

Remaining Questions from the Oct. 14 HOA Proposed Legislation Forum:

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1. Could we have Horry County involved in a "mediation process" vs. the State on this issue?
That is something HOAs would have to ask their legislators about.
Currently HOA law is covered under the S.C. Non-Profit Corporation Act, so I would believe any "mediation" requirements would need to be mandated at a State level.
2. Are there provisions in this legislation for recourse (for homeowners) with boards who do not uphold bylaws?
Yes, but the current S.C. Non-Profit Corporation also provides for same.
3. Does this law provide for a complete organization of the HOA?
Not exactly, but it creates a new overall standard for all associations regardless of size or even what their own current Master Deeds and Bylaws may say.
4. As it stands now, it is difficult to find someone to handle a conflict within an HOA. Who is the enforcement arm, locally, when it deals with Master Deed/By Laws? Does this Senate bill 30 address this? Is the only alternative hiring attorneys for both sides?
There is none at this time, nor would there be one locally if the legislation were passed.
Currently, legal help is the only remedy. Most professional property managers would support some kind of mediation or arbitration law to help this problem to the benefit of Boards and homeowners.
5. Covenants say: Motorcycles prohibited. Board does not enforce – even allows bikers. What can be done about it?
Legal action or change at the Association ballot box is the current remedies.
6. Problem: We have county/state ordinances to protect homeowners & HOA's. Yet when called for enforcement – i.e., storm water management, they refuse stating we are private. How come the local govt. can pick and choose which ordinances/laws they want to enforce & not all?
This question kind of mixes several areas and the proposed bill wouldn't have any affect whatsoever upon this problem.
7. How will this legislation protect the homeowners in a development?
I don't think it does - I think the new legislation is bigger government with an extra tax added. I see very little that doesn't poorly try to duplicate the current laws on our books.

8. Over a 20 year period boards come and go but the reserve account must be maintained properly. A board can use the funds at their discretion but they must be responsible by a special assessment. They often are not. How can we protect our reserve accounts?
Through litigation
Require and get each year audited financial statements. Be an involved homeowner.
9. Other states require covenants and restrictions to be given to homeowners at or soon after a contract is accepted. Are there any plans to implement a similar law?
This should be done, but is not a part of the current legislation.
No and the proposed law doesn't solve this either. Homeowners should at least get these items at closing as all owners pay for "document prep" charges at closing.
10. What protections are there for HOA's against frivolous lawsuits and complaints? How can an HOA protect against this?
There are legal penalties for bringing a frivolous lawsuit, but nothing that could prevent them from being filed.
The proposed law doesn't address this nor does current law. We would support reform including adding arbitration and mediation clauses, also mandating payment by the losing party of the opposing sides legal fees would help in my opinion curb this problem.
11. In what way can the power and lack of oversight of an HOA be limited without restricting their usefulness?
Power and lack of oversight are at opposite ends of the spectrum. Being an involved homeowner helps. Use of communication tools to keep all homeowners abreast of information affecting your association can help also. Finally, replacing ineffective or "power hungry" boards is always an option under all Master Deeds and Bylaws. Current nonprofit corporate law also addresses this problem as well.
12. What considerations are being given to be responsible officers & directors, who give their time voluntarily?
I see none in the proposed legislation, as all HOA boards are "lumped" into a "one size fits all" proposed law.
13. If a property owner pays dues to any HOA he rightfully belongs to, how can he be excluded from scheduled meetings? And why?
Master Deeds and Bylaws for an individual Association currently govern. I am not aware of when this can happen except for behavior problems requiring legal intervention.
14. How can legal issues between owners and POA's be settled without a state mediation authority, as proposed in the HOA legislation?
Both sides can currently agree to mediation or arbitration.

