commission that reasonably reflects the cost of furnishing the record to the applicant.

 (F) A license may be granted by the commission without examination to those applicants who are licensed in good standing in other states which are determined by the commission to have comparable examinations.

HISTORY: 2002 Act No. 359, Section 1; 2004 Act No. 289, Section 3.

Editor’s Note

Prior Laws:1962 Code Section 56‑1545.37; 1974 (58) 1949; 1990 Act No. 595, Section 6; 1993 Act No. 72, Section 1; 1976 Code Section 40‑59‑70.

Library References

Licenses 11(5), 20 to 22, 26, 39.43(1).

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60, 62 to 72, 119 to 120.

NOTES OF DECISIONS

In general 1

Pleadings 3

Regulations 2

1. In general

As long as alleged misconduct of home builder falls within coverage of builder’s license bond, nothing precludes members of public other than homeowners from maintaining action against surety under terms of bond. Code 1976, Sections 40 59 70, 40 59 80; S.C.Code Reg. 106 1. Lite House, Inc. v. North River Ins. Co. (S.C. 1996) 322 S.C. 26, 471 S.E.2d 166. Licenses 26

Builder’s alleged failure to pay creditor for materials and signing false affidavits indicating that creditor had been paid were not covered by surety bond requiring compliance with construction standards, since term “construction standard” encompassed only actual construction of building; however, builder’s acts may have constituted misconduct furnishing grounds to revoke, suspend or restrict builder’s license or grounds for criminal prosecution. Code 1976, Sections 29‑7‑20, 40‑59‑70, 40‑59‑80, 40‑59‑85(C), 40‑59‑90; S.C.Code Regs. 106‑1, 106‑7. Lite House, Inc. v. North River Ins. Co. (S.C.App. 1994) 316 S.C. 326, 450 S.E.2d 63, rehearing denied, certiorari granted, affirmed as modified 322 S.C. 26, 471 S.E.2d 166.

Purpose of requiring a home builder’s financial statement showing a net worth of $50,000 or a bond of $10,000 is to afford some measure of protection to the public, not to safeguard the Residential Home Builders Commission’s interest or to insure satisfaction of a sentence when a builder is convicted of presenting to or filing with the Commission false information when obtaining a license; the only financial sanction which could be levied upon a licensed home builder is a fine of $100, and it could be imposed only as an alternative to sentence of 30 days’ imprisonment. Code 1976, Sections 40‑59‑10 et seq., 40‑59‑130. Watson v. Harmon (S.C.App. 1984) 280 S.C. 214, 312 S.E.2d 8. Licenses 26

Where particular occupational group is licensed and a bond is required as part of legislative scheme to protect members of the public, the only proper conclusion is that, absent clear language to the contrary, those protected may maintain an action based upon the bond; thus, plaintiff homeowners could maintain action based upon bond which home builder was required to post under Residential Home Builders Act, where purpose of bond was to protect home‑buying public from financially irresponsible builders. Code 1976, Section 40‑59‑10 et seq. Watson v. Harmon (S.C.App. 1984) 280 S.C. 214, 312 S.E.2d 8.

2. Regulations

To state cause of action under terms of surety bond requiring compliance with construction standard or health and safety requirement, complaint must allege or imply actual violation of such rules and regulations, since bond of this type is neither performance bond guaranteeing completion of work contracted, nor payment bond guaranteeing that all material suppliers will be paid. Overruling Brailsford v. Lawyers Sur.Corp., 302 S.C. 515, 397 S.E.2d 254 (Ct.App.1990). Code 1976, Sections 40‑59‑70, 40‑59‑80; S.C.Code Reg. 106‑1. Lite House, Inc. v. North River Ins. Co. (S.C. 1996) 322 S.C. 26, 471 S.E.2d 166. Licenses 26

Regulation authorizing residential building commissioner to revoke builder’s license pertained to construction standards, within meaning of surety bond, in that regulation cited various building codes used by commission as guides in determining if builder violated proper structural, mechanical, and workmanship standards. S.C.Code Reg. 106‑7. Lite House, Inc. v. North River Ins. Co. (S.C.App. 1994) 316 S.C. 326, 450 S.E.2d 63, rehearing denied, certiorari granted, affirmed as modified 322 S.C. 26, 471 S.E.2d 166.

Principal’s failure to refund money advanced for building, which was not constructed, was misconduct which fell outside the scope of coverage of a surety bond statutorily required of licensed builders as a method of complying with rules and regulations pertaining to construction standards and health and safety requirements. Kennedy v. Henderson (S.C. 1986) 289 S.C. 393, 346 S.E.2d 526.

Although neither bond nor Residential Home Builders Act expressly confers upon member of public a right to maintain action against surety on bond of home builder, the right of action nonetheless exists by clear implication from whole of law and language of bond, considered together with Residential Home Builders Commission’s rules and regulations regarding revocation of home builder licenses; thus, plaintiff homeowners whose home was damaged by negligence of builder had right to institute action against surety to recover on builder’s bond. Code 1976, Section 40‑59‑90; Code 1976, R 106‑7. Watson v. Harmon (S.C.App. 1984) 280 S.C. 214, 312 S.E.2d 8. Licenses 26

Purpose of statute and regulations governing licensing of residential home builders is to protect home‑buying public from financially irresponsible builders; such purpose is manifested by requirement in statute that an applicant for a home builder’s license submit either proof of financial responsibility or a bond in amount of $10,000. Code 1976, Section 40‑59‑70(b). Watson v. Harmon (S.C.App. 1984) 280 S.C. 214, 312 S.E.2d 8.

