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Indicates New Matter

AMENDED

March 30, 2017

**H. 3886**

Introduced by Reps. Crawford, Ryhal, Hamilton, Sandifer, Fry, Putnam, Clemmons, Yow, Anderson, Johnson, Hardee, Huggins, Hewitt, Duckworth, Bowers, Sottile, Crosby, Felder, Bennett, Thigpen, Whipper, Brown, Hixon, Taylor, King, Daning, Spires, Henderson, Pitts, Kirby, White, McCravy, Hill, Gagnon, West, Wheeler, Davis, Murphy, Hayes, Ott, V.S. Moss, Lowe and Jordan

S. Printed 3/30/17--H.

Read the first time March 2, 2017.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 30 TO TITLE 27 SO AS TO ENTITLE THE CHAPTER “HOMEOWNERS ASSOCIATIONS”; TO DEFINE NECESSARY TERMS; TO REQUIRE OWNERS OF PROPERTY SUBJECT TO A HOMEOWNERS ASSOCIATION TO DISCLOSE THE ASSOCIATION’S GOVERNING DOCUMENTS TO PROSPECTIVE OWNERS, TO PROVIDE HOMEOWNERS ASSOCIATIONS SHALL PROVIDE HOMEOWNERS WITH PRINTED OR ELECTRONIC COPIES OF FINANCIAL INFORMATION AND THE GOVERNING DOCUMENTS OF THE ASSOCIATION UPON REQUEST AT NO CHARGE, TO PROVIDE HOMEOWNERS ASSOCIATION BOARDS MAY NOT TAKE ACTION TO ADD OR INCREASE FEES AND THE LIKE WITHOUT GIVING CERTAIN NOTICE TO HOMEOWNERS AND TO PROVIDE HOMEOWNERS MAY ATTEND MEETINGS AT WHICH SUCH ACTIONS ARE TO BE TAKEN, TO INSTRUCT THE SOUTH CAROLINA REAL ESTATE COMMISSION TO OFFER AN ONLINE INSTRUCTIONAL COURSE COVERING THE BASICS OF HOMEOWNERS’ ASSOCIATION MANAGEMENT AND THE RIGHTS AND RESPONSIBILITIES OF HOMEOWNERS, TO GRANT CONCURRENT CIVIL JURISDICTION IN CERTAIN ACTIONS BETWEEN HOMEOWNERS ASSOCIATIONS AND HOMEOWNERS, AND TO CREATE THE OFFICE OF HOMEOWNERS ASSOCIATION OMBUDSMAN IN THE DEPARTMENT OF CONSUMER AFFAIRS, TO PROVIDE QUALIFICATIONS, POWERS, AND DUTIES OF THE OMBUDSMAN, AMONG OTHER THINGS; AND TO AMEND SECTION 27‑50‑40, AS AMENDED, RELATING TO MANDATORY DISCLOSURE STATEMENTS SELLERS OF REAL PROPERTY MUST PROVIDE PURCHASERS, SO AS TO INCLUDE PROVISIONS CONCERNING DISCLOSURES OF PROPERTY SUBJECT TO HOMEOWNERS ASSOCIATION GOVERNANCE.

Amend Title To Conform

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

Homeowners Associations

Article 1

South Carolina

Homeowners Association Act

Section 27‑30‑110. This article may be cited as the ‘South Carolina Homeowners Association Act’.

Section 27‑30‑120. As used in this article:

(1) ‘Board’ means the representative body, regardless of name, designated in the governing documents to act on behalf of a homeowners association and govern the association.

(2) ‘Declarant’ means a person or group of persons acting in concert who:

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

(b) reserves or succeeds to a special declarant right, which means a right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration or bylaws of the association.

(3) ‘Declaration’ means the recorded instruments, however denominated, that create a homeowners association, including amendments to those instruments.

(4) ‘Governing documents’ means any documents:

(a) establishing a homeowners association and governing its management or operation;

(b) providing for the duties and obligations of the board, the association, and the homeowners;

(c) creating or imposing assessments, fees, or fines by the board or the association on the homeowners; and

(d) including, but not limited to, the master deed or master lease, covenants, conditions, and restrictions, declarations, bylaws, rules and regulations, and any amendments thereto.

(5) ‘Homeowner’ means a declarant or other person who owns a unit in a homeowners association, but does not include a person having an interest in such a unit solely as security for an obligation.

(6) ‘Homeowners association’ or ‘association’ means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration. A ‘homeowners association’ or ‘association’ does not include a vacation timesharing plan organized and subject only to the provisions of Chapter 32.

Section 27‑30‑130. A declaration or other governing document of a homeowners association must be recorded in the clerk of court’s or register of deeds office in the county in which the property is located in order to be enforceable. Homeowners associations in existence on the effective date of this section must record all such documents within six months after this effective date.

Section 27‑30‑140. A homeowners’ association shall provide notice to homeowners before it may take action to increase an annual budget at least forty‑eight hours in advance of such meeting. Notice may be accomplished through posting notice in a conspicuous place in a common area in the community, on an Internet website maintained by the homeowners’ association, or by electronic mail; however, a homeowners’ association’s bylaws may provide for notice requirements more stringent than those in this section.

Section 27‑30‑150. The access to documents provisions of Sections 33‑31‑1602, 33‑31‑1603, 33‑31‑1604, and 33‑31‑1605 apply to all homeowners associations not subject to the South Carolina Nonprofit Corporation Act for the purposes of allowing homeowners access to inspect and copy a homeowner association’s annual budget and homeowners membership lists.

Section 27‑30‑160. Pursuant to Section 22‑3‑10, the magistrates court shall have concurrent jurisdiction to adjudicate monetary disputes arising under this article, provided the dispute meets the jurisdictional requirements of Section 22‑3‑10.