15. Our HOA has a total of 20 units. How will this legislation affect our HOA/townhomes?
It would affect it the same way it would effect every
You will be taxed and most of your association members will be required to participate on the boards and the arbitration or covenants committees. You will have to be very vigilant to keep up with all the new reporting requirements.
16. My HOA has annual limits on assessments. If the SC HOA sets limits – which will take precedence?
The SC HOA Law, likely.
S.C. law is the highest level so it will prevail.
17. What protection will an association have to reduce frivolous actions and who will pay for litigation?
No protection is in the proposed legislation and HOA members themselves will be forced to pay as a whole to defend themselves from such actions.
18. Why is it necessary to enact legislation on an existing adequate system?
It's not, in my opinion.
19. Why require registration each year – or why limit initial registration to 1 year? And why should there be an annual fee per lot?
To raise revenue for the state and to fund the program to hear disputes.
To be able to support the new employees that will be needed in the S.C. Dept. of Consumer Affairs.
20. Is it legal that POA requires burying the propane tank and not having the satellite disc but it's not an Horry county law?
This question is confused by federal law regulations (propane tank), FCC regulations (satellite disc) and what is local law. The highest law is the prevailing one.
21. What can be done with a POA Board that is not following bylaws, rules & covenants and has no idea what Roberts Rules of Order is?
Currently legal action by a member or replacement of Board members by ballot or by removal.
22. Is there any legal action that can be done to personally sue their board? What help can you provide a community run under a dictatorship?
Yes, legal action can be expensive, but it is available. To me, voting out a "dictatorship" board is the easier and more democratic solution.

23. Property management companies assist HOA's yet to my knowledge no state listing of property management companies exists to protect consumers. Will the state be mandating such a listing for these companies with regard to insurance to protect HOA's from losses caused by their negligence? What about low cost insurance to protect HOA's from losses caused by the Horizontal Property Act?

There is no state listing and the new legislation doesn't propose any. HOA's maintain insurance, as do property managers to cover extreme cases of fraud or gross negligence. The Horizontal Property Act doesn't cause losses that I've ever heard of.

24. Will the bill require full disclosure of the Horizontal Property Act prior to property purchases?

No.

No - current disclosure law in S.C. places the responsibility for this on the seller of the property. I also think every homeowner should get a copy of their documents at closing as they pay on their HUD forms for "document prep" by their attorney.

25. What can you do if the POA unlawfully restricts your property rights? There is no appeal short of an explosive lawsuit now? Why is there no way to appeal a POA decision?

Use every appeal procedure outlined in your own Master Deed and Bylaws. Make sure your board of directors has followed all of your documents correctly. Assuming all of your appeal rights under those documents have been exhausted, legal action is all that remains. Again, most property managers, including myself, would be supportive of law to require mediation and/or arbitration before any legal action is commended.

26. Should all covenants be revised/updated on a regular basis? How frequent should this be done?

I would say every 10 years it should be reviewed and possibly revised.

I'm not a huge fan of this. It's kind of like amending the constitution of the U.S. or so for me. It should be done only infrequently and in the case of unworkable provisions.

27. What do homeowners do when the majority of the board of directors is in violation of our covenants and restrictions for over 2 years and one spouse of a board member is a POA management company? We have retained an attorney who has sent a letter of demand which was not responded to? What's the next step besides spending our own money to fight this?

Unfortunately litigation looks like it may be the next step.

You can work to elect other board members or go through the process of legal action.

28. What happens if nobody from the HOA wants to be on the adjudicatory panel?

Then you will find your association is in violation of the new law should same be passed.

29. If you are a community with no common property (no club house, pool, playground etc.) with county roads and only storm water retention ponds to maintain, what really is the benefit of our HOA/POA?

To enforce rules and regulations, plus there probably is some common property, even if it is just bordering land.

You pay common liability insurance for the ponds in question, and your association is responsible for keeping the community standards to a point that your property values don't decline due to non-maintenance of individual property by individual owners that could affect the total association.

30. Who is responsible for letting the buyer know about the community HOA and covenants? My understanding is both real estate agents and their closing attorneys – is this correct? How is this enforced?

Sellers are responsible for the disclosure - but attorneys and realtors also carry an ethical responsibility here as well. This issue is enforced legally.

31. Is there a provision in the bill that would allow a volunteer board member who is a resident of the community manage the HOA?

No.

Not covered by new law, but I think the new law will put a large burden on a volunteer manager due to the paperwork and reporting requirements to the state in the new bill.

32. If there is no provision for amending/changing covenants, can a new covenant be written to replace the old one? What percentage of the HOA voting members must approve a new covenant (if one can be established)?

This can be done, and the number of votes required would depend on existing Bylaws.

A review of the current S.C. Non-Profit Corporation Act here would be helpful to determine whether the covenants can be changed if the association's own bylaws are silent. Usually a super majority or 67% (or more in some cases) is necessary to amend Bylaws or the Master Deeds. The theory being that they should not need to be revised often.