**South Carolina General Assembly**

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**S. 860**

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Currently residing in the Senate Committee on **Judiciary**

Summary: S.C. Homeowners Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

6/3/2015 Senate Introduced and read first time ([Senate Journal‑page 8](file:///h:\SJ%20Archive\2015\06-03-15.docx))

6/3/2015 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 8](file:///h:\SJ%20Archive\2015\06-03-15.docx))

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**VERSIONS OF THIS BILL**

[6/3/2015](file:///p:\pprever\2015-16\860_20150603.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 30 TO TITLE 27 TO ENACT THE “SOUTH CAROLINA HOMEOWNERS PROTECTION ACT OF 2015” SO AS TO SET FORTH THE MANNER IN WHICH A HOMEOWNERS ASSOCIATION CREATED AFTER 2015 MUST BE ESTABLISHED AND ADMINISTERED, AND TO SET FORTH THE RIGHTS OF THE ASSOCIATION AND ITS OWNERS; TO AMEND SECTION 22‑3‑10, RELATING TO THE JURISDICTION OF MAGISTRATES, SO AS TO GRANT MAGISTRATES CONCURRENT CIVIL JURISDICTION IN CERTAIN ACTIONS BETWEEN ASSOCIATIONS AND OWNERS; AND TO AMEND SECTION 22‑3‑20, RELATING TO THE JURISDICTION OF MAGISTRATES, SO AS TO PROVIDE THAT A MAGISTRATE DOES NOT HAVE JURISDICTION OF CERTAIN FORECLOSURE ACTIONS BY AN ASSOCIATION.

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

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

“CHAPTER 30

The South Carolina Homeowners Protection Act of 2015

Section 27‑30‑10. This chapter may be cited as the ‘South Carolina Homeowners Protection Act of 2015’.

Section 27‑30‑20. (A) This chapter applies to all residential communities created within this State after December 31, 2015, except as otherwise provided in this section.

(B) This chapter applies only with respect to events and circumstances occurring after December 31, 2015, and does not invalidate existing provisions of the declaration, bylaws, or plats and plans, or amendments thereto, of those communities.

(C) This chapter does not apply to communities or lots located outside this State.

Section 27‑30‑30. As used in this section:

(1) ‘Association’ or ‘owner’s association’ means an incorporated entity:

(a) developed to manage and maintain a community; and

(b) with a voting membership of persons owning a lot within a community who are required by the governing documents to pay assessments to the association. An ‘association’ does not include a vacation time sharing plan organized and subject only to the provisions of Chapter 32 of this title.

(2) ‘Board’ means the representative body designated in the governing documents to act on behalf of the association and govern the association.

(3) ‘Commission’ means the South Carolina Real Estate Commission, created by Section 40‑57‑10.

(4) ‘Common area’ means any real estate within a community owned or leased by the association, other than a lot, or designated as common area on any plat of the subdivision or in the declaration and general common elements and limited common elements as defined in the Horizontal Property Act.

(5) ‘Common expenses’ means expenditures made by or financial liabilities of the association, together with any budgeted reserves.

(6) ‘Community’ means real estate with respect to which any person, by virtue of that person’s ownership of a lot, is expressly obligated by a declaration or master deed mandatory membership in an association and to pay common expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this chapter, ‘ownership of a lot’ does not include holding a leasehold interest.

(7) ‘Declarant’ means any person or group of persons and their successors and assigns acting in concert who:

(a) as part of a common promotional plan, offers to dispose of the person’s or group’s interest in a lot not previously disposed of; or

(b) reserves or succeeds to any declarant right.

There may be more than one declarant in a community.

(8) ‘Declarant rights’ means rights reserved in the governing documents for the benefit of a declarant or its designees, successor or assigns, including, without limitation, any right to:

(a) complete improvements indicated on plats and plans filed with the declaration;

(b) exercise any declarant’s right;

(c) maintain sales offices, management offices, signs advertising the community, and models;

(d) use easements through the common area for the purpose of making improvements within the community or within real estate which may be added to the community or any other real estate;

(e) make the community part of a larger community or group of communities and to merge the association with any other association as set out in the governing documents;

(f) make the community subject to a master association;

(g) appoint or remove any officer or executive board member of the association or any master association during any period of declarant control;

(h) amend the governing documents as set out in the governing documents;

(i) add real estate to a community;

(j) create lots, common area, or limited common area within a community;

(k) subdivide or combine lots or convert lots into common area; convert common area into lots; sell or convey common area;

(l) withdraw real estate from a community;

(m) cast special votes and multiple votes for each lot as provided in the governing documents; and

(n) have and exercise such other rights as may be set out in the governing documents.