Home builder’s surety was obligated, under bond home builder was required to execute by Residential Home Builders Act, for any failure by its principal to comply with Residential Home Builders Commission’s rules and regulations pertaining to construction standards of homes. Code 1976, Section 40‑59‑10 et seq. Watson v. Harmon (S.C.App. 1984) 280 S.C. 214, 312 S.E.2d 8. Licenses 26

3. Pleadings

Owner’s complaint, which sought damages from surety for alleged misconduct of principal in failing to refund moneys advanced for building which was not constructed, was not insulated from demurrer on ground that a novel issue was presented; the surety bond was conditioned on principal’s compliance with safety and construction regulations and no violations of any construction standards or safety regulations were alleged or inferred in the complaint. Kennedy v. Henderson (S.C. 1986) 289 S.C. 393, 346 S.E.2d 526.

**SECTION 40‑59‑230.** Renewal; continuing education; notification of change of circumstances.

 (A) Unless otherwise provided under the provisions of this chapter, the commission shall annually renew all licenses upon the applicant’s submission to the commission of the completed renewal application, proof of financial responsibility or bond, acceptable to the commission and payment of all applicable fees. If a license has been in inactive status for more than three years, the person shall file a new application as in the case of the issuance of an original license and is required to take and successfully complete the examination.

 (B) As a condition of license renewal, the commission may require by regulation a licensee to satisfactorily complete continuing education through a program approved by the commission.

 (C) A licensee must notify the commission in writing within thirty days of any change in the information required to be on file with the commission including, but not limited to, the licensee’s current mailing address.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 22, 25.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 64, 70 to 72, 77.

**SECTION 40‑59‑240.** Residential specialty contractors; classification; examination; county and municipal business license ordinances; bonds.

 (A) The commission by regulation shall classify residential specialty contractors in a manner consistent with established usage and procedure in the construction business and may limit the field and scope of the operations of a residential specialty contractor to those in which he is to be registered or certified. Residential specialty contractor registrations and certificates issued by the commission may not be for more than three of the classifications recognized by the commission. Residential specialty contractors registered or certified or wishing to be registered or certified for more than three classifications must be examined and licensed as residential builders.

 (B) Residential specialty contractors must be qualified and experienced in the particular areas of the contracting vocation in which they intend to, and do, engage. The commission, by regulation, may require examination in these areas.

 (C) Residential specialty contractors are not exempt from complying with county and municipal business license ordinances or other regulatory ordinances. A county or municipality may require a residential specialty contractor to be examined and licensed in accordance with standards adopted by the county or municipality; however, if a residential specialty contractor has passed an examination in his area of contracting and approved by the commission, no additional examination may be required by a county or municipality.

 (D) When the total cost of materials and labor for an undertaking performed by a residential specialty contractor for an individual property owner exceeds five thousand dollars, the residential specialty contractor shall obtain an executed bond with a surety in an amount approved by the commission and shall furnish a signed original to the commission.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1990 Act No. 595, Section 8; 1991 Act No. 130, Section 2; 1993 Act No. 72, Section 3; 1999 Act No. 91, Section 8; 1976 Code Section 40‑59‑77.

Library References

Licenses 11(5), 21, 26, 39.43(1), 40.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60, 67 to 69, 119 to 120, 125 to 126.

**SECTION 40‑59‑250.** Credit report; factors indicating reputation for timely performance; outstanding judgments.

 (A) A person applying to the commission for licensure as a residential builder or registration as a residential specialty contractor must submit to a credit report. In addition to the information provided by the credit report, the commission may determine from the written application, the personal references provided by the applicant, written communications or complaints to the commission, and from any other reliable, documented sources whether an applicant for licensure as a residential builder or an applicant for registration as a residential specialty contractor has a reputation for the prompt payment of labor and material bills and for the timely completion of other contracts into which the applicant may have entered.

 (B) The commission shall require the applicant to list on application and renewal forms any outstanding judgments issued against him or any entities with whom the applicant was associated for the past five years.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 1; 1976 Code Section 40‑59‑85.

Library References

Licenses 20, 22.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 62 to 66, 70 to 72.

**SECTION 40‑59‑260.** Exception for projects by property owner for personal use; exemption disclosure statement; notice filed with register of deeds.

 (A) This chapter does not apply to an owner of residential property who improves the property or who builds or improves structures or appurtenances on the property if:

 (1) the owner does the work himself, with his own employees, or with licensed contractors or registered entities or individuals;

 (2) the structure, group of structures, or appurtenances, including the improvements, are intended for the owner’s sole occupancy or occupancy by the owner’s family and are not intended for sale or rent; and

 (3) the general public does not have access to this structure.

 (B) In an action brought under this chapter, proof of the sale or rent or the offering for sale or rent of the structure by the owner‑builder within two years after completion or issuance of a certificate or occupancy is prima facie evidence that the project was undertaken for the purpose of sale or rent, unless otherwise approved by the commission, and is subject to the penalties provided in this chapter. As used in this section, “sale” or “rent” includes an arrangement by which an owner receives compensation in money, provisions, chattel, or labor from the occupancy, or the transfer of the property or the structures on the property. This section does not exempt a person who is employed by the owner and who acts in the capacity of a builder or a specialty contractor of any kind.

