**A** **BILL**

TO AMEND TITLE 27 OF THE 1976 CODE, BY ADDING CHAPTER 52, TO ENACT THE “SOUTH CAROLINA HOMEOWNERS’ ASSOCIATION ACT.”

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Homeowners’ Association Act”.

SECTION 2. Title 27 of the 1976 Code is amended by adding:

“CHAPTER 52

South Carolina Homeowners’ Association Act

Section 27‑52‑110. As used in this chapter:

(1) ‘Adjudicatory panel’ means a committee composed of association members appointed by the board of directors for the purpose of conducting a hearing pursuant to Sections 27‑52‑170 and 27‑52‑180. A member of the adjudicatory panel may not be a member of the board of directors.

(2) ‘Assessment’ means a sum of money payable to the association, to the developer or other owner of common areas, or to recreational facilities or other properties serving lots or units by the owners of one or more lots or units as authorized in governing documents.

(3) ‘Board of directors’ means the executive body of a homeowners’ association or a committee that exercises the power of the executive body by resolution or bylaw.

(4) ‘Common area’ means all property within a community owned or leased by an association or dedicated for use or maintenance by the association or its members, regardless of whether title has been conveyed to or retained by the association.

(5) ‘Declarant’ means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

(6) ‘Declaration’ means an instrument, including an amendment or supplement to the instrument, however denominated, that subjects land comprising a community to the jurisdiction and control of a homeowners’ association in which owners of the lots or units, or their association representatives, must be members.

(7) ‘Department’ means the South Carolina Department of Consumer Affairs.

(8) ‘Governing document’ means the master deed or master lease, restrictive covenants, declaration, articles of incorporation, bylaws, rules and regulations, or amendments to them, and other documents that determines a right or obligation of a homeowner or that otherwise governs the management or operation of an association.

(9) ‘Homeowners’ association’ or ‘association’ means an incorporated or unincorporated entity upon which responsibilities are imposed, to include managing, maintaining, or improving the property and of which the voting membership is comprised of persons owning separate lots or units who are required to pay assessments to the association for the purposes delineated in the declaration and governing documents of the association.

(10) ‘Lot’ means a plot or parcel of land designated for separate ownership or occupancy that is shown on a recorded subdivision plat for a development or has its boundaries described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, and that is not a common area.

(11) ‘Member’ means a member of a homeowners’ association, and may include, but is not limited to, a lot or unit owner or an association representing lot or unit owners or a combination thereof, and includes a person or entity obligated by the governing documents to pay an assessment.

(12) ‘Person’ means an individual, corporation, partnership, association, unincorporated organization, or other form of entity, however organized, including a nonprofit organization.

(13) ‘Unit’ means property in a horizontal property regime pursuant to Section 27‑31‑10 et seq.

Section 27‑52‑120. A person may not act as a homeowners’ association without first receiving a certificate of registration from the department.

Section 27‑52‑130. (A) Upon filing a declaration , the declarant must file an application for a preliminary registration with the department on a form prescribed by the department. The application must be in writing, under oath, and, at a minimum, contain:

(1) the name, address, and telephone number of the declarant;

(2) the name, address, and telephone number of the declarant’s employer;

(3) the anticipated number of lots or units to be included in the homeowners’ association; and

(4) a copy of the declaration, master deed, or master lease and restrictive covenants.

(B) An application for preliminary registration must be accompanied by a nonrefundable fee of one hundred dollars.

(C) Upon the formation of the homeowners’ association’s board of directors and the imposition of assessments, the homeowners’ association must submit an application for registration pursuant to Section 27‑52‑140.

Section 27‑52‑140. (A) A homeowners’ association shall submit an application for registration to the department on a form prescribed by the department. The application must be in writing, under oath, and, at a minimum, contain:

(1) the name, address, and telephone number of the association;

(2) the name of each community manager and the name of any other person who is authorized to manage the common areas of the community;

(3) the name, address, and telephone numbers of the members of the board of directors of the homeowners’ association;

(4) the name, address, and telephone numbers of the officers of the homeowners’ association, if any;

(5) the current number of lots or units governed by the homeowners’ association;

(6) the assessments required to be paid by members of the homeowners’ association;

(7) a copy of the homeowners’ association’s declaration, articles of incorporation, bylaws, rules, and any amendments to them; and

(8) a copy of the disclosure a member is required to give a potential buyer pursuant to Section 27‑52‑200.

(B) If a document required to be submitted by this section exceeds twenty pages, the copy must be reproduced on both sides of the paper.