(9) ‘Declaration’ means an instrument, including a master deed, that creates a community and any amendments to that instrument.

(10) ‘Governing documents’ means any declaration, covenants, conditions, restrictions, articles of incorporation of an association, bylaws, architectural guidelines, rules, resolutions, and regulations, and any amendments thereto, that restrict the use of property in a community or create an obligation on the part of the association or an owner.

(11) ‘Lot’ means a portion or unit of the community, not including common area, including improvements, excluding undeveloped parcels, phases or stages of the community, subject to the governing documents of the association that can be conveyed as a separate legal parcel including, but not limited to, a residential lot, an apartment or unit in a horizontal property regime, any townhouse, or any dwelling. A lot also may include any boat slip or boat slip use right as established by a declaration.

(12) ‘Owner’ means and refers to the record owner or owners, including the declarant, whether one or more persons or entities, of the fee simple title to any of the lots, but does not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title to the lot pursuant to foreclosure or any proceedings in lieu of the foreclosure. Also, ‘owner’ shall refer to the heirs, successors, and assigns of any owner.

(13) ‘Person’ means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Section 27‑30‑40. An owners’ association shall be incorporated as a nonprofit corporation pursuant to the South Carolina Nonprofit Corporation Act of 1994, as amended, ‘Nonprofit Corporation Act’, Section 33‑31‑101, et seq. and all existing owners associations are subject to the provisions of the Nonprofit Corporation Act and this chapter. The membership of the association at times shall consist exclusively of all the property owners within the community. Any owners’ association formed before enactment of this chapter and not incorporated as provided in this chapter shall have one hundred eighty days to comply with the requirements of this section.

Section 27‑30‑50. (A) The principles of law and equity contained in the common law of this State, as well as other South Carolina statutes including, but not limited to, both the Horizontal Property Act, Section 27‑31‑10, et seq., and the Nonprofit Corporation Act, Section 33‑31‑101, et seq., and the application of the principles of contract to the interpretation and enforcement of the governing documents shall control and supplement the provisions of this chapter, except to the extent they directly conflict with this chapter. When these principles, precedents or statutes are in conflict with this chapter, the provisions of this chapter control.

(B) Parties may establish provisions in governing documents relating to matters not covered by this chapter.

(C) Nothing in this chapter shall be construed to abrogate or limit the ‘reasonable judgment’ and ‘business judgment’ standards that apply to decisions and actions of directors and officers of the association.

Section 27‑30‑60. Unless the articles of incorporation or the declaration expressly limits or provides to the contrary, the association, acting by and through its board, may:

(1) adopt and amend bylaws and rules and regulations related to the community and to the use of the lots and common areas contained therein, and remedies and penalties for noncompliance after written notice of such noncompliance is provided to an owner;

(2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from owners in accordance with such budgets;

(3) hire and discharge managing agents and other employees, agents, and independent contractors. Nothing shall prohibit an association from electing or appointing such persons or entities as an officer of the association as the board considers appropriate;

(4) institute, defend, or intervene in litigation or administrative proceedings on matters affecting the community;

(5) make contracts and incur liabilities;

(6) regulate the use, maintenance, repair, replacement, and modification of the common area;

(7) cause additional improvements to be made as a part of the common area;

(8) grant easements, leases, licenses, and concessions through or over the common area;

(9) impose and receive any payments, fees, or charges for the use, rental, or operation of the common area other than the limited common area and for services provided to owners;

(10) impose reasonable charges for late payments of assessments, not to exceed the greater of thirty dollars each month or ten percent of any assessment installment unpaid and, after notice, suspend privileges or services provided by the association, except rights of access to lots, including ingress and egress over the roads in the community, during any period that assessments or other amounts due and owing to the association remain unpaid after the due date established by the association;

(11) after written notice, impose reasonable fines, assessments for noncompliance or suspend privileges or services provided by the association, except rights of access to lots, including ingress and egress over the roads in the community, for reasonable time periods for violations of the governing documents;

(12) provide for the indemnification of and maintain liability insurance for its officers, board, directors, employees, and agents;

(13) assign its right to future income, including the right to receive common expenses assessments;

(14) exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and

(15) exercise any other powers necessary and proper for the governance and operation of the association.