 (C) To qualify for exemption under this section, an owner must personally appear and sign the building permit application. The local permitting agency shall provide the person with a disclosure statement, provided by the department, in substantially the following form:

“Disclosure Statement

State law requires residential construction to be done by licensed residential builders and specialty contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one‑family or two‑family residence. The building must be for your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you have built yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your residential builder or specialty contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.”

 (D) At the time an owner personally appears and signs the building permit application as required by subsection (C) of this section, the local permitting agency shall provide the owner with all forms necessary to comply with subsection (E) of this section.

 (E) If a residential building or structure has been constructed by an owner under the exemption provided for in this section, the owner of the residential building or structure must promptly file as a matter of public record a notice with the register of deeds, indexed under the owner’s name in the grantor’s index, stating that the residential building or structure was constructed by the owner as an unlicensed builder. Failure to do so revokes the statutory exemption.

 (F) Nothing in this chapter may be construed to authorize an owner of a residential building or structure to hire a person or entity that is not licensed or registered in accordance with this chapter.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 19(3).

Westlaw Topic No. 238.

Attorney General’s Opinions

It is likely a court would interpret the owner of record to have to appear in person to sign a building permit application. S.C. Op.Atty.Gen. (May 2, 2013) 2013 WL 2121458.

**SECTION 40‑59‑270.** Applicability of Chapter 11; exemption of mechanical contractor.

 This chapter does not apply to a person licensed under Chapter 11 for the purpose of undertaking the construction, or superintending of construction, of a building or the improvement, reimprovement, or repair of any building. A residential builder who is licensed pursuant to this chapter is not required to be licensed as a general contractor or mechanical contractor under Chapter 11 in order to engage in residential building as defined in Section 40‑59‑10. A mechanical contractor is exempt from this chapter relating to residential specialty contractors when engaged in contracting in the classification in which he is licensed to perform mechanical contracting. The commission is the exclusive licensing and registration entity for persons who engage solely in residential building and in residential specialty contracting.

HISTORY: 2002 Act No. 359, Section 1.

CROSS REFERENCES

For definition of general contractor, see Section 40‑11‑20.

Library References

Licenses 19(3).

Westlaw Topic No. 238.

NOTES OF DECISIONS

In general 1

1. In general

Maintenance of general contractor’s license by principal of contractor was sufficient compliance with statute exempting any person licensed as a general contractor from requirements of residential home builders statutes and therefore contractor was not precluded from bringing suit by virtue of statute prohibiting a licensed residential home builder from bringing an action to enforce provisions of a contract. Code 1976, Sections 40‑59‑130, 40‑59‑140. Costa and Sons Const. Co., Inc. v. Long (S.C.App. 1991) 306 S.C. 465, 412 S.E.2d 450. Licenses 19(3); Licenses 39.43(2)

**SECTION 40‑59‑280.** Proof of licensure as condition of issuance of local building permit; reports of violations.

 The building official, or other authority charged with the duty of issuing building or similar permits, of any incorporated municipality or subdivision of the municipality or county shall refuse to issue a permit for an undertaking which requires licensure or registration under this chapter unless the applicant has furnished evidence that he is either licensed or registered in accordance with this chapter or exempt from the requirements of this chapter. The building official, or other authority charged with the duty of issuing building or similar permits, also shall report to the commission the name and address of an person who, in his opinion, has violated this chapter by accepting or contracting to accomplish work requiring licensure or registration under this chapter when the person has not produced evidence of licensure or registration or exemption from this chapter.

HISTORY: 2002 Act No. 359, Section 1.

Library References

Licenses 11(5).

Zoning and Planning 1389.

Westlaw Topic Nos. 238, 414.

**SECTION 40‑59‑290.** Severability.

 If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this chapter is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this chapter, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

HISTORY: 2002 Act No. 359, Section 1.

**SECTION 40‑59‑300.** Construction of low‑income housing using volunteer labor by 501(c)(3) eleemosynary organization without presence of “qualifier”.

 Notwithstanding any other provision of law, a 501(c)(3) eleemosynary organization may construct a residential home with volunteer labor without the presence of a qualifier if the home without consideration is to be transferred to or made available for the use of an underprivileged or low‑income family or individual. “Qualifier” for purposes of this provision means a builder or specialty contractor licensed to perform the particular work being done on the site. The cost of the building permit must be borne by the 501(c)(3) organization.

HISTORY: 2003 Act No. 83, Section 2.

Library References

Licenses 19(3).

Westlaw Topic No. 238.

Attorney General’s Opinions

Habitat for Humanity, a 501(c)(3) organization, may construct a home without the presence of a qualifier inasmuch as the home is transferred without consideration. S.C. Op.Atty.Gen. (August 17, 2004) 2004 WL 1879685.

ARTICLE 2

Certificates of Authorization

**SECTION 40‑59‑400.** Definitions.

 For purposes of this article:

 (1) “Branch office” means a place of business separate from the principal place of business where building services are offered or provided. A specific project or construction site office is not a branch office.

 (2) “Commission” means the South Carolina Residential Builders Commission established in Article 1.

 (3) “Firm” means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, joint venture, or other legally constituted organization which offers or provides building services through licensed residential builders, residential specialty contractors, or home inspectors.

