RECALLED

April 22, 2015

**H. 3248**

Introduced by Reps. Ryhal, Hardwick, Long, M.S. McLeod, Felder and Hardee

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Read the first time January 13, 2015.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 28 TO TITLE 27 SO AS TO PROVIDE REQUIREMENTS CONCERNING THE GOVERNANCE OF HOMEOWNERS ASSOCIATIONS, TO DEFINE NECESSARY TERMINOLOGY, TO PROVIDE HOMEOWNERS ASSOCIATIONS MUST REGISTER WITH THE REAL ESTATE COMMISSION AND FILE COPIES OF ITS GOVERNING DOCUMENTS WITH THE CLERK OF COURT, REGISTER OF DEEDS, AND THE COMMISSION, TO PROVIDE HOMEOWNERS ASSOCIATIONS OTHERWISE ALSO MUST MAKE ITS GOVERNING DOCUMENTS AVAILABLE TO THE PUBLIC AND PROSPECTIVE BUYERS IN A CERTAIN MANNER, TO PROVIDE MECHANISMS FOR THE AUTOMATIC TRANSFER OF CONTROL OF PROPERTY GOVERNED BY A HOMEOWNERS ASSOCIATION FROM THE DECLARANT TO AN ELECTED BOARD OF THE HOMEOWNERS, TO PROVIDE RELATED NOTICE REQUIREMENTS, TO PROVIDE TRAINING REQUIREMENTS FOR HOMEOWNERS ASSOCIATION BOARD MEMBERS, TO PROVIDE HOMEOWNERS MAY INSPECT CERTAIN ASSOCIATION DOCUMENTS, TO PROVIDE HOMEOWNERS ASSOCIATIONS MUST PROVIDE CERTAIN NOTICE FOR BOARD MEETINGS, TO PROVIDE THAT HOMEOWNERS ASSOCIATIONS MAY NOT PLACE A LIEN AGAINST THE PROPERTY OF A HOMEOWNER OR OTHERWISE FINE OR ASSESS COSTS AGAINST A HOMEOWNER WITHOUT FIRST GIVING THE HOMEOWNER A HEARING BEFORE THE BOARD, AND TO PROVIDE HOMEOWNERS OR HOMEOWNERS ASSOCIATIONS MAY SEEK FROM MAGISTRATES COURT EQUITABLE RELIEF TO ENFORCE THE PROVISIONS OF THIS CHAPTER, AND TO PROVIDE THAT THE PREVAILING PARTY IN SUCH AN ACTION MAY RECOVER REASONABLE ATTORNEY’S FEES AND RELATED COSTS; AND BY ADDING SECTION 40‑57‑63 SO AS TO IMPOSE RELATED POWERS AND DUTIES ON THE REAL ESTATE COMMISSION, AND TO DEFINE NECESSARY TERMINOLOGY.

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 28

Homeowners Associations

Section 27‑28‑110. As used in this chapter:

(1) ‘Board’ means the representative and elected governing body of the association.

(2) ‘Commission’ means the South Carolina Real Estate Commission.

(3) ‘Governing documents’ means the master deed, covenants, conditions, restriction, bylaws, rules, resolutions, and regulations that establish and control the operations of an association and provide for assessments, fees, fines, and other costs.

(4) ‘Homeowners’ means people who own property that requires membership in an association under the terms of a deed, covenant, condition, or restriction running with title to their property or their tenants or designees.

(5) ‘Homeowners association’ or ‘association’ means a homeowners organization to which homeowners are required to:

(a) belong under the terms of a deed, covenant, condition, or restriction that runs with title to their property;

(b) abide by its governing documents; and

(c) pay assessments, fees, fines, and other costs.

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 personal agreement and for which membership is not a requirement running with title to the property.

Section 27‑28‑120. (A) Before January 1, 2016, or thirty days after an association has organized and is operating, an association shall:

(1) file the association’s governing documents with the county clerk of court or register of deeds in the county where the association is located; and

(2) register with the commission online or using forms provided by the commission, pay any applicable fee, and provide the governing documents of the association to the commission pursuant to Section 40‑57‑63.

(B) An association shall submit an amendment to its governing documents to the county clerk of court or register of deeds and to the commission no later than thirty days after the amendment becomes effective.

(C) An association that maintains an Internet website shall make the governing documents of association available on that website in a manner accessible to the public. The association must update these documents when they are amended within thirty days after the amendment becomes effective. If an association does not maintain and Internet website, it shall provide electronic or printed copies of these documents to a prospective homebuyer, his realtor, or his closing attorney within five days after receiving a request for these documents from the prospective homebuyer, his realtor, or his closing attorney. The association only may charge a fee for the actual cost incurred when making printed copies of these documents and may charge no fee for the transmission of these documents in electronic format.

Section 27‑28‑130. (A) No later than when sixty percent of the lots governed by the association have been conveyed by the declarant occurs or five years after the recording of the declaration have passed, whichever occurs first, a governing board of the association either must be created if none exists or reconstituted if one does exist. Membership of the new or reconstituted board must be elected as provided in subsection (B). The purpose of this section is to transition control of the association from the declarant to the homeowner when a certain percentage of the governed property is no longer owned by the declarant or a certain amount of time has passed from the recording of the declaration, whichever occurs first.