Section 27‑30‑70. (A) A meeting of the association must be held at least once a year. Special meetings of the association may be called by:

(1) the president;

(2) a majority of the board; or

(3) owners having ten percent, or any lower percentage specified in the bylaws, of the votes of the association.

Not less than ten days nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the owner, or at the sole option of the association, sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the owner as an address for required notice. The notice of any meeting shall state the time and place of the meeting. The notice of any special meeting shall state the purpose of the special meeting.

(B) Meetings of the board must be held as provided in the bylaws. The board may establish rules and procedures that provide owners with an opportunity to attend a portion of a board meeting and to speak to the board about their issues or concerns. An owner who wishes to have such an opportunity shall make such request in writing to the board and briefly set forth both the topic and purpose of the testimony. The board may place reasonable restrictions on including, but not limited to, the point in time in advance of a meeting that such written request must be made, the number of persons who may speak on each side of an issue, the time allotted to each owner who will speak, the number of times that an individual may have the opportunity to speak on a particular subject and prohibiting repetitive presentation of information.

(C) Meetings of the association and the board shall be conducted substantially in accordance with the most recent edition of Robert’s Rules of Order Newly Revised or such other procedures as the board may adopt.

Section 27‑30‑80. (A) Beginning January 1, 2016, the commission shall offer an online instructional course covering the basics of owners’ association governance and the rights and responsibilities of owners. The online course is open to the public and may be taken by any interested person. The completion of the course is not a requirement to serve on the board of an association.

(B) The course must be offered at no charge.

(C) The course must include, but is not limited to, the following subjects:

(1) the South Carolina Nonprofit Corporation Act, Section 33‑31‑101, et seq., and other state and federal laws concerning governance of owners associations;

(2) ethical and fiduciary duties;

(3) owner responsibilities to an association and to other owners;

(4) board responsibilities to an association and its owners including, but not limited to, disclosure of association records;

(5) declarant rights and funding;

(6) insurance;

(7) budgeting and reserves;

(8) enforcement of governing documents;

(9) collection practices and procedures; and

(10) rights of owners as members of an association.

Section 27‑30‑90. (A) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other records, including records of meetings of the association and board, must be made reasonably available for examination by any owner as required in the bylaws and this chapter. For the purposes of this section, ‘reasonably available’ means no more than once in any thirty‑day period. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the owners at specified times, the association shall make an annual income and expense statement and balance sheet available to any owner, upon written request, at no charge and within seventy five days after the close of the fiscal year to which the information relates. Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association’s books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the board or by the affirmative vote of a majority of the votes of the association.

(B) The association, upon written request, shall furnish to an owner a statement setting forth the amount of unpaid assessments and other charges against that owner’s lot. The statement must be furnished within ten business days after receipt of the request or such shorter period set out in the governing documents.

(C) The association may establish and collect reasonable fees to offset the cost of either the production of or the providing of such records and assessment status statements, or both, except that the association may not charge a fee for the downloading of such information from a website.

Section 27‑30‑100. A seller of a lot shall disclose to any prospective owner whether the lot to be sold is subject to governing documents. If so, the seller shall make such governing documents available to the prospective owner in a printed format or by electronic or other means including providing the prospective owner with the location where the governing documents can be downloaded from a website. Upon written request from a prospective owner, the seller shall make any such governing documents available to a prospective owner either during the due diligence period set forth in the sales contract or before the execution of a sales contract in the event such contract does not set forth a due diligence period. A seller is solely responsible for the costs of providing any such governing documents to a prospective owner. The association may establish and collect reasonable fees to offset the cost of either the production of or the providing of such records, or both, except that the association may not charge for the downloading of such documents from a website. This does not require an association to post any information, including governing documents, on a website. Nothing contained in this chapter causes the failure of a prospective owner to request governing documents, or after a written request is made, the failure of a seller to provide governing documents, in any way, to affect the enforceability of the governing documents or the obligation of any owner to comply with the governing documents.

