CHAPTER 1

General Provisions

**SECTION 27‑1‑10.** Real estate made liable for debts, duties and demands.

 Houses, lands and other hereditaments and real estate situated or being within this State, belonging to any person indebted, (a) shall be liable to and chargeable with all just debts, duties and demands, of whatever nature or kind whatsoever, owing by any such person, (b) shall and may be assets for the satisfaction thereof and (c) shall be subject to the like remedies, proceedings and process as personal estates.

HISTORY: 1962 Code Section 57‑451; 1952 Code Section 57‑451; 1942 Code Section 9066; 1932 Code Section 9066; Civ. C. ‘22 Section 5475; Civ. C. ‘12 Section 3696; Civ. C. ‘02 Section 2612; G. S. 1983; R. S. 2112; 1712 (2) 571.

CROSS REFERENCES

Sale of real estate by probate court to pay debts of deceased, see Sections 62‑3‑1301 et seq.

Library References

Execution 21.

Homestead 58.

Westlaw Topic Nos. 161, 202.

C.J.S. Executions Sections 25, 38.

C.J.S. Homesteads Section 30.

NOTES OF DECISIONS

In general 1

1. In general

The interest of a joint tenant is subject to levy and sale. Davant v Cubbage (1834) 20 SCL 311. Galloway v Galloway (1907) 76 SC 524, 57 SE 528.

Sale cannot be made when the heirs or the devisees are in actual and exclusive possession. Bird v Houze (1842) 17 SC Eq 250. Huggins v Oliver (1884) 21 SC 147. Wheeler v Floyd (1886) 24 SC 413.

Sale of lands of ancestor under execution against executor or administrator can be made when heirs or devisees are not in possession. D’Urphye v Nelson (1803) 3 SCL 289. Smith v Executors of Smith (1825) 6 SC Eq 134. Galphin v M’Kinney (1826) 6 SC Eq 280. Martin v Latta (1827) 15 SCL 128. Executors of Gregory v Forrester (1826) 6 SC Eq 318. Rogers v Huggins (1874) 6 SC 356. Simons v Bryce (1878) 10 SC 354. Smith v Grant (1881) 15 SC 136. Small v Small (1881) 16 SC 64.

Land in possession of vendee is not subject to subsequent execution against vendor. Massey v M’Ilwain (1836) 11 SC Eq 421. Adickes v Lowry (1879) 12 SC 97.

Land in possession of vendee to be conveyed on payment of purchase money is not liable to be sold under execution against him. Barton v Rushton (1813) 4 SC Eq 373. Richards v M’Kie (1824) 5 SC Eq 184.

Section embraces vested remainders. Harrison v. Maxwell (S.C. 1820) 10 Am.Dec. 611.

At common law lands were not liable to levy and sale for debt. Liability therefor is created by this section [Code 1962 Section 57‑451]. Dorn v. Stidham (S.C. 1927) 139 S.C. 66, 137 S.E. 331. Creditors’ Remedies 22

Section makes land general assets for payment of debts. Suber v. Allen (S.C. 1880) 13 S.C. 317.

**SECTION 27‑1‑15.** Recovery of attorney is fees and interest on claims for improvement of real estate.

 Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty‑five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney’s fees and interest at the judgment rate from the date of the demand.

HISTORY: 1987 Act No. 134, Section 1.

Library References

Costs 194.32.

Westlaw Topic No. 102.

C.J.S. Costs Sections 125, 127.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 83, Argument in the Briefs.

S.C. Jur. Appeal and Error Section 145, Remand for Further Proceedings.

S.C. Jur. Attorney Fees Section 60, Claim for Improvements to Real Estate.

S.C. Jur. Attorney Fees Section 63, Mechanics’ Liens.

S.C. Jur. Costs Section 14, South Carolina Frivolous Civil Proceedings Sanctions Act.

S.C. Jur. South Carolina Rules of Civil Procedure Section 59.2, Discussion.