Section 27‑30‑170. No provision of this article may be construed to be in conflict with the provisions of the South Carolina Nonprofit Corporation Act.

Article 3

Homeowners Association Ombudsman

Section 27‑30‑310. This article must be known and may be cited as the ‘Homeowners Association Ombudsman Act’.

Section 27‑30‑320. For the purposes of this article:

(1) ‘Board’ means the representative body, regardless of name, designated in the governing documents to act on behalf of a homeowners association and govern the association.

(2) ‘Bylaws’ means the document, and amendments to it, that contain the procedures for conducting the affairs of a homeowners association, regardless of the form of the association’s legal entity or the name by which the document comprising the bylaws is identified.

(3) ‘Declarant’ means a person or group of persons acting in concert who:

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

(b) reserves or succeeds to a special declarant right, which means a right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration or bylaws of the association.

(4) ‘Declaration’ means the recorded instruments, however denominated, that create a homeowners association, including amendments to those instruments.

(5) ‘Department’ means the Department of Consumer Affairs.

(6) ‘Director’ means the Director of the Department of Consumer Affairs.

(7) ‘Homeowner’ means a declarant or other person who owns a unit in a homeowners association, but does not include a person having an interest in such a unit solely as security for an obligation.

(8) ‘Homeowners association’ or ‘association’ means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration. A ‘homeowners association’ or ‘association’ does not include a vacation timesharing plan organized and subject only to the provisions of Chapter 32.

(9) ‘Office’ means the Office of the Homeowners Association Ombudsman established in this article.

(10) ‘Ombudsman’ means the homeowners association ombudsman established in this article.

Section 27‑30‑330. (A) There is established within the department the Office of the Homeowners Association Ombudsman.

(B) The director shall appoint the ombudsman.

(C) The ombudsman is the head of the office and is charged with managing the office consistent with the powers and duties vested in the ombudsman by this article, within the limitations of the funds appropriated by the General Assembly.

(D) The ombudsman shall serve at the pleasure of the director.

(E) A vacancy in the ombudsman position is filled in the same manner as the original appointment.

(F) Nothing in this section may be construed to allow the department, director, or ombudsman to charge a fee on an association, declarant, or residential builder to fund the Office of the Homeowners Association Ombudsman.

Section 27‑30‑340. The ombudsman:

(1) shall maintain a publicly available Internet website containing information about the office, contact information, services available through the office, information required to be placed on the website by other provisions of this article, and other information considered appropriate by the ombudsman;

(2) may organize and conduct meetings to educate declarants, homeowners associations, executive boards of homeowners associations, and other interested parties about their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective homeowners association;

(3) shall prepare, publish, and make available online educational and reference materials about homeowners communities, including general information about the roles, rights, and responsibilities of the various parties, suggestions for the orderly operation of the homeowners association, mechanisms for internal dispute resolution, and other information considered appropriate by the ombudsman;

(4) may assist with meetings, mediations, or other forms of alternative dispute resolution as requested by declarants, homeowners, homeowners associations, executive boards of homeowners associations, or other interested parties, if all parties to the dispute consent, which may be withdrawn at any time;

(5) shall receive complaints for informational purposes to report as required in item (6) and, if all parties to the dispute consent, which may be withdrawn at any time, may arrange for meetings or other forms of alternative dispute resolution to assist the parties in the resolution of the complaint;

(6) shall make an annual report of the office’s activities to the Governor and the General Assembly before December first, provided this report must include:

(a) statistics on the number of inquiries and complaints handled by the office;

(b) information on education and outreach efforts by the office;

(c) concerns expressed to the office by declarants, homeowners, homeowners associations, executive boards of homeowners associations, or other interested parties;

(d) legal developments impacting homeowners communities, associations, or both;

(e) recommendations to the General Assembly for changes to state law to improve the regulation and operation of homeowners communities; and

(f) other information considered appropriate by the ombudsman;

(7) shall direct the work of the office consistent with the powers and duties established by this section;

(8) shall employ and supervise staff necessary to assist in carrying out the powers and duties established by this section, within the limitations of funds appropriated by the General Assembly; and

(9) shall perform any other function necessary to fulfill the powers and duties outlined in this section.”

SECTION 2. Section 27‑50‑40(A) of the 1976 Code, as last amended by Act 141 of 2010, is further amended to read:

“(A) The owner of the real property shall furnish to a purchaser a written disclosure statement. The disclosure statement must contain the language and be in the form promulgated by the commission and the form may be delivered electronically through the Internet or other similar methods. The commission may charge a reasonable fee for the printed form but shall post the form for free downloading on its public website. The disclosure statement must include, but is not limited to, the following characteristics and conditions of the property:

(1) the water supply and sanitary sewage disposal system;

(2) the roof, chimneys, floors, foundation, basement, and other structural components and modifications of these structural components;

(3) the plumbing, electrical, heating, cooling, and other mechanical systems;

(4) present infestation of wood‑destroying insects or organisms or past infestation, the damage from which has not been repaired;

(5) the zoning laws, restrictive covenants, building codes, and other land‑use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from a governmental agency affecting this real property;

(6) presence of lead‑based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material, buried or covered, and other environmental contamination; ~~or~~

(7) existence of a rental, rental management, vacation rental, or other lease contract in place on the property at the time of closing, and, if known, any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property the tenant leases;

(8) existence of a meter conservation charge, as permitted by Section 58‑37‑50, that applies to electricity or natural gas service to the property; or

(9) whether the property is subject to governance of a homeowners association, as provided in Chapter 30 of this title, which carries certain rights and obligations that may limit the use of his property and involve financial obligations, and that copies are recorded in the clerk of court’s office or the register of deeds office in the county in which the property is located.”

SECTION 3. This act takes effect upon approval by the Governor.

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