Section 27‑30‑110. An association may exempt from disclosure the following information:

(1) matters concerning competitive bidding, or proposed contractual agreements;

(2) information of a personal nature where disclosure would constitute an unreasonable invasion of the personal privacy of an owner or an agent or employee of the association. This item must not be interpreted to restrict access by owners to a list of owners and their addresses, except that such a list must not be requested or distributed by an owner for commercial solicitation. However, the association may exempt information related to an owner from a list of owners to be disclosed pursuant to this section, if the owner has made a request to the association in writing that such information not be provided;

(3) records concerning law enforcement, public safety, security matters, and matters relating to the enforcement of the governing documents specific to any owner;

(4) matters specifically exempted from disclosure by statute or law;

(5) assessment and payment records showing individual names and property addresses and the current legal status, including actions being taken to collect from an owner;

(6) employment matters, except that a final decision concerning the following must be disclosed:

(a) the creation of a position;

(b) the hiring, firing, or discipline of an employee; and

(7) correspondence or work products that would violate an attorney client relationship.

Section 27‑30‑120. (A) Any charges including, but not limited to, assessments, fees, or fines made pursuant to Sections 27‑30‑60 and 27‑30‑130 shall constitute a lien upon the lot pursuant to Section 27‑30‑150.

(B) Notwithstanding any other provision of this chapter, if any violation of the governing documents is of a continuing nature, and if the owner fails to cure any continuing violation within the time required by the association as stated in a written notice of such violation, then a daily noncompliance assessment or fine may be imposed until the violation is cured.

(C) An owner may appeal a purported violation of the governing documents, noncompliance assessment or fine made pursuant to Sections 27‑30‑60 and 27‑30‑130 to the board or their designee. Any such appeal must be made in writing and delivered to the association within thirty days after written notice of the violation fine or assessment is mailed to the owner by the association. The board or its designee shall respond in writing relative to such appeal to the owner within thirty days of receipt of the appeal.

Section 27‑30‑130. (A) In the event that an owner neglects or fails to maintain his lot in conformity with the governing documents or otherwise fails to abide by or comply with the governing documents, the declarant or the association, when so empowered, may in addition to any other remedy, provide such maintenance or remedy such noncompliance. The declarant or the association, when so empowered, shall first give written notice to the owner of the specific items of maintenance or repair that the association intends to perform or of the actions to be taken by the association to remedy the noncompliance and the owner shall have the time set forth in said notice within which to perform such maintenance himself to remedy the noncompliance or to satisfy the association that the required maintenance, repair or compliance will be completed in a timely manner. The determination as to whether an owner has neglected or failed to maintain his lot in a manner consistent with other lots in the association or is in compliance with the governing documents must be made by the declarant or the association, when so empowered, in its sole discretion, or an entity authorized to do so by the declarant or the association, when so empowered.

(B) In the event the association performs such maintenance, repairs, replacements, or remedy for noncompliance, the costs of such maintenance, repairs, replacements, or remedy, together with all attorneys’ fees and costs of collecting from the owner the cost of such maintenance, replacements, or remedy may be added to and become a part of the assessment to which that lot is subject.

(C) In the event that the association determines that the need for maintenance, repairs, or replacements, which is the responsibility of the association, is caused through the wilful or negligent act of an owner or the permittees of any owner, then the association may perform such maintenance, repairs, or replacements at the owner’s sole cost and expense, and all costs of the maintenance, repairs, or replacements, together with any fines or assessments for noncompliance levied by the association for such noncompliance and all attorneys’ fees and costs of the collection must be added to and become a part of the assessment to which the owner is subject and becomes a lien against the lot of the owner. Each owner is responsible for the actions of and the compliance with the governing documents by the permittees of that owner and further must be responsible for the payment of any fines or assessments levied for that noncompliance.

(D) The association also may elect to enforce the provisions of the governing documents by filing suit at law to recover monetary damages or in equity to enjoin any violation, or both.

Section 27‑30‑140. (A) Except as otherwise provided in the declaration, until the association levies a common expense assessment, the declarant shall pay all common expenses. After any assessment has been levied by the association, assessments after that must be made at least annually. Nothing contained in this chapter prevents the association from assessing owners for common expense costs incurred by the declarant or association before the initial common expense assess for the budget period for which the assessment applies.