NOTES OF DECISIONS

In general 1

Defense of counterclaim 2

Preservation of issues for review 3

1. In general

District court’s findings against steel buyers in certain particulars did not imply that their investigation and resulting decisions in paying seller were unreasonable or unfair, and, thus, buyers were not liable for reasonable attorney fees under South Carolina statute on recovery of attorney fees on claims for improvement of real estate. Carolina Steel Corp. v. Palmetto Bridge Constructors, 2006, 444 F.Supp.2d 577. Costs 194.36

Master‑in‑equity was entitled to consider evidence related to attorney fees in affidavit that was submitted after trial in concrete supplier’s breach of contract action against concrete placement contractor, where the master reopened the matter to hold a hearing to determine attorney fee award and the additional hearing on attorney fees was not anticipated in the supplier’s original estimation of attorney fees that was presented at trial. Hardaway Concrete Co., Inc. v. Hall Contracting Corp. (S.C.App. 2007) 374 S.C. 216, 647 S.E.2d 488. Costs 208

Concrete supplier was entitled to an attorney fee award in breach of contract action against concrete placement contractor for fees for repreparing for trial, where the trial occurred approximately two months after it was to originally begin. Hardaway Concrete Co., Inc. v. Hall Contracting Corp. (S.C.App. 2007) 374 S.C. 216, 647 S.E.2d 488. Costs 194.32

Concrete supplier was not entitled to attorney fee award that included fees for motion for sanctions against concrete placement contractor, where the supplier lost on the motion. Hardaway Concrete Co., Inc. v. Hall Contracting Corp. (S.C.App. 2007) 374 S.C. 216, 647 S.E.2d 488. Costs 2

Concrete placement contractor acted in bad faith and did not make a fair and reasonable investigation into concrete supplier’s claim for payment for materials, and thus, supplier was entitled to attorney fees in its breach of contract action; contractor intentionally refused to pay supplier its rightful charges in contravention of the agreement between them. Hardaway Concrete Co., Inc. v. Hall Contracting Corp. (S.C.App. 2007) 374 S.C. 216, 647 S.E.2d 488. Costs 194.32

The party seeking an award of attorney fees and interest under statute, which allowed recovery of such fees if the opposing party fails to pay a contractor, laborer, design professional or materials supplier that expended labor, services, or materials under contract for the improvement of real property, has the initial burden of presenting prima facie evidence that the opposing party did not make a fair and reasonable investigation of the claim for payment. Hardaway Concrete Co., Inc. v. Hall Contracting Corp. (S.C.App. 2007) 374 S.C. 216, 647 S.E.2d 488. Costs 207

The party seeking an award of attorney’s fees and interest under Section 27‑1‑15 has the initial burden of presenting prima facie evidence that the person against whom the claim is made did not make a fair and reasonable investigation of the claim. Moore Elec. Supply, Inc. v. Ward (S.C.App. 1994) 316 S.C. 367, 450 S.E.2d 96. Public Contracts 234; Public Contracts 237

In an action by a supplier of material against a subcontractor and its surety for payment on a bond, the supplier failed to meet the burden of proof necessary for recovery of attorney’s fees and interest where the supplier did not present evidence at trial that the surety failed to take reasonable and fair steps to investigate the validity of the claim. Moore Elec. Supply, Inc. v. Ward (S.C.App. 1994) 316 S.C. 367, 450 S.E.2d 96.

2. Defense of counterclaim

The issues presented in concrete placement contractor’s breach of contract counterclaim against concrete supplier were intertwined with supplier’s breach of contract claim, and thus, master‑in‑equity did not abuse his discretion in awarding supplier attorney fees for defending counterclaims. Hardaway Concrete Co., Inc. v. Hall Contracting Corp. (S.C.App. 2007) 374 S.C. 216, 647 S.E.2d 488. Costs 194.32

3. Preservation of issues for review

Subcontractors failed to preserve for appellate review claim for attorney fees in action brought against city for alleged violation of Subcontractors’ and Suppliers’ Payment Protection Act (SPPA), which required city to ensure that general contractor on public building project had posted payment bond, where, although they asserted claim for fees in amended complaint, order granting city’s motion for summary judgment did not address claim, and subcontractors failed to file motion to alter or amend judgment. Shirley’s Iron Works, Inc. v. City of Union (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778. Appeal and Error 238(4)

**SECTION 27‑1‑20.** Appointment of surveyors where land title in dispute; nomination by parties.

 If any cause be pending in any circuit court or within its jurisdiction wherein the title or boundaries of lands shall be brought into dispute, the judge of the court shall appoint surveyors at the nomination of the parties, to survey such lands, at the charge of such parties, and to return such survey, on oath, at the next sitting of the court.

