**South Carolina General Assembly**

122nd Session, 2017-2018

**S. 104**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Rankin

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Companion/Similar bill(s): 82, 122, 576, 3301, 3886

Introduced in the Senate on January 10, 2017

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

Summary: S.C. Homeowners Association Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/13/2016 Senate Prefiled

12/13/2016 Senate Referred to Committee on **Judiciary**

1/10/2017 Senate Introduced and read first time ([Senate Journal‑page 60](file:///h:\sj\20170110.docx))

1/10/2017 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 60](file:///h:\sj\20170110.docx))

1/20/2017 Senate Referred to Subcommittee: Malloy (ch), Climer, Goldfinch

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**VERSIONS OF THIS BILL**

[12/13/2016](file:///p:\pprever\2017-18\104_20161213.docx)

**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; TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 30 TO TITLE 27, SO AS TO ENACT “THE SOUTH CAROLINA HOMEOWNERS ASSOCIATION ACT”; TO AMEND SECTION 27-50-30, RELATING TO CERTAIN TRANSFERS THAT DO NOT REQUIRE RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENTS, SO AS TO PROVIDE THAT IF THE PROPERTY IS SUBJECT TO A HOMEOWNERS ASSOCIATION, THE DISCLOSURE STATEMENT MUST BE PROVIDED TO ANY PURCHASER, INCLUDING THE FIRST SALE OF A DWELLING NEVER INHABITED; AND TO AMEND SECTION 33-31-171, RELATING TO AUTHORIZING THE ATTORNEY GENERAL TO INVESTIGATE THE ORGANIZATION, CONDUCT, AND MANAGEMENT OF A NONPROFIT CORPORATION, SO AS TO SPECIFY THAT AUTHORIZATION INCLUDES INVESTIGATION OF HOMEOWNERS ASSOCIATIONS.

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. The 1976 Code is amended by adding:

“CHAPTER 30

The South Carolina Homeowners Association Act

Section 27‑30‑10. This chapter shall be known and cited as the ‘South Carolina Homeowners Association Act’.

Section 27‑30‑20. As used in this chapter, unless the context clearly indicates otherwise:

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

Section 27-30-30. (A) The Attorney General or his designee is established as the State Homeowners Association Ombudsman to investigate the organization, conduct, and management of homeowners associations operating in this State.

(B) Every homeowners association must permit the Attorney General or any of his authorized assistants or representatives to examine and take copies of all of its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, articles, bylaws, and any and all other records of any such corporation as often as the Attorney General considers necessary to show or tend to show that the corporation has been, or is, engaged in acts or conduct in violation of its governing documents or in violation of any law of this State.

Section 27-30-40. The duties of the Attorney General or his designee as the State Homeowners Association Ombudsman are to:

(1) receive complaints concerning potential violations of the law, regulations, or governing documents involving a homeowners association;

(2) investigate the complaints received and, if meritorious and appropriate, provide meetings, mediation, or other forms of alternative dispute resolution to those parties involved in order to assist in the resolution of the complaint;

(3) beginning January 1, 2018, offer an online instructional course covering the basics of homeowners association governance and the rights and responsibilities of owners. The online course must be offered at no charge and open to the public. The completion of such a course is not a requirement to serve on a homeowners association board; and

(4) make an annual report to the Governor and the General Assembly prior to December first that includes the following information:

(a) statistics on the number of inquiries and complaints handled by the Ombudsman;

(b) information on education and outreach efforts by the Ombudsman;

(c) recommendations for state law revisions to improve the operation of homeowners associations.

Section 27-30-50. The Department of Consumer Affairs and the Real Estate Commission in the Department of Labor, Commerce and Regulation are authorized to comply with any requests by the Attorney General or his designee to assist in performing the responsibilities of this chapter.”

SECTION 3. Section 27-50-30 of the 1976 Code is amended to read:

“Section 27‑50‑30. (A) This article does not apply to transfers:

(1) pursuant to court order including transfers in administration of an estate, pursuant to a writ of execution, by foreclosure sale, by a trustee in bankruptcy, by a receiver, by eminent domain, and resulting from a decree for specific performance;

(2) to a mortgagee from the mortgagor or his successor in interest in a mortgage if the indebtedness is in default, by a trustee pursuant to a deed of trust or to a mortgagee pursuant to a mortgage if the indebtedness is in default, by a trustee under a mortgagee pursuant to a foreclosure sale, or by a mortgagee who has acquired the real property at a sale conducted pursuant to a judgment and order of foreclosure;

(3) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(4) from one or more co‑owners solely to one or more other co‑owners;

(5) made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors;

(6) between spouses resulting from a divorce decree or support order or marital property distribution order;

(7) made by virtue of the record owner's failure to pay federal, state, or local taxes;

(8) to or from the federal government;

(9) to the State, its agencies and departments, and its political subdivisions including school districts;

(10) involving the first sale of a dwelling never inhabited, except as provided in subsection (B);

(11) real property sold at public auction;

(12) to a residential trust;

(13) between parties when both parties agree in writing not to complete a disclosure statement;

(14) of a vacation time sharing plan as defined in Section 27‑32‑10(9); and

(15) of a vacation multiple ownership interest as described in Section 27‑32‑250.

(B) A disclosure statement developed by the commission for purchasers of property subject to a homeowners association, a property owners association, a condominium owners association, a horizontal property regime, or similar organizations subject to covenants, conditions, restrictions, bylaws, or rules must be provided by an owner to any purchaser, including the first sale of a dwelling never inhabited.”

SECTION 4. Section 33-31-171 of the 1976 Code is amended to read:

“Section 33‑31‑171. The Attorney General, or any of his assistants or representatives when authorized by the Attorney General, may make investigations into the organization, conduct, and management of a nonprofit corporation, domestic or foreign, including homeowners associations as provided in Chapter 30 of Title 27, operating in this State. Every such corporation shall permit the Attorney General or any of his authorized assistants or representatives to examine and take copies of all its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, articles, bylaws, and any and all other records of any such corporation as often as the Attorney General may deem it necessary to show or tend to show that the corporation has been, or is, engaged in acts or conduct in violation of its charter rights and privileges or in violation of any law of this State.”

SECTION 5. This act takes effect upon approval by the Governor.

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