 (4) “Private practice firm” means a firm through which the practice of residential building, residential specialty contracting, or home inspecting requires a residential business certificate of authorization as described in this chapter.

 (5) “Resident licensee” means a licensed practitioner who spends a majority of each normal workday working out of a principal or branch office and who is in responsible charge of the office and the building services provided from that office including, but not limited to, responsibility for applying for permits for the firm.

 (6) “Responsible charge” means the direction of building services by a residential builder, residential specialty contractor, or home inspector to the extent that successful completion of the building services is dependent on the personal supervision, direct control, and final decisions by the qualified registrant to the extent that the qualified registrant assumes professional responsibility for the building services.

HISTORY: 2000 Act No. 324, Section 1.

Notes of Decisions

In general 1

1. In general

The Residential Home Builders Act, in requiring building contractor to identify at least one person licensed under Act to assume professional responsibility for condominium project, did not creates actionable legal duty of care on part of licensee for benefit of project developer, as basis for liability in negligence for allegedly failing to adequately supervise subcontractor’s structural work. 16 Jade Street, LLC v. R. Design Const. Co., LLC. (S.C. 2013) 405 S.C. 384, 747 S.E.2d 770. Negligence 1202(3); Negligence 1205(7)

**SECTION 40‑59‑410.** Residential business certificate of authorization as requirement for firm to engage in residential home building, residential specialty contracting, and home inspecting.

 (A) The practice or offer to practice residential building, residential specialty contracting, or home inspecting through a firm is authorized only through entities holding a residential business certificate of authorization issued by the commission. For the purposes of this section, a residential business certificate of authorization is also required for any firm practicing in this State under a fictitious name. However, when an individual is practicing residential home building, residential specialty contracting, or home inspecting in his name as individually licensed, or if an individual has at least fifty‑one percent of the ownership interest and is the sole resident licensee for the firm, that person or entity is not required to be issued a residential business certificate of authorization.

 (B) The practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by an individual residential home builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if:

 (1) one or more of the corporate officers in the case of a corporation, or one or more of the principal owners in the case of a firm, or one or more employees are designated as the resident licensee in responsible charge of each principal or branch office for the building services regulated by the commission and are licensed under the provisions of this chapter;

 (2) the firm has obtained an executed surety bond approved by the commission in the sum of fifteen thousand dollars initially and as subsequently provided by regulation; and

 (3) the firm has been issued a residential business certificate of authorization by the commission. Nothing in this section may be construed to mean that a license or registration to practice residential home building, residential specialty contracting, or home inspecting may be held by a firm.

 (C) Approval of firms seeking to incorporate or register to do business in this State under this section must be conditioned upon proper filing with the Secretary of State of the articles of incorporation and revisions to the articles, as certified by the Secretary of State. This section may not be construed to require an additional filing with the Secretary of State not otherwise required by law.

 (D) A firm desiring a residential business certificate of authorization shall file with the department an application on forms provided by the department accompanied by all applicable fees. Each residential business certificate of authorization must be renewed by July first of the licensing period. A renewal form provided by the department must be completed and submitted with all applicable fees. The initial application fee and annual renewal fee are one hundred dollars and as subsequently provided by regulation. Information to be provided on the application and renewal forms shall include the names and addresses of all officers and directors of the firm or officers and partners of the partnership who are licensed or registered to practice residential home building, residential specialty contracting, or home inspecting in this State, including those in responsible charge of all principal and branch offices providing building services in the State.

 (E) Disciplinary action against a firm must be administered in the same manner and on the same grounds as disciplinary action against an individual under this chapter and Section 40‑1‑110. No firm is relieved of responsibility for conduct or acts of its agents, officers, or employees by reason of its compliance with this section, and no individual practicing residential home building, residential specialty contracting, or home inspecting is relieved of responsibility for professional services performed by reason of his employment or relationship with the firm.

 (F) Nothing in this section may be construed to prohibit firms from joining together to offer residential home building, residential specialty contracting, or home inspecting services to the public, if each separate entity providing the services in this State otherwise meets the requirements of this section. For firms practicing as a professional corporation under the laws of this State, the joint practice of residential home building, residential specialty contracting, or home inspecting with other professions is approved by the commission.

 (G) If the requirements of this section are met, the commission shall issue a residential business certificate of authorization to the firm, and the firm may engage or offer to engage in the business of residential home building, residential specialty contracting, or home inspecting. The commission, however, may refuse to issue a certificate or may suspend or revoke an existing certificate for due cause. A person or organization aggrieved by an adverse determination of the commission may seek judicial review in accordance with this chapter.

 (H) Residential home builders, residential specialty contractors, or home inspectors engaged in practice through firms involving the practice of residential building, residential specialty contracting, or home inspecting may maintain branch offices as well as a principal place of business.

 Each principal place of business as well as each branch office must have a resident residential builder, residential specialty contractor, or home inspector in responsible charge of the field and office building work or services provided. A residential home builder must supervise the residential home building aspects of the principal or branch office and may also supervise the residential specialty contracting from that location. A residential specialty contractor may supervise residential specialty contracting services of the principal or branch office as long as the services are within the scope of residential specialty contracting in the classifications for which the individual is authorized to engage. A home inspector may supervise home inspecting services of the principal or branch office as long as the services are within the scope of home inspecting for which the individual is authorized to engage. The resident residential home builder, residential specialty contractor, or home inspector is considered in responsible charge of only one place of business at a given time.