HISTORY: 1962 Code Section 57‑452; 1952 Code Section 57‑452; 1942 Code Section 8867; 1932 Code Section 8867; Civ. C. ‘22 Section 5308; Civ. C. ‘12 Section 3538; Civ. C. ‘02 Section 2452; G. S. 1823; R. S. 1964; 1722 (7) 177.

CROSS REFERENCES

Engineers and land surveyors, see Section 40‑22‑10 et seq.

Library References

Boundaries 52(1).

Westlaw Topic No. 59.

C.J.S. Boundaries Sections 90 to 99, 103, 105.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Boundaries and Land Surveying Section 42, Appointment of Surveyor and Land Surveyor’s Role.

LAW REVIEW AND JOURNAL COMMENTARIES

Boundaries: Quieting Title. 24 S.C. L. Rev. 632.

South Carolina Law on Boundary Disputes. 12 SC LQ 418.

NOTES OF DECISIONS

In general 1

Costs 7

Notice 6

Pleadings 5

Surveyors 8

View that section applies only when survey is necessary; postponement of trial 3

View that section is not mandatory 2

Waiver of right to survey 4

1. In general

Ordinarily the matter of settling disputed boundaries is ancillary to actions at law of trespass to try title or ejectment in accordance with this section. Uxbridge Co. v Poppenheim (1926) 135 SC 26, 133 SE 461. Atkinson v Anderson (1825) 14 SCL 223. Sumter v Bracey (1804) 2 SCL 515. Douglass v Fernandis (1831) 18 SCL 78. Wash v Holmes (1833) 19 SCL 12. Kershaw & Gillman v Starnes (1840) 26 SCL 73. Breithaupt v Clarke (1833) 19 SCL 399. Davis v Winsmith (1874) 5 SC 332. Barmore v Jay (1823) 13 SCL 371. Lesly v Burford (1804) 3 SCL 460. Sturzenegger v Marsh (1830) 17 SCL 592. Kershaw & Gillman v Starnes (1840) 26 SCL 73. Speer v Duval (1851) 39 SCL 13.

For additional related cases, as to rules of surveying, see Colclough v Richardson (1821) 12 SCL 167. Welch v Phillips (1821) 12 SCL 215. Nelson v Frierson (1821) 12 SCL 232. Stokes v Holliday (1821) 12 SCL 255. Bond v Quattlebaum (1822) 12 SCL 584. Martin v Simpson (1824) 16 SCL 454.

Cited in Little v. Little (S.C. 1953) 223 S.C. 332, 75 S.E.2d 871.

Action for damages on account of alleged trespass brought into dispute “title or boundaries” which authorized survey. Brogdon v. D.W. Alderman & Sons Co. (S.C. 1932) 165 S.C. 234, 163 S.E. 795. Boundaries 54(1)

2. View that section is not mandatory

This section is not mandatory; as was said in Cruikshanks v Frean (1825) 14 SCL 84: “Either party may resort to it when for the want of other evidence of identity it becomes necessary; but when they think proper to put their rights upon other evidence, it would be a strange construction to compel them to provide more than was necessary.” Rush v. Thigpen (S.C. 1957) 231 S.C. 230, 98 S.E.2d 245.

3. View that section applies only when survey is necessary; postponement of trial

In an action for damages caused by a ditch dug by defendant along the line of plaintiff’s land, where defendant’s affidavit for an order of survey did not disclose facts from which a survey appeared necessary and the pleadings did not suggest such necessity, the court was not bound to make the order under this section requiring the court to appoint surveyors in causes wherein the boundaries of land shall be brought in dispute. Welsh v Atlantic C. L. R. Co. (1917) 107 SC 534, 93 SE 196. Cruikshanks v Frean (1825) 14 SCL 84.

