~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 29, 2015

**S. 18**

Introduced by Senator Jackson

S. Printed 4/29/15--S.

Read the first time January 13, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 18) to amend the Code of Laws of South Carolina, 1976, so as to enact the “South Carolina Homeowners’ Protection Act” by adding Chapter 55 to Title 27, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting therein the following:

/ A BILL

TO AMEND SECTION 22‑3‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CIVIL JURISDICTION IN MAGISTRATES COURT, SO AS TO ADD A SUBSECTION TO PROVIDE THAT MAGISTRATES COURT SHALL HAVE CIVIL JURISDICTION OVER ACTIONS BETWEEN HOMEOWNERS ASSOCIATIONS AND OWNERS REGARDING SPECIFIC PERFORMANCE AND ACCESS TO THE OFFICIAL RECORDS OF THE ASSOCIATION; AND BY ADDING CHAPTER 30 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. Section 22‑3‑10 of the 1976 Code is amended by adding a new subsection to read:

“(15) in actions between associations and owners, as defined in Section 27‑30‑10, regarding specific performance of the recorded covenants or restrictions of the association and access to the official records of the association.

(a) Any party in a matter wherein this subsection applies may remove the matter to circuit court.

(b) The costs that may arise in bringing or defending an action under this subsection, including reasonable attorney’s fees may be recovered by the prevailing party in the discretion of the court.”

SECTION 2. Title 27 of the 1976 Code is amended by adding:

“CHAPTER 30

South Carolina Homeowners’ Association Act

Section 27‑30‑10. As used in this chapter:

(1) ‘association’ or ‘homeowners association’ means an incorporated entity with:

(a) the responsibility to manage and maintain a planned community or horizontal property regime; and

(b) a voting membership of owners 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 or a voluntary organization entered into by individual agreement that does not pass with the sale of the property and is not required by the deed, covenants, conditions, or restrictions upon property.

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

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

(4) ‘governing documents’ mean any declarations, covenants, conditions, restrictions, articles of incorporation, bylaws, architectural guidelines, rules, regulations, resolutions, and any amendments to those documents, which restrict the owner’s property use or create an obligation on the part of the association or an owner.

(5) ‘owner’ means the declarant, developer, record owner, or owners of property subject to the governing documents of an association and includes their heirs, successors, and assigns.

Section 27‑30‑20. (A) Beginning January 1, 2016, the commission shall offer an online instructional course covering the basics of 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 such course shall not be a requirement to serve on a board.

(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, Title 33, Chapter 31, and other state and federal laws concerning governance of associations;

(2) ethical and fiduciary duties;

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

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

(5) procedure for conducting meetings;

(6) insurance;

(7) budgeting and reserves;

(8) governing documents; and

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

Section 27‑30‑30. (A) An owner selling his property that is subject to an association’s governing documents or his agent must disclose the governing documents to any prospective owner by electronic or other means either during the due diligence period set forth in the sales contract or, in the event such contract does not set forth a due diligence period, prior to the execution of a sales contract.

(B) A selling owner is solely responsible for the costs of providing the governing documents to a prospective owner in compliance with this section.

(C) An association must make governing documents available to owners and may establish and collect reasonable fees for the actual cost of a photocopy of the governing documents, except that an association must not charge for electronic access to the governing documents on a website or electronic transmission of the governing documents.”

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

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

LUKE A. RANKIN LEE BRIGHT

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

The Department of Labor, Licensing and Regulation reports that this bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

Senate Bill 0018 amends Title 27 by adding Chapter 55 which establishes the S.C. Homeowners Protection Act. The bill describes the rights of property owners, the obligations of homeowners’ associations, and related restrictions. The bill amends Section 27-50-40 relating to the property seller-to-buyer disclosure statement by specifying language that must be included. The bill requires the Real Estate Commission to regularly review and revise all such disclosure statements.

The Department of Labor, Licensing and Regulation reports that this bill would have no expenditure impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA HOMEOWNERS’ PROTECTION ACT” BY ADDING CHAPTER 55 TO TITLE 27, TO DEFINE NECESSARY TERMS, TO PROVIDE FOR THE APPLICABILITY OF THE CHAPTER AND EXEMPTIONS, TO PROVIDE RIGHTS OF PROPERTY OWNERS CONCERNING HOMEOWNERS’ ASSOCIATIONS, AND TO PROVIDE OBLIGATIONS OF HOMEOWNERS’ ASSOCIATIONS AND RELATED RESTRICTIONS; AND TO AMEND SECTION 27‑50‑40, AS AMENDED, RELATING TO THE RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT, SO AS TO REQUIRE THAT THE STATEMENT INCLUDES INFORMATION ABOUT ANY REQUIREMENT OF A PURCHASER TO BECOME A MEMBER OF ONE OR MORE ASSOCIATIONS, RELATED MANDATORY FEES AND ASSESSMENTS, THE MANNER IN WHICH THESE FEES AND ASSESSMENTS MAY BE CHANGED, AND THE POSSIBLE CONSEQUENCES FOR FAILING TO PAY THESE FEES AND ASSESSMENTS, AND TO REQUIRE THE REAL ESTATE COMMISSION BIENNIALLY TO REVIEW AND REVISE THESE DISCLOSURE STATEMENTS.