 For purposes of this subsection,”engaged in practice” means holding oneself out generally to the public as qualified and available to perform residential building, residential specialty contracting, or home inspecting services.

 (I) Nothing contained in this chapter prevents an authorized residential builder or residential specialty contractor from undertaking a residential building project anywhere in the State.

HISTORY: 2000 Act No. 324, Section 1.

Library References

Licenses 11(1), 11(5), 20 to 22, 38.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 51, 53, 55, 58 to 60, 62 to 66, 70 to 72, 80, 82 to 100.

Notes of Decisions

In general 1

1. In general

The Residential Home Builders Act, in requiring building contractor to identify at least one person licensed under Act to assume professional responsibility for condominium project, did not creates actionable legal duty of care on part of licensee for benefit of project developer, as basis for liability in negligence for allegedly failing to adequately supervise subcontractor’s structural work. 16 Jade Street, LLC v. R. Design Const. Co., LLC. (S.C. 2013) 405 S.C. 384, 747 S.E.2d 770. Negligence 1202(3); Negligence 1205(7)

ARTICLE 3

Licensing of Home Inspectors

**SECTION 40‑59‑500.** Definitions.

 As used in this article:

 (1) “Administrator” means the Executive Director for the South Carolina Residential Builders Commission provided for under Section 40‑59‑50.

 (2) “Commission” means the South Carolina Residential Builders Commission.

 (3) “Director” means the Director of the Department of Labor, Licensing and Regulation.

 (4) “Home inspection” means the rendering of a written or oral report in exchange for compensation of any sort, regarding the condition of the construction or improvements to a residence including, but not limited to, structural problems or conditions, damage, safety problems, deterioration, equipment, and systems that are visible and readily accessible. Home inspection does not include a contract or proposal for repair, renovation, or remodeling of the improvements to a residence. The parties to a home inspection may limit or expand the scope of the inspection by agreement.

 (5) “Home inspector” means an individual who, for compensation of any sort, engages in the business of home inspection.

 (6) “Residence” means a structure including, but not limited to, condominiums and townhouses intended to be used or in fact used primarily for living quarters which is not over three floors in height and which does not have more than sixteen units.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑200.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Contracts Section 4, Contracts Against Public Policy.

Treatises and Practice Aids

60 Causes of Action 2d 145, Cause of Action in Tort for Improper Home Inspection.

Notes of Decisions

In general 1

1. In general

The limit of liability provision in home inspection contract was not in contravention of South Carolina public policy; the General Assembly protected purchasers from unqualified home inspectors by imposing licensure requirements, but the general assembly did not require home inspectors to carry errors and omissions liability insurance. Gladden v. Boykin (S.C. 2013) 402 S.C. 140, 739 S.E.2d 882. Contracts 114; Licenses 11(1)

**SECTION 40‑59‑510.** Administration; roster of licensed home inspectors.

 The administrator is authorized to administer the provisions of this article. The administrator shall keep a register of all applicants for licensure, including the date of application and the name, qualifications, place of business, and place of residence of the applicant and the status of the license application. The administrator also shall maintain a roster including the name, place of business, residence, and business telephone number of each licensed home inspector. A copy of the roster must be available to anyone upon a written request to the commission. The commission may charge a reasonable fee for complying with a request for a roster. The amount of the fee must be established by the commission in regulation.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑210.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑59‑520.** Licensing requirement; licensing of business entity.

 (A) No person may engage in or transact any home inspection business or hold himself out to the public as a home inspector or offer to engage in or transact any home inspection business in this State unless the person is licensed by the commission.

 (B) No license may be issued under this article to a partnership, association, corporation, firm, or group. However, nothing in this article precludes a licensed home inspector from performing home inspections for or on behalf of a partnership, association, corporation, firm, or group or from entering into contracts or enforcing contracts as a partnership, association, corporation, firm, or group.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑220.

Library References

Licenses 11(1).

Westlaw Topic No. 238.

C.J.S. Licenses Sections 51, 53, 55.

**SECTION 40‑59‑530.** Exceptions.

 This article does not apply to a person:

 (1) employed by the State or any political subdivision of the State as a code enforcement official when acting within the scope of that employment;

 (2) inspecting a home exclusively for the use of a bank, savings and loan association, or credit union unless otherwise required by federal law or regulation;

 (3) licensed, registered, or certified pursuant to Chapter 3 or a person duly licensed as a general contractor pursuant to Chapter 11 or a person duly licensed pursuant to Article 1 of Chapter 59 or a person duly licensed or registered as a professional engineer pursuant to Chapter 22. Notwithstanding the exemption from licensure under this article, the provisions of this article relating to the conduct of a person in the performance of a home inspection shall apply to that person. A violation of this article is considered a violation against the person’s license and subjects the person to disciplinary action by the licensing board under which the person is licensed;

 (4) who is duly licensed under the provisions of Section 46‑13‑55 for the purpose of issuing CL100 Wood Infestation Reports, provided such inspection is limited solely to the requirement of the CL100 report.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑230.

Library References

Licenses 19(3).

Westlaw Topic No. 238.