As to lack of necessity for survey, see Keenan v Keenan (1854) 41 SCL 345. Manning v Dove (1857) 44 SCL 395.

As to necessity for survey, see Thomas & Ashby v Jeter & Abney (1833) 19 SCL 380. Scriven v Heyward (1840) 25 SCL 119. Speer v Duval (1851) 39 SCL 13. State v Sartor (1847) 33 SCL 60. Manning v Dove (1857) 44 SCL 395. Patterson v Crenshaw (1890) 32 SC 534, 11 SE 390.

If survey is necessary, the trial must be postponed for it. Gourdine v. Theus (S.C. 1806).

4. Waiver of right to survey

Even if this section were mandatory, where appellants did not request an order of survey after the respondent had withdrawn his motion for it but, instead, asked for and were granted a two weeks’ continuance to enable them to have their own survey made, and they thereby waived their right to insist upon a survey. Moreover, it was not made to appear that they had been prejudiced by the absence of a survey under this section. Rush v. Thigpen (S.C. 1957) 231 S.C. 230, 98 S.E.2d 245.

5. Pleadings

Where the complaint possessed equitable features, a suit to settle a boundary, based on a complaint alleging that the defendant cut down line trees and obliterated monuments, was held within equity jurisdiction. McRae v. Hamer (S.C. 1929) 148 S.C. 403, 146 S.E. 243. Boundaries 26

A complaint alleging facts which clearly show that suit is brought to prevent multiplicity of suits is good as against demurrer for want of equity. McRae v. Hamer (S.C. 1929) 148 S.C. 403, 146 S.E. 243.

Complaint must show equitable feature, thus equity will not entertain an action to settle and fix a boundary line unless the complaint discloses some feature of equitable cognizance. Uxbridge Co. v. Poppenheim (S.C. 1926) 135 S.C. 26, 133 S.E. 461. Boundaries 26

6. Notice

Notice of survey to the other party is necessary under this section. Underwood v. Evans (S.C. 1802).

7. Costs

Order directing each party to boundary dispute to pay his respective surveyor’s cost was not erroneous where there was no definite prevailing party and trial judge addressed the issue of costs, ordering the division of costs because the established line was not asserted by either party in the pleadings and both derived benefit from the action in establishing the line. Wilson v. Padgett (S.C. 1976) 266 S.C. 556, 225 S.E.2d 185.

In an action for trespass, where plaintiff moved for and procured survey of a disputed boundary, the defendants, having prevailed on the issue of boundary, could tax the costs incurred by the survey under this section, although plaintiff won judgment for trespass. Kelley v. Oehmig (S.C. 1931) 159 S.C. 278, 156 S.E. 910. Costs 36

8. Surveyors

Surveyor is compelled by law to make his return to the first court, but no provision is made for his attendance afterwards. If a party wishes the surveyor to attend succeeding courts, such party should have said surveyor subpoenaed. Nicklin v Morrow (1814) 5 SCL 405. Breithaupt v Clarke (1933) 19 SCL 399.

Surveyor must verify his plat as a witness. Davis v. Winsmith (S.C. 1874) 5 S.C. 332.

**SECTION 27‑1‑30.** Appointment of surveyors where land title in dispute; nomination by court.

 In case either of the parties shall refuse to nominate a surveyor duly sworn and qualified, the court shall proceed to nominate two or more such surveyors, as it shall think fit, in order for the better finding out and discovering the truth of the matter in difference. If the court shall acquiesce in the return of the surveyors so given in on oath as aforesaid it shall be allowed as evidence.

HISTORY: 1962 Code Section 57‑453; 1952 Code Section 57‑453; 1942 Code Section 8868; 1932 Code Section 8868; Civ. C. ‘22 Section 5309; Civ. C. ‘12 Section 3539; Civ. C. ‘02 Section 2453; G. S. 1834; R. S. 1965; 1722 (7) 177.

CROSS REFERENCES

Engineers and land surveyors, see Section 40‑22‑10 et seq.

Library References

Boundaries 52(1).

Westlaw Topic No. 59.