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 55

South Carolina Homeowners’ Protection Act

Section 27‑55‑110. As used in this chapter:

(1) ‘Association’ means an incorporated entity with:

(a) the responsibility to manage and maintain a planned community or horizontal property regime; and

(b) voting membership of persons owning separate lots or units who are required by the governing documents to pay assessments to the association;

(2) ‘Board’ means the body, regardless of name, designated in the governing documents to act on behalf of the association.

(3) ‘Governing documents’ mean any documents:

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

(b) providing for the duties and obligations among the board, the association, and the property owners;

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

(d) including, but not limited to, the master deed or master lease, restrictive covenants, declaration, articles of incorporation, bylaws, rules and regulations, and any amendments.

(4) ‘Property owner’ means a voting member of the association or the voting member’s tenant or designee.

Section 27‑55‑120. (A) The provisions of this chapter do not apply to an association that is:

(1) voluntary or entered into by individual agreement that does not pass with the sale of the property and is not required by the deed, covenants, or restrictions upon property; or

(2) a vacation time sharing plan organized and subject only to the provisions of Title 27, Chapter 32.

(B) Nothing in this chapter requires that an association be administered by a professional manager or management company or prohibit self‑management by the members of the association.

Section 27‑55‑130. (A) A property owner must be informed in the disclosure statement required by Section 27‑50‑40, if he is required to be a member of one or more associations when he purchases his property.

(B) A property owner must receive in the disclosure statement required by Section 27‑50‑40, a list of any fees or assessments that he is required to pay as a member of the association.

(C) A property owner must be informed in the disclosure statement required by Section 27‑50‑40, that the assessments of subsection (B) may be subject to change based upon the association’s governing documents.

Section 27‑55‑140. (A) A property owner may inspect, review, and have copies made of any governing documents. An association may charge a reasonable fee for providing copies of any records under this subsection and for supervising the property owner’s inspection. A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission, if available, upon request by the property owner. An association is not obligated to synthesize information in the governing documents.

(B) Within thirty days after a change is made in the governing documents, the board must have a copy of the change prepared in writing and hand‑delivered or sent prepaid by United States mail to the mailing address designated in writing by each property owner.

Section 27‑55‑150. A property owner is entitled to:

(1) participate in at least one meeting annually each calendar year;

(2) receive:

(a) notice of a meeting at least ten days prior to the meeting;

(b) notice of the general purpose of any meeting; and

(c) the names, addresses, and contact information for all candidates or members of the board of directors if a meeting is for the election or removal of members of the board of directors.

Section 27‑55‑160. An association must provide a fair, reasonable, and expeditious procedure for resolving a dispute between a property owner and the association that provides for:

(1) the property owner’s right to be heard; and

(2) the board’s final written determination concerning the dispute to be delivered promptly to the property owner.

Section 27‑55‑170. (A) A homeowners’ association shall not charge or attempt to collect an assessment or fine from a member that is not set forth in the governing documents.

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

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

Section 27‑55‑180. (A) An association may not suspend privileges or services provided by the association during a period that assessments or other amounts due and owing in relation to the assessment remain unpaid for a period of thirty days after the member received notice of the unpaid amount and received an opportunity to be heard. The notice must be sent certified mail, return receipt requested, to the member’s lot or unit’s mailing address or address otherwise specified in writing by the member and contain:

(1) a statement of any amount the association claims is due;

(2) a description of how the homeowner may remedy the situation;

(3) a date and time for the member’s hearing before the adjudicatory panel;

(4) information on the availability of nonbinding mediation through the department; and

(5) the department’s current address, telephone numbers, and website address.

(B) Before a homeowners’ association may file suit or take other action against a member homeowner for a violation of governing documents other than failure to pay an assessment, the association must, in addition to compliance with other law and the governing documents, provide notice and opportunity for a hearing. The notice must be sent certified mail, return receipt requested, to the member’s lot or unit’s mailing address or address otherwise specified in writing by the member and contain:

(1) the specific alleged violation; and

(2) a date, time, and place for the member’s hearing before the homeowners’ association’s adjudicatory panel.

Section 27‑55‑190. (A) Any right or obligation declared by this chapter is enforceable by a civil action.

(B) An aggrieved party may recover appropriate damages for a violation of this chapter.

(C) An aggrieved party has a duty to mitigate damages in an action for a violation of this chapter.

(D) For any action brought pursuant to this chapter, the court may award costs and attorney’s fees to the prevailing party.”

SECTION 2. Section 27‑50‑40 of the 1976 Code is amended to read:

“Section 27‑50‑40. (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~~ 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) a requirement that by purchasing the real property, the purchaser:

(a) must become a member of one or more associations; and

(b) must pay the association or association fees, assessments, or both, along with a list of these fees and assessments, notice that these fees and assessments are subject to change based upon the association’s governing documents, and notice that the purchaser may be subject to a foreclosure action if the assessments are not paid.

(B) The disclosure statement must give the owner the option to indicate that the owner has actual knowledge of the specified characteristics or conditions, or that the owner is making no representations as to any characteristic or condition.

(C) The rights of the parties to a real estate contract in connection with conditions of the property of which the owner has no actual or constructive knowledge are not affected by this article.

(D) The South Carolina Real Estate Commission shall review and revise the disclosure statement issued in compliance with this section beginning two years from the effective date of this act and biennially thereafter.”

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

SECTION 4. This act takes effect July 1, 2015.

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