**SECTION 40‑59‑540.** Application; examination; regulations establishing minimum standards.

 (A) A person desiring to be licensed as a home inspector shall submit written application to the commission on forms as the commission prescribes. Upon the submission of a completed application form and the payment of the fee required by the commission, the applicant is entitled to take the home inspector licensing examination as prescribed by the commission. Upon successful completion of the examination, the commission shall issue the applicant a license authorizing the applicant to engage in the business of home inspection in this State. The issuance of a license is evidence that the licensee is entitled to all the rights and privileges of a licensed home inspector while the license remains active.

 (B) The commission shall promulgate regulations to establish the minimum qualifications and uniform criteria for the granting of a home inspector license.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑240.

Library References

Licenses 20 to 26.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 72, 77.

**SECTION 40‑59‑550.** Display of license; address changes; renewal; inactive status.

 (A) The licensee shall display the license in the manner prescribed by the commission.

 (B) The licensee shall inform the commission of any change in his business or home address.

 (C) A license must be renewed before July first of each year for a period of one year upon payment of the renewal fee and upon compliance with this article. If the home inspector has not complied with any provision of this article during the year, the licensee shall submit a new application as in the case of the issuance of an original license.

 (D) The commission may provide for the late renewal of a license upon payment of a late fee in an amount established by the commission in regulation.

 (E) A licensee who does not intend to engage in the business of home inspection for at least one year may request upon written notice to the commission that his license be placed in inactive status. While in inactive status, the person is not subject to payment of any renewal fees and may not perform home inspections in this State. When the person desires to resume the performance of home inspections, he shall file an application for license renewal, pay the renewal fee, and demonstrate continuing competence as defined by the commission in regulation. If a license has been in inactive status for more than three years, the person shall submit a new application as in the case of the issuance of an original license and shall take and successfully complete the examination.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑250.

Library References

Licenses 20 to 22, 25, 38.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60, 62 to 66, 70 to 72, 77, 80, 82 to 100.

**SECTION 40‑59‑560.** Inspection reports; form; disclosure of scope and limitations.

 (A) An inspection report issued by a licensed home inspector under this chapter must be on a form approved by the commission. For purposes of this section, a form that contains the same information as the commission‑approved form is considered to have met the requirements of this section.

 (B) Nothing in this section may require a home inspector to inspect every item contained in the commission‑approved form, and nothing in this section may limit a home inspector from performing a home inspection beyond the scope of information contained in the commission‑approved form. A home inspector shall indicate on the inspection report which items, if any, were not inspected.

 (C) A home inspector shall disclose the scope and limitations, if any, of each inspection before performing a home inspection.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑255.

Library References

Licenses 25.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 64, 77.

**SECTION 40‑59‑570.** “Advertisement” defined.

 “Advertisement” means any form of public notice, however disseminated. An advertisement by a licensed home inspector shall include the name, business name, address, and license number of the licensee. The use of any false, misleading, unfair, or deceptive practice in any advertisement is grounds for disciplinary action as provided for under this chapter.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1995 Act No. 124, Section 3; 1976 Code Section 40‑59‑257.

Library References

Licenses 25.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 64, 77.

**SECTION 40‑59‑580.** Denial, suspension, or revocation; civil penalties; hearing; appeal.

 (A) The commission may deny, refuse to renew, temporarily suspend, or revoke a license or issue a civil penalty under this section if the licensee or applicant for licensure:

 (1) makes a false or misleading statement in that portion of a written report that deals with professional qualification or in any testimony concerning professional qualifications;

 (2) engages in an act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit a home inspector or other person or with the intent to substantially injure another person;

 (3) engages in an act of fraud, misrepresentation, or deceit in the making of a home inspection;

 (4) pays a finder’s fee or a referral fee to a person in connection with an inspection of a residence;

 (5) fails or refuses without good cause to exercise reasonable diligence in developing a home inspection report, preparing a report, or communicating a report;

 (6) accepts a home inspection assignment when the employment itself is contingent upon the home inspector reporting a predetermined estimate, analysis, or opinion or when the fee to be paid is contingent upon the opinion, the conclusions, analysis, or report reached or upon the consequences resulting from the assignment;

 (7) performs work or improvement to a residence upon which the home inspector performed a home inspection within the previous twelve months;

 (8) employs fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or renewal of a license;

 (9) commits an act or acts of malpractice, gross negligence, or incompetence in the performance of home inspections;

 (10) practices as a licensed home inspector without a current license;

 (11) engages in conduct that could result in harm or injury to the public;

 (12) engages in an act or practice violative of any of the provisions of this article or a regulation promulgated by the commission under this article or aids, abets, or assists a person in such violation.

 (B) The commission may impose a civil penalty for violations of any provision of this article or a regulation promulgated by the commission, as follows:

 (1) for a first violation, a penalty in an amount not to exceed one hundred dollars;

 (2) for a second violation, a penalty in an amount not to exceed two hundred dollars; and

 (3) for a third and any subsequent violation, a penalty in an amount not to exceed one thousand dollars.

 Civil penalties collected by the commission must be remitted to the State Treasurer for deposit in the state’s general fund.

 (C) The denial, refusal to renew, temporary suspension, or revocation of a license or the issuance of a civil penalty under this section may be ordered by a decision of a majority of the commission after a hearing held in accordance with Article 3, Chapter 23 of Title 1, the Administrative Procedures Act. A decision of the commission to deny, refuse to renew, temporarily suspend, or revoke a license or impose a civil penalty is subject to review by an administrative law judge as provided under Article 5, Chapter 23 of Title 1.