C.J.S. Boundaries Sections 90 to 99, 103, 105.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Boundaries and Land Surveying Section 42, Appointment of Surveyor and Land Surveyor’s Role.

LAW REVIEW AND JOURNAL COMMENTARIES

Boundaries: Quieting Title. 24 S.C. L. Rev. 632.

South Carolina Law on Boundary Disputes. 12 SC LQ 418.

**SECTION 27‑1‑40.** Party walls in cities and towns.

 Every person who shall erect in a city or town any building with brick shall have liberty to set half his partition wall on his next neighbor’s ground, providing he leave a toothing in the corner of such wall for his neighbor to adjoin unto.

HISTORY: 1962 Code Section 57‑454; 1952 Code Section 57‑454; 1942 Code Section 8869; 1932 Code Section 8869; Civ. C. ‘22 Section 5310; Civ. C. ‘12 Section 3540; Civ. C. ‘02 Section 2454; G. S. 1842; R. S. 1966; 1713 (7) 58.

Library References

Party Walls 4(1).

Westlaw Topic No. 290.

C.J.S. Party Walls Sections 6 to 11.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Party Walls Section 1 , Introductory Comments.

**SECTION 27‑1‑50.** Party walls in cities and towns; expense.

 When the owner of such adjoining land shall build, he shall pay for one half of such partition wall, so far as he makes use of it.

HISTORY: 1962 Code Section 57‑455; 1952 Code Section 57‑455; 1942 Code Section 8870; 1932 Code Section 8870; Civ. C. ‘22 Section 5311; Civ. C. ‘12 Section 3541; Civ. C. ‘02 Section 2455; G. S. 1843; R. S. 1967; 1713 (7) 58.

Library References

Party Walls 4(1).

Westlaw Topic No. 290.

C.J.S. Party Walls Sections 6 to 11.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Little v. Sims (S.C. 1923) 122 S.C. 382, 115 S.E. 639.

**SECTION 27‑1‑60.** Right of homeowner or tenant to fly United States flag; restrictive covenants and rental agreements; definitions.

 (A) Regardless of any restrictive covenant, declaration, rule, contractual provision, or other requirement concerning flags or decorations found in a deed, contract, lease, rental agreement, or homeowners’ association document, any homeowner or tenant may display one portable, removable United States flag in a respectful manner, consistent with 36 U.S.C. Sections 171‑178, as amended, on the premises of the property of which he is entitled to use.

 (B)(1) No homeowners’ association document may preclude the display of one portable, removable United States flag by homeowners. However, the flag must be displayed in a respectful manner, consistent with 36 U.S.C. Sections 171‑178, as amended.

 (2) No restrictive covenant in a deed may preclude the display of one portable, removable United States flag on the property. However, the flag must be displayed in a respectful manner, consistent with 36 U.S.C. Sections 171‑178, as amended.

 (3) No rental agreement, lease, or contract may preclude the display of one portable, removable United States flag on the premises of any tenant. However, the flag must be displayed in a respectful manner, consistent with 36 U.S.C. Sections 171‑178, as amended.

 (C) For purposes of this section:

 (1) “homeowner” means a person who holds title to real property, in fee simple or otherwise including, but not limited to, an owner of real property subject to a homeowners’ association, an owner of an interest in a vacation time sharing plan, and a co‑owner under a horizontal property regime;

 (2) “homeowners’ association” has the same meaning as provided in Section 12‑43‑230;

 (3) “homeowners” association document’ includes, but is not limited to, declarations of covenants, articles of incorporation, bylaws, or any similar document concerning the rights of property owners to use their property; and

 (4) “tenant” means any tenant under a rental agreement executed pursuant to Chapter 40, Title 27, any tenant under a rental agreement executed pursuant to Chapter 47, Title 27, any tenant under a vacation time sharing plan, any tenant under a horizontal property regime, and any person who leases commercial or residential real property under a contractual agreement.

HISTORY: 2002 Act No. 344, Section 1.

Library References

Covenants 49.

Deeds 170.

Landlord and Tenant 134(2).

Westlaw Topic Nos. 108, 120, 233.