(C) An application for registration must be accompanied by a nonrefundable fee of ten dollars for each lot or unit in the community governed by the association.

(D) A certificate of registration is valid for one year from the date of issue. A certificate of registration must be renewed annually by filing with the department, at least thirty days before expiration of the registration, a complete renewal application containing the information the department requires to determine the existence and effect of material changes from the information contained in the applicant’s original application, annual reports, or previous renewal application. A renewal application must be accompanied by a nonrefundable fee of ten dollars for each lot or unit in the community governed by the association. The department may impose a late penalty of ten dollars a day for each day the renewal application is past due.

Section 27‑52‑150. (A) Meetings of the homeowners’ association must be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws must specify an agent of the association who shall, at least twenty‑one days in advance of an annual or regularly scheduled meeting and at least ten days in advance of another meeting, send each member notice of the meeting. The notice must contain the time, place, and purposes of such meeting, including the general nature of proposed amendment to the declaration or bylaws, budget change, and proposal to remove a director or officer. Notice either must be personally delivered to all members, sent by United States postage, prepaid mail to each lot or unit’s mailing address, or to an address otherwise specified in writing by the member, or sent by electronic means to an address specified in writing by the member. Notice also must be conspicuously posted no less than forty‑eight hours in advance of the meeting in a common area that is reasonably calculated to be available to the majority of the members.

(B) A meeting of the board of directors, including a subcommittee or other committee of, must be open to all members of record. The open meeting requirement does not apply to a meeting between the board and its attorney with respect to proposed or pending litigation where the content of the discussion would otherwise be governed by attorney‑client privilege.

(C) A member has the right to attend all meetings of the board and to speak for a reasonable amount of time on a matter placed on the agenda. The board may adopt reasonable rules to govern the rights of members to speak and the frequency and duration of member statements.

(D) Unless otherwise required by statutory law, a quorum of the board is present throughout a meeting of the association if members constituting one‑third of the voting interests are present in person or by proxy at the beginning of the meeting.

(E) An amendment to a governing document of the association cannot be made unless two‑thirds of the association’s voting interests, either voting in person or by proxy, approve the amendment.

Section 27‑52‑160. (A) The homeowners’ association shall maintain and preserve in its office complete and accurate books, accounts, and records as the department may reasonably require to determine if the association is complying with the provisions of this chapter and rules and regulations adopted in furtherance of its provisions. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles, be apart and separate from another business in which the organization is involved, and retained for at least three years.

(B) At a minimum, each of the following items, as applicable, must be maintained and held in a place easily accessible to the homeowners’ association’s members:

(1) a copy of plan, specification, permit, or warranty related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace;

(2) a copy of the association’s declaration, bylaws, articles of incorporation, rules, and any amendments to them;

(3) the minutes of all meetings of the board of directors and of the members;

(4) a current roster of all members, their mailing addresses, and lot or unit identifications. The association also shall maintain the electronic mailing address or alternate mailing address designated by members to receive notice pursuant to Section 27‑52‑150;

(5) all of the association’s insurance policies or a copy of them;

(6) a current copy of all contracts to which the association is a party, including management agreement, lease, or other contract under which the association has an obligation or responsibility;

(7) a copy of a bid received by the association in the past year for work to be performed;

(8) a copy of the association’s annual budget for the past three years; and

(9) the financial and accounting records of the association, including records of receipts and expenditures, a current accounting for each member, association tax returns, and financial reports.

(C) The association’s records must be maintained in this State and be open to inspection and available for photocopying by members or their authorized agent at reasonable times and places within five business days after receipt of a written request stating the specific books and records the member requests of the association. A member who is denied access to official records is entitled to ten dollars per day for the association’s failure to comply. The calculation begins on the eleventh business day after receipt of the written request.

(D) The homeowners’ association shall prepare an annual budget. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must delineate all fees or charges for recreational amenities. The association shall provide each member with a copy of the budget or written notice to the member’s lot or unit mailing address or alternate address provided in writing by the member that the budget is available pursuant to Section 27‑52‑160(C).

(E) The homeowners’ association shall prepare an annual financial report within ninety days after the close of its fiscal year. The association shall provide each member with a copy of the budget or written notice to the member’s lot or unit mailing address or alternate address provided in writing by the member that the financial report is available pursuant to Section 27‑52‑160(C).

(F) A homeowners’ association annually shall, on or before April fifteenth, file a written report with the department relating to the operation of the association during the preceding calendar year. The report must be made under oath on a form prescribed by the department. The department may impose a late penalty of ten dollars a day for each day the report is past due.

