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S. 30

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

Summary: S.C. Homeowners' Association Act

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/10/2008	Senate	Prefiled
12/10/2008	Senate	Referred to Committee on Judiciary
1/13/2009	Senate	Introduced and read first time SJ-86
1/13/2009	Senate	Referred to Committee on Judiciary SJ-86
1/23/2009	Senate	Referred to Subcommittee: Malloy (ch), Ford, Massey, S.Martin, Mulvaney

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VERSIONS OF THIS BILL

12/10/2008

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 52 TO TITLE 27 SO AS 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.

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

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

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

14 (7) 'Department' means the South Carolina Department of
15 Consumer Affairs.

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

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

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

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

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

42 (13) 'Unit' means property in a horizontal property regime
43 pursuant to Section 27-31-10 et seq.

1

2 Section 27-52-120. A person may not act as a homeowners'
3 association without first receiving a certificate of registration from
4 the department.

5

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

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

13 (2) the name, address, and telephone number of the
14 declarant's employer;

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

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

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

21 (C) Upon the formation of the homeowners' association's
22 board of directors and the imposition of assessments, the
23 homeowners' association must submit an application for
24 registration pursuant to Section 27-52-140.

25

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

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

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

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

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

39 (5) the current number of lots or units governed by the
40 homeowners' association;

41 (6) the assessments required to be paid by members of the
42 homeowners' association;

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

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

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

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

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

24
25 Section 27-52-150. (A) Meetings of the homeowners'
26 association must be held in accordance with the provisions of the
27 bylaws at least once each year after the formation of the
28 association. The bylaws must specify an agent of the association
29 who shall, at least twenty-one days in advance of an annual or
30 regularly scheduled meeting and at least ten days in advance of
31 another meeting, send each member notice of the meeting. The
32 notice must contain the time, place, and purposes of such meeting,
33 including the general nature of proposed amendment to the
34 declaration or bylaws, budget change, and proposal to remove a
35 director or officer. Notice either must be personally delivered to
36 all members, sent by United States postage, prepaid mail to each
37 lot or unit's mailing address, or to an address otherwise specified
38 in writing by the member, or sent by electronic means to an
39 address specified in writing by the member. Notice also must be
40 conspicuously posted no less than forty-eight hours in advance of
41 the meeting in a common area that is reasonably calculated to be
42 available to the majority of the members.

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

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

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

16 (E) An amendment to a governing document of the association
17 cannot be made unless two-thirds of the association's voting
18 interests, either voting in person or by proxy, approve the
19 amendment.

20

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

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

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

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

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

41 (4) a current roster of all members, their mailing addresses,
42 and lot or unit identifications. The association also shall maintain
43 the electronic mailing address or alternate mailing address

1 designated by members to receive notice pursuant to Section
2 27-52-150;

3 (5) all of the association's insurance policies or a copy of
4 them;

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

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

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

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

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

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

34 (E) The homeowners' association shall prepare an annual
35 financial report within ninety days after the close of its fiscal year.
36 The association shall provide each member with a copy of the
37 budget or written notice to the member's lot or unit mailing
38 address or alternate address provided in writing by the member
39 that the financial report is available pursuant to Section
40 27-52-160(C).

41 (F) A homeowners' association annually shall, on or before
42 April fifteenth, file a written report with the department relating to
43 the operation of the association during the preceding calendar year.

1 The report must be made under oath on a form prescribed by the
2 department. The department may impose a late penalty of ten
3 dollars a day for each day the report is past due.
4

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

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

15 (C) An association may impose a charge for the late payment of
16 assessments. A payment by a member is considered late if it is
17 unpaid thirty or more days after its due date, unless a longer period
18 is permitted in the governing documents. A charge for the late
19 payment of assessments is limited to the greater of fifteen dollars
20 or ten percent of the assessment.
21

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

- 31 (1) a statement of any amount the association claims is due;
- 32 (2) a description of how the homeowner may remedy the
33 situation;
- 34 (3) a date and time for the member's hearing before the
35 adjudicatory panel;
- 36 (4) information on the availability of nonbinding mediation
37 through the department pursuant to Section 27-52-190; and
- 38 (5) provide the department's current address, telephone
39 numbers, and website address.