(B) Except for assessments pursuant to subsections (C), (D), (E), (F), and (G), all common expenses shall be assessed uniformly against all the lots in accordance with the allocations set forth in the declaration. Any past due common expense assessment or installment shall bear interest at the rate established by the governing documents, not exceeding eighteen percent each year.

(C) To the extent required by the declaration:

(1) any common expense associated with the maintenance, repair, or replacement of a limited common area may be assessed against the lots to which that limited common area is assigned, equally, or in any other proportion that the declaration provides;

(2) any common expense, service provided or portion of them benefiting fewer than all of the lots may be assessed exclusively against the lots benefitted; and

(3) the costs of insurance may be assessed in proportion to risk and the costs of utilities may be assessed in proportion to usage.

(D) Assessments must be levied in accordance with the Horizontal Property Act.

(E) If any common expense is caused by the negligence or misconduct of any owner or occupant, the association may assess that expense exclusively against that owner or occupant’s lot.

(F) An owner may not waive or otherwise escape liability for assessments by nonuse of common area, including exclusive common area reserved for the owner’s use, or by abandonment of his lot. Neither the lack of use nor damage or destruction of any lot or improvements thereon by fire or other casualty shall result in any abatement or diminution of the assessment or the obligation to pay assessments. The obligation to pay assessments is a separate and independent covenant on the part of each owner, which runs with the title to the lot. Diminution or abatement of assessments or set offs must not be claimed or allowed for any alleged failure of the association or board to take some action or perform some function required of it, or for any inconvenience or discomfort arising from any other action taken by the association or the board.

(G) The declarant may pay assessments for the lots owned by it or pay the current shortfall of the association’s common expenses, including budgeted reserves. The declarant is not required to pay any portion of the shortfall of the association that arises from the failure of other lot owners to pay their assessments.

Section 27‑30‑150. (A) In addition to the provisions of the governing documents, any assessment attributable to a lot shall constitute a lien on that lot and the personal obligation of the owner of the lot. The lien provided for in this section is of a continuous nature. Unless the governing documents provide otherwise, fees, charges, late charges, interests, attorney’s fees and costs, and other charges imposed pursuant to Sections 27‑30‑60, 27‑30‑120, 27‑30‑130, and 27‑30‑140 as well as any other sums due and payable to the association under the governing documents, the provisions of this chapter, or as the result of an arbitration, mediation, or judicial decision are subject to the lien pursuant to this section.

(B) A notice of lien may be filed by the association and shall set forth the name and address of the association, the name of the record owner of the lot at the time the notice of lien is filed, a description of the lot, and the amount of the lien claimed. For purposes of this section, the property address or tax map number shall constitute a sufficient description of the lot.

(C) Liens filed pursuant to this section:

(1) are absolutely privileged and cannot form the basis for a cause of action in libel or slander; and

(2) shall be filed by an attorney licensed to practice law in this State.

(D) A lien under this section is before all liens and encumbrances on a lot except:

(1) liens of a first mortgage on the lot recorded before the notice of lien created in this section is filed; and

(2) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics’ or materialmen’s liens.

(E) The association is entitled to recover the reasonable attorneys’ fees and costs it incurs in connection with the collection of the delinquent assessments, fines, and all other charges allowed by this chapter.

(F) The lien must be foreclosed in the same manner as mortgages pursuant to Title 29 and the Rules of Civil Procedure.

Pursuant to this section, the owner is the only necessary party in a foreclosure action and does not have a right of appraisal in connection with actions brought. The owner is considered to have waived his right to the homestead exemption as provided in Section 15‑41‑30 and any right of redemption under common law. All foreclosure actions and actions to enforce the governing documents provided for in this chapter or the governing documents may be brought in circuit court and may be referred to the Master in Equity or Special Referee in accordance with the Rules of Civil Procedure.

(G) The association, acting through its board and in the board’s sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys’ fees may be added to the outstanding balance and included in an installment schedule.

(H) Where the holder of a first mortgage of record or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage, the purchaser and its heirs, successors, and assigns are not liable for the assessments against the lot, which became due before the acquisition of title to the lot by the purchaser. The unpaid assessments are deemed to be common expenses collectible from all the owners, including the purchaser, its heirs, successors, and assigns. For purposes of this subsection, ‘acquisition of title’ means and refers to the date a deed conveying title is signed by the foreclosing judge or the time at which the rights of the parties are fixed following the foreclosure of a mortgage, whichever occurs first.