Section 27‑52‑170. (A) A homeowners’ association shall not charge or attempt to collect an assessment or fine from a member that is not set forth in the governing documents.

(B) The association’s governing documents must prescribe the manner in which expenses are shared and specify the member’s proportional share thereof for annual assessments and special assessments. An association may not charge a member an annual assessment that is more than twenty percent greater than the previous year’s assessments without the approval of two‑thirds of the members of the association.

(C) An association may impose a charge for the late payment of assessments. A payment by a member is considered late if it is unpaid thirty or more days after its due date, unless a longer period is permitted in the governing documents. A charge for the late payment of assessments is limited to the greater of fifteen dollars or ten percent of the assessment.

Section 27‑52‑180. (A) An association may not suspend privileges or services provided by the association during a period that assessments or other amounts due and owing in relation to the assessment remain unpaid for a period of thirty days after the member received notice of the unpaid amount and received an opportunity to be heard. The notice must be sent certified mail, return receipt requested, to the member’s lot or unit’s mailing address or address otherwise specified in writing by the member and contain:

(1) a statement of any amount the association claims is due;

(2) a description of how the homeowner may remedy the situation;

(3) a date and time for the member’s hearing before the adjudicatory panel;

(4) information on the availability of nonbinding mediation through the department pursuant to Section 27‑52‑190; and

(5) provide the department’s current address, telephone numbers, and website address.

(B) Before a homeowners’ association may file suit or take other action against a member homeowner for a violation of governing documents other than failure to pay an assessment, the association must, in addition to compliance with other law and the governing documents, provide notice and opportunity for a hearing. The notice must be sent certified mail, return receipt requested, to the member’s lot or unit’s mailing address or address otherwise specified in writing by the member and contain:

(1) the specific alleged violation;

(2) a date, time, and place for the member’s hearing before the homeowners’ association’s adjudicatory panel;

(3) the availability of nonbinding mediation through the department pursuant to Section 27‑52‑190; and

(4) the department’s current address, telephone numbers, and website address.

(C) The adjudicatory panel must hold the hearing within thirty days after the association sends the required notice to the member. The association shall provide the member notice of the date, time, and place of the hearing at least fourteen days prior to the hearing date. The member may request postponement which must be granted for good cause shown.

(D) If the adjudicatory panel of the homeowners’ association finds a violation of governing documents, other than the failure to pay an assessment, it may impose a fine not to exceed one hundred dollars for a violation. A fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for a hearing, except that no such fine shall exceed one thousand dollars in the aggregate unless otherwise provided in the governing documents.

Section 27‑52‑190. (A) A member may seek nonbinding mediation through the department for disputes involving the association’s governing documents or disputes involving a monetary amount of at least two hundred fifty dollars. The request for mediation must be submitted on a form prescribed by the department and be accompanied by a nonrefundable fee of fifty dollars. Once a request for mediation is received, the department shall send a notice of date, time, and place for the mediation to the member and the board of directors of the homeowners’ association.

(B) For an action instituted by a member, notice of the dispute must be given to the board of directors of the association at least fourteen days prior to the member submitting a request for mediation to the department.

(C) If the member submits a request for mediation as a result of receiving a notice required by Sections 27‑52‑180(A) or 27‑52‑180(B), the member, within thirty days of the adjudicatory panel hearing, must submit a request for mediation to the department and copy the association on the request. If the member chooses not to be heard by the association’s adjudicatory panel, the member must, within thirty days of receiving the notice, submit a request for mediation to the department and copy the association on the request.

(D) Upon receiving the notice of the request for mediation, the homeowners’ association may not take any adverse action against the member until after the mediation occurs.

Section 27‑52‑200. (A) A member must give all prospective buyers a written disclosure indicating that the lot or unit being sold is in a community under the control and jurisdiction of a homeowners’ association. The disclosure must include the most current telephone number and address of the association.