40 (B) Before a homeowners' association may file suit or take
41 other action against a member homeowner for a violation of
42 governing documents other than failure to pay an assessment, the
43 association must, in addition to compliance with other law and the

1 governing documents, provide notice and opportunity for a
2 hearing. The notice must be sent certified mail, return receipt
3 requested, to the member's lot or unit's mailing address or address
4 otherwise specified in writing by the member and contain:

- 5 (1) the specific alleged violation;
- 6 (2) a date, time, and place for the member's hearing before
7 the homeowners' association's adjudicatory panel;
- 8 (3) the availability of nonbinding mediation through the
9 department pursuant to Section 27-52-190; and
- 10 (4) the department's current address, telephone numbers,
11 and website address.

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

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

26
27 Section 27-52-190. (A) A member may seek nonbinding
28 mediation through the department for disputes involving the
29 association's governing documents or disputes involving a
30 monetary amount of at least two hundred fifty dollars. The request
31 for mediation must be submitted on a form prescribed by the
32 department and be accompanied by a nonrefundable fee of fifty
33 dollars. Once a request for mediation is received, the department
34 shall send a notice of date, time, and place for the mediation to the
35 member and the board of directors of the homeowners'
36 association.

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

41 (C) If the member submits a request for mediation as a result of
42 receiving a notice required by Sections 27-52-180(A) or
43 27-52-180(B), the member, within thirty days of the adjudicatory

1 panel hearing, must submit a request for mediation to the
2 department and copy the association on the request. If the member
3 chooses not to be heard by the association's adjudicatory panel, the
4 member must, within thirty days of receiving the notice, submit a
5 request for mediation to the department and copy the association
6 on the request.

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

10

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

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

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

20 (2) copy of the declaration;

21 (3) dated statement containing:

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

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

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

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

34 (e) a statement as to whether the records of the association
35 reflect an alteration or improvement to the lot or unit that violates
36 the declaration. The association is not obligated to provide
37 information regarding alterations or improvements that occurred
38 more than six years before the proposed sale. Nothing in this
39 subitem relieves the seller of a lot or unit from the obligation to
40 disclose alterations or improvements to the lot or unit that violate
41 the declaration, nor precludes the association from taking action
42 against the purchaser of a lot or unit for violations that are apparent

1 at the time of purchase and that are not reflected in the
2 association's records;

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

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

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

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

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

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

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

41 (E) The association may charge the member a reasonable fee to
42 compensate the association for the costs incurred in the preparation
43 of statements furnished by the association pursuant to this section.

1 The association shall make available to any interested party the
2 amount of the pre-sale disclosure fee.

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

9
10 Section 27-52-210. A homeowners' association owes to its
11 members a duty of utmost care, honesty, and loyalty, including the
12 duty of due diligence when handling matters of the association.

13
14 Section 27-52-220. (A) The department may enforce the
15 provisions of this chapter and investigate a suspected violation.

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

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

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

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

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

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

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

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

21
22 Section 27-52-240. The department may promulgate
23 regulations necessary to effectuate the purposes of this chapter.

24
25 Section 27-52-250. A fee collected by the department must be
26 retained by it.”

27
28 SECTION 3. If any section, subsection, item, subitem, paragraph,
29 subparagraph, sentence, clause, phrase, or word of this act is for
30 any reason held to be unconstitutional or invalid, such holding
31 shall not affect the constitutionality or validity of the remaining
32 portions of this act, the General Assembly hereby declaring that it
33 would have passed this chapter, and each and every section,
34 subsection, item, subitem, paragraph, subparagraph, sentence,
35 clause, phrase, and word thereof, irrespective of the fact that any
36 one or more other sections, subsections, items, subitems,
37 paragraphs, subparagraphs, sentences, clauses, phrases, or words
38 hereof may be declared to be unconstitutional, invalid, or
39 otherwise ineffective.

40
41 SECTION 4. This act takes effect January 1, 2009.

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