 (D) An individual may apply to the commission for reinstatement of a revoked license if the revocation has been in effect for at least one year. The license may be granted upon an affirmative vote by a majority of the commission.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑260.

Library References

Licenses 38, 40, 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100, 121 to 126.

**SECTION 40‑59‑590.** Restrictions; appraisals and real estate activities.

 A home inspector is prohibited from engaging in real estate appraisal activity unless the inspector meets the requirements of Chapter 60. Further, a home inspector is prohibited from engaging in any real estate activity regulated under Chapter 57 unless the inspector meets the requirements of that chapter.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑265.

Library References

Licenses 25.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 64, 77.

**SECTION 40‑59‑600.** Penalties; actions to enforce contract; injunction.

 (A) The administrator is authorized to use the powers granted to him pursuant to this chapter to enforce the provisions of this article.

 (B) A home inspector who is not otherwise exempt from this article who undertakes or attempts to undertake the business of home inspection without first obtaining a license or who knowingly presents, or files with, the commission false information for the purpose of obtaining a license is guilty of a misdemeanor and:

 (1) for the first offense, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both;

 (2) for a second offense, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than ninety days, or both.

 (3) for a third and subsequent offense, upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than one hundred eighty days, or both.

 (C) A home inspector who does not have a license as required by this article may not bring an action either at law or in equity to enforce the provisions of a contract for home inspection which he entered into in violation of this article.

 (D) If it appears to the commission that a home inspector has violated, or is about to violate, a provision of this article, the commission may in its own name petition an administrative law judge to issue a temporary restraining order enjoining the violation of this article, pending a full hearing to determine whether or not the injunction must be made permanent.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑270.

Library References

Licenses 39.39, 40 to 42.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 132.

**SECTION 40‑59‑610.** Regulations.

 The commission is authorized to promulgate regulations to administer the provisions of this article.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑280.

CROSS REFERENCES

Regulations for Residential Builders Commission, see S.C. Code of Regulations R. 106‑1 et seq.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑59‑620.** Applicability of building code in effect at time of construction.

 When an inspection report includes a deficiency that is alleged to be a building codes violation, the inspector is responsible for determining the construction dates and building codes in effect at the time of construction and must conduct the inspection using the building codes in effect at the time of construction.

HISTORY: 2002 Act No. 359, Section 1.

Editor’s Note

Prior Laws:1994 Act No. 463, Section 3; 1976 Code Section 40‑59‑290.

Library References

Licenses 25.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 64, 77.

ARTICLE 5

South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act

**SECTION 40‑59‑810.** Short Title.

 This article may be cited as the “South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act”.

HISTORY: 2003 Act No. 82, Section 1.

Editor’s Note

2003 Act No. 82, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies to claims arising on or after this act’s effective date [July 2, 2003].”

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

**SECTION 40‑59‑820.** Definitions.

 As used in this article:

 (1) “Action” means any civil lawsuit or action or arbitration proceeding for damages or indemnity asserting a claim for injury or loss to a dwelling or personal property caused by an alleged defect arising out of or related to the design, construction, condition, or sale of the dwelling or a remodel of a dwelling.

 (2) “Claimant” means a homeowner, including a subsequent purchaser, who asserts a claim against a contractor, subcontractor, supplier, or design professional concerning a defect in the design, construction, condition, or sale of a dwelling or in the remodel of a dwelling.

 (3) “Construction defect” means a deficiency in or a deficiency arising out of the design, specifications, surveying, planning, supervision, or observation of construction or construction of residential improvements that results from any of the following:

 (a) defective material, products, or components used in the construction of residential improvements;

 (b) violation of the applicable codes in effect at the time of construction of residential improvements;

 (c) failure of the design of residential improvements to meet the applicable professional standards of care at the time of governmental approval of the design of residential improvements; or

 (d) failure to construct residential improvements in accordance with accepted trade standards for good and workmanlike construction at the time of construction. Compliance with the applicable codes in effect at the time of construction conclusively establishes construction in accordance with accepted trade standards for good and workmanlike construction, with respect to all matters specified in those codes.

 (4) “Dwelling” means a single‑family house or duplex or a multifamily unit not to exceed sixteen units and not to exceed three stories in height, and which is intended for residential use. A dwelling includes the systems and other components and improvements that are part of a single or multifamily unit at the time of construction.

 (5) “Serve” or “service” means personal service or delivery by certified mail to the last known address of the addressee.

HISTORY: 2003 Act No. 82, Section 1.

Editor’s Note

2003 Act No. 82, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies to claims arising on or after this act’s effective date [July 2, 2003].”

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

**SECTION 40‑59‑830.** Stay of action until compliance with article.

 If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article.

HISTORY: 2003 Act No. 82, Section 1.

Editor’s Note

2003 Act No. 82, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies to claims arising on or after this act’s effective date [July 2, 2003].”

