**A** **BILL**

TO AMEND SECTION 27‑1‑60, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RIGHT OF A HOMEOWNER OR A TENANT TO DISPLAY THE UNITED STATES FLAG ON REAL PROPERTY HE OWNS OR IS ENTITLED TO USE, SO AS TO AUTHORIZE THE DISPLAY OF ONE PORTABLE, REMOVABLE UNITED STATES FLAG IN A RESPECTFUL MANNER, CONSISTENT WITH 4 U.S.C. SECTIONS 4‑10 AND TO APPLY THE PROVISION RETROACTIVELY; AND BY ADDING SECTION 27‑1‑70 SO AS TO PROVIDE REASONABLE STANDARDS FOR A STRUCTURE OR POLE ON WHICH THE UNITED STATES FLAG MAY BE DISPLAYED.

Whereas, the ability to display the United States flag on one’s own property or property one is lawfully entitled to use is a significant symbolic means of expression and an important patriotic gesture; and

Whereas, through Act 344 of 2002, the General Assembly assured property owners and tenants that they could reasonably display a United States flag on their property despite restrictive covenants and other contractual limitations that prohibited displaying the flag; and

Whereas, restrictive covenants and other contractual limitations on use of property are imposed by developers and homeowners’ associations in order to ensure certain property conditions, and these restrictions have an effect on property values; and

Whereas, persons who own or lease property subject to restrictive covenants and other contractual limitations rely on the enforcement of those restrictions when entering into a purchase or lease; and

Whereas, the purpose of this legislation is to:

(1) ensure that persons have an ability to display a flag on their own property or property they are entitled to use while not interfering with restrictive covenants or other contractual limitations that specify the placement, size, and location of a structure or pole used for displaying the flag on the property; and (2) provide requirements for the placement, size, and location of a structure or pole used for displaying the flag if restrictive covenants, other contractual restrictions, or local ordinances are silent on that subject. Now, therefore,

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

SECTION 1. Section 27‑1‑60 of the 1976 Code is amended to read:

“Section 27‑1‑60. (A) Regardless of any restrictive covenant, declaration, rule, contractual provision, or other ~~requirement concerning flags or decorations~~ provision found in a deed, contract, lease, rental agreement, or homeowners’ association document concerning the display of flags or decorations on real property, ~~any~~ a homeowner or tenant may display one portable, removable United States flag in a respectful manner, consistent with ~~36 U.S.C. Sections 171‑178~~ 4 U.S.C. Sections 4‑10, as amended, on the premises of the property of which he is entitled to use.

(B)~~(1)~~ ~~No~~ A homeowners’ association document, restrictive covenant in a deed, rental agreement, lease, or another contract ~~may~~ shall not preclude the display of one portable, removable United States flag by a ~~homeowners~~ homeowner or tenant if~~. However,~~ the flag ~~must be~~ is displayed in a respectful manner, consistent with ~~36 U.S.C. Sections 171‑178~~ 4 U.S.C. Sections 4‑10, as amended.

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

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

(C) For purposes of this section and Section 27‑1‑70:

(1) ‘Homeowner’ means a person who holds title to real property, in fee simple or otherwise, so as to enjoy the rights of use and possession including, but not limited to, an owner of real property subject to a homeowners’ association, an owner of an interest in a vacation time sharing plan, and a co‑owner under a horizontal property regime~~;~~.

(2) ‘Homeowners’ association’ has the same meaning as provided in Section 12‑43‑230~~;~~.

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

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

SECTION 2. Chapter 1, Title 27 of the 1976 Code is amended by adding:

“Section 27‑1‑70. Notwithstanding a restrictive covenant, declaration, rule, contractual provision, or other provision found in a deed, contract, lease, rental agreement, homeowners’ association document, or in a local ordinance, a homeowner or tenant may display in a respectful manner, consistent with 4 U.S.C. Sections 4‑10, as amended, a portable, removable United States flag of a standard size for home display:

(1) on a free standing flagpole between fifteen and twenty‑five feet for home display; or

(2) affixed to the structure of the home by a flagpole with dimensions that are reasonable for home display.”

SECTION 3. This act takes effect upon approval by the Governor and is prospective in application, except that SECTION 1 applies retroactively regardless of the date of adoption of any restrictive covenant, declaration, rule, contractual provision, or other requirement concerning the display of flags or decorations found in a deed, contract, lease or rental agreement, or homeowners’ association document.

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