(B) Within ten days after receipt of a written notice of a pending sale, and before the sale of the lot or unit, the member shall mail or deliver to a potential purchaser a packet containing a:

(1) copy of the bylaws and the rules of the association;

(2) copy of the declaration;

(3) dated statement containing:

(a) the telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association, or another person designated by the board of directors;

(b) the amount of the common regular assessment and the unpaid common regular assessment, special assessment or other assessment, fee, or charge currently due and payable from the selling member;

(c) a statement as to whether a portion of the lot or unit is covered by insurance maintained by the association;

(d) the total amount of money held by the association as reserves;

(e) a statement as to whether the records of the association reflect an alteration or improvement to the lot or unit that violates the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subitem relieves the seller of a lot or unit from the obligation to disclose alterations or improvements to the lot or unit that violate the declaration, nor precludes the association from taking action against the purchaser of a lot or unit for violations that are apparent at the time of purchase and that are not reflected in the association’s records;

(f) statement regarding whether the member has knowledge of an alteration or improvement to the lot or unit that violates the declaration;

(g) statement by the member and the association containing case names and case numbers for pending litigation with respect to the lot or unit filed by the association against the member or filed by the member against the association; and

(h) statement that provides ‘I hereby acknowledge that the declaration, bylaws, and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the homeowner’s association’s contract with me (the purchaser). I also understand that as a matter of South Carolina law, if I fail to pay my homeowner’s association assessments, the homeowner’s association may foreclose on my property.’ The statement must be signed by the purchaser and forwarded to the association within fourteen days of the sale of the lot or unit;

(4) a copy of the current operating budget of the association; and

(5) a copy of the most recent annual financial report of the association. If the report is more than ten pages in length, the association may provide a summary of the report in lieu of the entire report.

(C) If the disclosure summary is not provided to a prospective purchaser before the purchaser executes a contract for the sale of property governed by covenants that are subject to disclosure pursuant to this section, the purchaser may void the contract by delivering to the selling member written notice canceling the contract within three days after receipt of the disclosure summary or prior to closing, whichever occurs first. This right may not be waived by the purchaser and terminates at closing.

(D) A purchaser who does not receive the information required by subsection (A) of this section or a seller who is damaged by the failure of the member or the association to disclose the information required by subsection (A) of this section may pursue all remedies at law or in equity against the member or the association, whichever failed to comply with subsection (A) of this section, including the recovery of reasonable attorney’s fees.

(E) The association may charge the member a reasonable fee to compensate the association for the costs incurred in the preparation of statements furnished by the association pursuant to this section. The association shall make available to any interested party the amount of the pre‑sale disclosure fee.

(F) For purposes of this section, unless the context otherwise requires, ‘member’ means the seller of the lot or unit title and excludes any South Carolina licensed real estate salesperson or real estate broker who is acting as a salesperson or broker and also excludes a trustee of a deed of trust who is selling the property in a trustee’s sale.

Section 27‑52‑210. A homeowners’ association owes to its members a duty of utmost care, honesty, and loyalty, including the duty of due diligence when handling matters of the association.

Section 27‑52‑220. (A) The department may enforce the provisions of this chapter and investigate a suspected violation.

(B) The department’s investigation may require a registered person, unregistered person, or an applicant to:

(1) respond to questions concerning activities regulated under this chapter; and

(2) provide relevant records. The records must be made available to the department within three business days of a request unless the department grants an extension. The department may inspect records on‑site.

(C) Upon finding that a person has violated a provision of this chapter, the department may impose an administrative fine of no more than five hundred dollars for a violation and not more than five thousand dollars for a series of violations arising from the same set of transactions or occurrences.

(D) Upon finding that an action of an association may be in violation of this chapter, or of a law or regulation of this State or of the federal government or an agency of them, the department, after reasonable notice to the association and an opportunity for the association to be heard, shall order the association to cease and desist from the action.

(E) If the association fails to appeal the cease and desist order of the department and continues to engage in the action in violation of the department’s order, the association is subject to a penalty of not less than one thousand nor more than two thousand five hundred dollars, in the discretion of the department, for each action the association takes in violation of the department’s order. The penalty provision of this section is in addition to and not instead of other provisions of law applicable to an association’s failure to comply with an order of the department.

Section 27‑52‑230. (A) A person who has exhausted all administrative remedies available with the department and who is aggrieved by the department’s determination is entitled to a contested case hearing before the Administrative Law Court as provided in Section 1‑23‑600(D) and judicial review as provided in Sections 1‑23‑380(B) and 1‑23‑610. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo as provided by law. A preliminary, procedural, or intermediate action or ruling of the Administrative Law Court is reviewable immediately if review of the final decision of the Administrative Law Court does not provide an adequate remedy.

(B) Contested case proceedings are instituted by filing a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. A copy of the request for a contested case hearing must be served on the administrator and all parties of record. The final decision of the administrative law judge may be appealed as provided in Sections 1‑23‑380 and 1‑23‑610.

Section 27‑52‑240. The department may promulgate regulations necessary to effectuate the purposes of this chapter.

Section 27‑52‑250. A fee collected by the department must be retained by it.”

SECTION 3. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act 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 act, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect January 1, 2012.

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