(B) The election required in subsection (A) must be held within ninety days after the occurrence that triggered the election. The declarant shall give each homeowner at least twenty‑one days’ notice of the meeting in which the election will occur, and the names, addresses, and weighted votes of each homeowner entitled to vote at the meeting, including that of the declarant; provided, however, that the declarant may not have a weighted vote. With respect to subsequent elections of board members, the association shall provide each homeowner with the same notice and other information that the declarant was required to provide for the election of the new or reconstituted board in this subsection.

Section 27‑28‑140. (A) A person who is elected to serve on the board of a homeowners association shall, within thirty days after his election to the board, register with the Real Estate Commission’s online registration and become certified by commission by completing a four hour orientation program developed or approved by the commission.

(B) An orientation program must include, but is not limited to, the following subjects:

(1) fiduciary obligations;

(2) parliamentary procedure and conduct of public meetings;

(3) requirements of the association’s governing documents;

(4) financial duties, budgeting, and reserves; and

(5) state and federal laws concerning common interest communities.

(C) A person may complete the orientation either by viewing the orientation online, attending an orientation sponsored by the commission, or attending an orientation conducted by the association and approved by the commission.

(D) The association must notify the commission of when a board member:

(1) completes the orientation, at which time the commission shall designate the board member as certified; and

(2) does not complete the orientation, at which time the commission shall remove the name of the board member from the registry. A person whose name is removed from the registry pursuant to this item is not prohibited from subsequently registering with the commission and completing the orientation requirements.

(E) The association must maintain a record of board members’ orientation attendance for inspection by homeowners, and retain the records for a particular board member for one year after he leaves the board.

Section 27‑28‑150. (A) A homeowner has the right to inspect or copy association records, except as provided by Section 27‑28‑160, pursuant to reasonable rules concerning time and place of access.

(B) The association may establish and collect fees not to exceed the actual cost of making copies of association records, but may charge no fee for the transmission of these documents in an electronic format.

Section 27‑28‑160. An association may exempt from disclosure the following information:

(1) matters concerning competitive bidding, or proposed contractual arrangements, except that these matters must be disclosed after a contractual arrangement has been entered;

(2) information of a personal nature where disclosure would constitute an unreasonable invasion of personal privacy of a homeowner or employee. This provision must not be interpreted to restrict access by homeowners to a list of homeowners and their addresses, except that such a list must not be requested or distributed for commercial solicitation;

(3) records concerning law enforcement, public safety, and security matters;

(4) matters specifically exempted from disclosure by statute or law;

(5) employment matters, except that a final decision concerning the following must be disclosed:

(a) the creation of a position;

(b) the hiring, firing, or discipline of an employee; and

(c) the salary and benefits for an employee paid for by association funds; and

(6) correspondence or work products that would violate an attorney‑client relationship.

Section 27‑28‑170. (A) An association must give written public notice of its regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of these meetings.

(B) Written public notice of an agenda must be available at least twenty‑four hours prior to a meeting.

(C) Before the association may hold a called, special, or rescheduled meeting, it must provide written public notice as soon as practicable and include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings.

(D) Any public notice required under this section must be posted in a conspicuous, common area in the community designated for public notices.

Section 27‑28‑180. (A) An association may not place a lien against the property of a homeowner or otherwise fine or assess costs against a homeowner without first giving the homeowner an opportunity to address the underlying basis for the lien, fine, or assessment to the full board. The association must notify the homeowner of the intent of the association to file the lien or impose the fine or assessment, after which the homeowner has twenty business days in which to demand a hearing before the board. Upon receipt of a demand for a hearing by a homeowner, the board shall set a time and place for a special hearing regarding the matter, which must be within ten business days after its receipt of the demand. The board must conduct the meeting in executive session, unless the homeowner requests that the hearing be conducted publicly.

(B) The homeowner may record the hearing, whether or not it is conducted in executive session, by means of audio or video reproduction, provided that:

(1) the recording does not actively interfere with the conduct of the meeting; and

(2) the association is not required to furnish recording facilities or equipment.

Section 27‑28‑190. (A) A homeowner or association may apply to the magistrates court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter. The court may order equitable relief as it considers appropriate.

(B) A prevailing homeowner or association seeking relief under this chapter may be awarded reasonable attorney’s fees and other costs of litigation in the discretion of the court.”

SECTION 2. Chapter 57, Title 40 of the 1976 Code is amended by adding:

“Section 40‑57‑63. (A) In addition to the powers and duties provided in Section 40‑47‑60, the commission shall:

(1) develop an orientation program for new homeowners association board members consistent with Section 27‑28‑140;

(2) conduct quarterly orientations for new homeowners association board members or continuously make this orientation available online;

(3) develop and maintain an online database registry of homeowners associations, which must include the:

(a) name, physical address, mailing address, and telephone number of an association;

(b) names and contact information of an association’s board members; and

(c) copies of declarations, bylaws, and related governing documents of an association provided by the association, pursuant to Section 27‑28‑120, to the department.

(B) The commission may charge a fee for the registration of a homeowners association as determined by the department through regulation. The department shall collect these fees, which only may be used to defray the costs associated with implementing the provisions of this section.

(C) As used in this section:

(1) ‘Association board’ has the same meaning as in Section 27‑28‑110(1);

(2) ‘Governing documents’ has the same meaning as in Section 27‑28‑110(3);

(3) ‘Homeowners’ has the same meaning as in Section 27‑28‑110(4); and

(4) ‘Homeowners association’ or ‘association’ has the same meaning as in Section 27‑28‑110(5).”

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

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