C.J.S. Deeds Sections 304, 309, 344 to 350, 352 to 355.

C.J.S. Landlord and Tenant Sections 753 to 756, 758.

Attorney General’s Opinions

A homeowner can display one portable, removable United States flag despite a restrictive covenant providing otherwise if the homeowner properly displays and uses the flag in a respectful manner pursuant to federal law. A homeowners’ association can regulate the time, place, or manner of display when necessary to protect a substantial interest of the association. S.C. Op.Atty.Gen. (June 24, 2016) 2016 WL 3644621.

**SECTION 27‑1‑70.** Real property transfer fee covenants unenforceable; definitions; policy; requirements for enforceability of prior transfer fee covenants.

 (A) As used in this section:

 (1) “Association” means a nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant, or other applicable law.

 (2) “Transfer” means the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in real property located in this State.

 (3) “Transfer fee” means a fee or charge imposed by a transfer fee covenant, but does not include any tax, assessment, fee, or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations.

 (4) “Transfer fee covenant” means a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners or successors in title to specified real property located in this State, and which obligates a transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting this transfer. A “transfer fee covenant” does not include:

 (a) a provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement which obligates one party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement, if that amount:

 (i) is payable on a one‑time basis only upon the next transfer of an interest in the specified real property and, once paid, does not bind successors in title to the property;

 (ii) constitutes a loan assumption or similar fee charged by a lender holding a lien on the property;

 (iii) constitutes a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid; or

 (iv) is the actual cost to copy governing documents of a community association and is charged by the association to a transferee or transferor for governing documents delivered to a real estate closing, provided cost is not passed through to a third party other than the agent of the association;

 (b) any provision in a deed, memorandum, or other document recorded for the purpose of providing record notice of an agreement described in subsection (A)(4)(a);

 (c) a provision of a document requiring payment of a fee or charge to an association to be used exclusively for purposes authorized in the document if no portion of the fee is required to be passed through to a third party designated or identifiable by description in the document or another document referenced in it;

 (d) a provision of a document requiring payment of a fee or charge to an organization described in Section 501(c)(3), 501(c)(4), or 501(c)(7) of the Internal Revenue Code, to be used exclusively to support cultural, educational, charitable, recreational, environmental, conservation, social, or other similar activities benefiting the real property affected by the provision or the community of which the property is a part; or

 (e) any fee, charge, assessment, or other amount payable in connection with a “conservation easement” as defined in Section 27‑8‑80 in the Conservation Easement Act, or a preservation easement as described in Sections 170 (h)(4)(B) and (C) of the Internal Revenue Code of 1986, as amended, whether the conservation easement or preservation easement is donated or purchased, or part donated and part purchased; whether paid contemporaneously with the recording of the conservation easement or the preservation easement or at some future date during its term and existence; and whether paid by the original grantor or any successor or assign in the legal chain of title to the real property subject to the conservation easement or preservation easement.

 (B) The General Assembly finds:

 (1) the public policy of this State favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property; and

 (2) a transfer fee covenant violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

 (C) A transfer fee covenant recorded after the effective date of this section, or a lien to the extent that it purports to secure the payment of a transfer fee, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee of an interest in the property.

 (D) In order for a transfer fee covenant recorded before the effective date of this section to be valid and enforceable, a separate document that complies with the following requirements of this subsection must be filed in each county in which the real property subject to the transfer fee covenant is located within one hundred eighty days of the effective date of this section.

 (1) The title of the document must be “Notice of Transfer Fee Covenant” in at least fourteen‑point boldface type.

 (2) The document must list the amount or basis by which the transfer fee covenant is calculated.

 (3) The actual dollar‑cost examples for a home priced at two hundred fifty thousand dollars, five hundred thousand dollars, and seven hundred fifty thousand dollars must be included in the document.

 (4) The document must contain the date or circumstances under which the transfer fee covenant expires, if any.

 (5) The document must contain instructions and contact information concerning the payment of the fee required by the transfer fee covenant.

HISTORY: 2012 Act No. 106, Section 1, eff February 1, 2012.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Covenants Section 29.50, Transfer Fee Covenants.