**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 31‑21‑160 SO AS TO PROVIDE THAT CERTAIN INDIVIDUALS MAY RECORD A NEW INSTRUMENT TO REMOVE CERTAIN RESTRICTIVE COVENANTS CONTAINING A CONVEYANCE ENCUMBERING THE TRANSFER OF REAL PROPERTY; BY ADDING SECTION 31‑21‑170 SO AS TO PROVIDE THE PROCESS BY WHICH AN INDIVIDUAL MAY REMOVE CERTAIN RESTRICTIVE COVENANTS; AND BY ADDING SECTION 31‑21‑180 SO AS TO PROVIDE FOR CERTAIN CIVIL ACTIONS.

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

SECTION 1. Chapter 21, Title 31 of the 1976 Code is amended by adding:

“Section 31‑21‑160. (A) Any person who holds an ownership interest of record in real property in this State, or any attorney authorized to practice law in this State and acting on behalf of a person with an ownership interest in real property in this State, may record a new instrument to remove any restrictive covenant contained in any conveyance encumbering or otherwise affecting the transfer or sale of, or any interest in, real property that:

(1) is held to be void and unenforceable by a final determination of the South Carolina Supreme Court or the United States Supreme Court; or

(2) is in violation of the acts prohibited by Chapter 21, Title 31.

(B) Any person who, in good faith, delivers or records any instrument pursuant to subsection (A) is immune from civil liability. The immunity provided in this subsection is not available to any person who:

(1) represents or attempts to represent that the restrictive covenants pertaining to subsection (A), which are void and unenforceable or prohibited by law, are valid and enforceable; or

(2) honors or exercises or attempts to honor or exercise restrictive covenants pertaining to subsection (A), which are void and unenforceable or prohibited by law.

Section 31‑21‑170. (A) In accordance with Section 31‑21‑160, a new instrument removing a restrictive covenant that is in violation of law may be recorded by filing the new instrument with the county clerk for the county in which the real property is located.

(B) A new instrument filed and recorded pursuant to this section must contain:

(1) the title of the filed and recorded prior instrument to which the new instrument pertains;

(2) the name and mailing address of the person filing and recording the new instrument;

(3) the name and mailing address of any owner of record of the real property on whose behalf the new instrument is being filed;

(4) the legal description of the real property subject to the provisions in violation of law as specified in Section 31‑21‑160(A); and

(5) a clear reference to the provisions in the prior instrument that are in violation of law as specified in Section 31‑21‑160(A) and have been stricken from the new instrument.

(C) Upon receiving a new instrument that complies with the requirements of subsection (B), the county clerk for the county in which the real property is located shall file and record the new instrument.

Section 31‑21‑180. (A) Any person whose real property is subject to, or is benefitted by, a restrictive covenant that was removed pursuant to Section 31‑21‑170 and who believes the restrictive covenant is valid, may petition the court having jurisdiction over the property. The petition must state the grounds upon which relief is requested and must be supported by the affidavit of the petitioner or his attorney setting forth a concise statement of the facts upon which the petition is based. The clerk of court shall assign a case number to the petition and obtain from the petitioner a filing fee of thirty‑five dollars.

(B) Upon the filing of the petition the court may enter its order, which may be granted ex parte, directing the person who filed and recorded the instrument to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the petition, and order the person to show cause, if any, why the relief provided in this section should not be granted. Service under this section must be made in accordance with the rules of civil procedure.

(C) If, following a hearing on the matter the court determines that the restrictive covenant is valid and enforceable, the court shall issue an order so stating and awarding damages of up to one thousand dollars as determined by the court or actual damages, whichever is greater, costs, and reasonable attorneys’ fees to the petitioner to be paid by the person who filed and recorded the instrument.

(D) If the court determines that the restrictive covenant is void and unenforceable, the court shall issue an order so stating and shall award costs and reasonable attorneys’ fees to the person who filed and recorded the instrument to be paid by the petitioner.”

SECTION 2. This act takes effect upon approval by the Governor.

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