Library References

Negligence 1505.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 650 to 655.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

Notes of Decisions

In general 1

1. In general

Builder and developer did not waive their right to enforce arbitration clause in purchase agreement between homeowners and builder and developer, even though builder and developer engaged in litigation process for over two years in homeowners’ action alleging defective construction of their home’s stucco siding; reason for delay in bringing motion to compel arbitration was circuit court’s decision to address legal argument under Right to Cure Act prior to deciding issue of arbitrability, no discovery had taken place in litigation, and homeowners were not prejudiced, since builder and developer provided notice that they sought to compel arbitration at the beginning of litigation. Carlson v. South Carolina State Plastering, LLC (S.C.App. 2013) 404 S.C. 250, 743 S.E.2d 868. Alternative Dispute Resolution 182(2)

Notice provision of Right to Cure Construction Dwelling Defect Act, which required mandatory compliance with notice requirements before filing of civil action, and Act’s stay provision, which allowed for stay in response to violation of notice provisions, were able to be harmonized; stated public policy was not abridged when a court was required to stay a proceeding in order to require compliance with the notice provision, and the predominant concern was on the contractor/subcontractor’s actual exercise of the rights to notice and the opportunity to cure, not when those rights were received. Grazia v. South Carolina State Plastering, LLC (S.C. 2010) 390 S.C. 562, 703 S.E.2d 197, rehearing denied. Antitrust and Trade Regulation 286

**SECTION 40‑59‑840.** Notice of claim; timing; contents; request for clarification.

 (A) In an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor. The notice of claim must contain the following:

 (1) a statement that the claimant asserts a construction defect;

 (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect; and

 (3) a description of any results of the defect, if known.

 The contractor or subcontractor shall advise the claimant within fifteen days of receipt of the claim if the construction defect is not sufficiently stated and shall request clarification.

HISTORY: 2003 Act No. 82, Section 1.

Editor’s Note

2003 Act No. 82, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies to claims arising on or after this act’s effective date [July 2, 2003].”

Library References

Negligence 1505.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 650 to 655.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

Notes of Decisions

In general 1

1. In general

Stay provision in Right to Cure Construction Dwelling Defect Act, which allowed for stay in response to violation of notice provisions, was not limited to mistaken filing situations; there was not a statutory or case law basis for such a restriction, and there was nothing in the wording of the section which supported such a limitation. Grazia v. South Carolina State Plastering, LLC (S.C. 2010) 390 S.C. 562, 703 S.E.2d 197, rehearing denied. Antitrust and Trade Regulation 283

Right to Cure Construction Dwelling Defect Act and procedures for certifying class action under rules of civil procedure were not incompatible; purpose of the Act was to encourage resolution of these types of claims without using litigation, by providing an environment that codifies contractor/subcontractor’s ability to inspect and offer a remedy or settlement, enforcing a stay provision in the Act did absolutely nothing to restrict the furtherance of that purpose, but, instead, the purpose was better served by allowing use of the Act’s stay provision to allow court to determine whether or not a class action was feasible under the circumstances in each individual case, rather than striking the class allegations in toto at the outset, there was no express bar of class actions in Act, and public policy favored allowance of class actions under Act. Grazia v. South Carolina State Plastering, LLC (S.C. 2010) 390 S.C. 562, 703 S.E.2d 197, rehearing denied. Antitrust and Trade Regulation 286; Parties 35.67

Notice provision of Right to Cure Construction Dwelling Defect Act, which required mandatory compliance with notice requirements before filing of civil action, and Act’s stay provision, which allowed for stay in response to violation of notice provisions, were able to be harmonized; stated public policy was not abridged when a court was required to stay a proceeding in order to require compliance with the notice provision, and the predominant concern was on the contractor/subcontractor’s actual exercise of the rights to notice and the opportunity to cure, not when those rights were received. Grazia v. South Carolina State Plastering, LLC (S.C. 2010) 390 S.C. 562, 703 S.E.2d 197, rehearing denied. Antitrust and Trade Regulation 286

**SECTION 40‑59‑850.** Contractor’s election to inspect, remedy, settle, or deny claim; inspection of construction defect; response to contractor’s offer; admissibility.

 (A) The contractor or subcontractor has thirty days from service of the notice to inspect, offer to remedy, offer to settle with the claimant, or deny the claim regarding the defects. The claimant shall receive written notice of the contractor’s or subcontractor’s, as applicable, election under this section. The claimant shall allow inspection of the construction defect at an agreeable time to both parties, if requested under this section. The claimant shall give the contractor and any subcontractors reasonable access to the dwelling for inspection and if repairs have been agreed to by the parties, reasonable access to affect repairs. Failure to respond within thirty days is deemed a denial of the claim.

 (B) The claimant shall serve a response to the contractor’s offer, if any, within ten days of receipt of the offer.

 (C) If the parties cannot settle the dispute pursuant to this article, the claimant may proceed with a civil action or other remedy provided by contract or by law.

 (D) Any offers of settlement, repair, or remedy pursuant to this section, are not admissible in an action.

HISTORY: 2003 Act No. 82, Section 1.

Editor’s Note

2003 Act No. 82, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies to claims arising on or after this act’s effective date [July 2, 2003].”

Library References

Negligence 1505.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 650 to 655.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.

**SECTION 40‑59‑860.** Claims for personal injury or death; designation for stay on Civil Action Cover Sheet.

 (A) Nothing in this article applies to actions arising out of claims for personal injury or death, or both.

 (B) Court Administration must develop a designation on the Civil Action Cover Sheet which indicates whether a stay has been granted for a civil action filed pursuant to the South Carolina Notice and Opportunity to Cure Construction Defects Act.

HISTORY: 2003 Act No. 82, Section 1.

Editor’s Note

2003 Act No. 82, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and applies to claims arising on or after this act’s effective date [July 2, 2003].”

Library References

Negligence 1505.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 650 to 655.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App I, 50 State Statutory Survey‑Construction Defects.