Section 27‑30‑160. (A) Except in cases of amendments that may be executed by the declarant under the terms of the declaration, the declaration may be amended only by affirmative vote or written agreement signed by owners to which at least a majority of the votes of the association or written agreements signed by the owners to which a majority of the votes of the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any declarant right. The declaration may specify a smaller number only if all the lots are restricted exclusively to nonresidential use.

(B) Action to challenge the validity of an amendment adopted pursuant to this section may not be brought more than one year after the amendment is recorded.

(C) Every amendment to the declaration must be recorded in every county in which any portion of the community is located and is effective only upon recordation.

(D) Any amendment to the declaration passed pursuant to the provisions of this section or the procedures provided for in the declaration are presumed valid and enforceable.

(E) A declarant rights may not be amended, modified, changed, or waived without an amendment to the declaration signed by the declarant.

(F) Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded, and certified by an attorney licensed to practice law in this State.

Section 27‑30‑170. (A) The declarant right must be clearly set forth in either the declaration or bylaws, or both.

(B) The declaration may provide for a period of declarant control of the association, during which period the declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board.

(C) Any director elected by the owners may be removed from the board, with or without cause, by the affirmative vote of a majority of the votes of the association.

(D) Except as otherwise provided in the declaration or bylaws, after the declarant or developer has sold all the lots in the community, control of the association is automatically conveyed to the members of the association. Nothing in this section may be construed to prevent the declarant or developer from transferring control of the association to the members before the sale of all the lots.

(E) By the filing of a document with the recording office of deeds or by providing written notice to the board, the declarant or the association, when so empowered, may assign, either permanently or temporarily or in part or in whole, any or all of the rights and powers granted or arising from the declaration to one or more entities or persons without the consent of any owner. The declarant or the association, when so empowered, may delegate any of those powers and rights to the same extent as it may assign them without any recording or notice requirements.

Section 27‑30‑180. (A) Any two or more communities, by agreement of the owners as provided in subsection (B), may be merged or consolidated into a single community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant community is, for all purposes, the legal successor of all of the preexisting communities, and the operations and activities of all associations of the preexisting communities must be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(B) An agreement of two or more communities to merge or consolidate pursuant to subsection (A) must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting communities. Any such agreement must be recorded in every county in which a portion of the community is located and is not effective until recorded.

(C) Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the lots of the resultant community either by:

(1) stating the reallocations or the formulas upon which they are based; or

(2) stating the percentage of overall common expense liabilities and votes in the new association which are allocated to all of the lots comprising each of the preexisting community, and providing that the portion of the percentages allocated to each lot formerly comprising a part of the preexisting community must be equal to the percentages of common expense liabilities and votes in the association allocated to that lot by the declaration of the preexisting community.

Section 27‑30‑190. (A) An owner is responsible for complying with the governing documents.

(B) It is the obligation of the owner to file written notice with the association of the current name and mailing address of the person authorized to receive all notices required by this chapter and the governing documents. If the owner fails to file such notice, the association shall send all notices to the owner at the physical address of the lot.”

SECTION 2. Section 22‑3‑10 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) in actions between associations and owners regarding specific performance of the recorded covenants or restrictions of the association and access to the official records of the association, the South Carolina Rules of Civil Procedure and Rules of Evidence strictly apply to all actions when this item applies. Any party in a matter in which this item applies may remove the matter to circuit court. The costs that may arise in bringing or defending an action pursuant to this item, including reasonable attorneys’ fees, may be recovered by the prevailing party in the discretion of the court.”

SECTION 3. Section 22‑3‑20 of the 1976 Code is amended to read:

“Section 22‑3‑20. ~~No~~ A magistrate ~~shall~~ does not have cognizance of a civil action:

(1) in which the State is a party, except an action for a penalty and not exceeding one hundred dollars; ~~or~~

(2) when the title to real property shall come in question, except as provided in Article 11 of this chapter; or

(3) in owners’ association foreclosure pursuant to Section 27‑30‑150.”

SECTION 4. This act takes effect upon approval by the Governor.

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