**South Carolina General Assembly**

122nd Session, 2017-2018

**H. 3065**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Ryhal

Document Path: l:\council\bills\agm\19013wab17.docx

Introduced in the House on January 10, 2017

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Homeowners Association Ombudsman

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/15/2016 House Prefiled

12/15/2016 House Referred to Committee on **Labor, Commerce and Industry**

1/10/2017 House Introduced and read first time ([House Journal‑page 61](file:///h:\hj\20170110.docx))

1/10/2017 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 61](file:///h:\hj\20170110.docx))

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**VERSIONS OF THIS BILL**

[12/15/2016](file:///p:\pprever\2017-18\3065_20161215.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 32 TO TITLE 37 SO AS TO CREATE THE OFFICE OF HOMEOWNERS ASSOCIATION OMBUDSMAN IN THE DEPARTMENT OF CONSUMER AFFAIRS; TO PROVIDE QUALIFICATIONS, POWERS, AND DUTIES OF THE OMBUDSMAN; TO REQUIRE THE DEPARTMENT TO FACILITATE AND MAINTAIN A REGISTRY OF HOMEOWNERS ASSOCIATIONS; TO ESTABLISH PROCEDURES FOR FILING AND RESOLVING COMPLAINTS CONCERNING HOMEOWNERS ASSOCIATIONS; AND TO PROVIDE CERTAIN DEFINITIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 37 of the 1976 Code is amended by adding:

“CHAPTER 32

Homeowners Association Ombudsman

Section 37‑32‑110. This chapter must be known and may be cited as the ‘Homeowners Association Ombudsman Act’.

Section 37‑32‑120. For the purposes of this chapter:

(1) ‘Bylaws’ means the recorded document, and recorded amendments to it, that contain the procedures for conducting the affairs of a homeowners association, regardless of the form of the association’s legal entity or the name by which the document comprising the bylaws is identified.

(2) ‘Declarant’ means a person or group of persons acting in concert who:

(a) as part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or

(b) reserves or succeeds to a special declarant right, which means a right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration or bylaws of the association.

(3) ‘Declaration’ means the recorded instruments, however denominated, that create a homeowners association, including amendments to those instruments.

(4) ‘Department’ means the Department of Consumer Affairs.

(5) ‘Director’ means the Director of the Department of Consumer Affairs.

(6) ‘Executive board’ means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.

(7) ‘Homeowner’ means a declarant or other person who owns a unit in a homeowners association, but does not include a person having an interest in such a unit solely as security for an obligation.

(8) ‘Homeowners association’ means real estate described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration.

(9) ‘Office’ means the Office of the Homeowners Association Ombudsman established in this chapter.

(10) ‘Ombudsman’ means the homeowners association ombudsman established in this chapter.

(11) ‘Registry’ means the homeowners association registry established in Section 37‑32‑170.

(12) ‘Rule’ or ‘rules’ means a rule, procedure, or regulation of the association, however denominated, that does not appear in the declaration or bylaws and that governs either the management of the homeowners association or the conduct of persons or property within the homeowners association and adopted by the association.

(13) ‘Unit’ means a tract or parcel of land governed by the homeowners association and designated for separate ownership or occupancy, including all improvements contained within the space except those excluded in the declaration. A unit may include two or more noncontiguous spaces. The association’s interest in a unit is unaffected if the unit is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner.

Section 37‑32‑130. (A) There is established within the department the Office of the Homeowners Association Ombudsman.

(B) The director shall appoint the ombudsman, consistent with the qualifications set forth in Section 37‑32‑140.

(C) The ombudsman is the head of the office and is charged with managing the office consistent with the powers and duties vested in the ombudsman by this chapter, within the limitations of the funds appropriated by the General Assembly.

(D) The ombudsman shall serve at the pleasure of the director.

(E) A vacancy in the ombudsman position is filled in the same manner as the original appointment.

Section 37‑32‑140. The ombudsman must:

(1) be a licensed attorney in good standing in this State;

(2) have at least five years of experience in the practice of law in this State;

(3) have experience in real estate law, including homeowners association law;

(4) be a certified civil mediator;

(5) not engage in any other business or profession that conflicts with the powers and duties of the position or the office; and

(6) satisfy any additional criteria established by the director.

Section 37‑32‑150. The ombudsman shall:

(1) contact declarants, homeowners, homeowners associations, the executive boards of homeowners associations, and other interested parties to inform them of the services available through the office;

(2) maintain a publicly available Internet website containing information about the office, contact information, services available through the office, information required to be placed on the website by other provisions of this chapter, and other information considered appropriate by the ombudsman;

(3) assist declarants, homeowners, homeowners associations, executive boards of homeowners associations, and other interested parties in understanding their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective homeowners association; provided, however, that:

(a) the ombudsman is not the attorney for declarants, homeowners associations, executive boards of homeowners associations, or other interested parties;

(b) no attorney‑client relationship may be implied or established by the ombudsman’s communication with those persons; and

(c) the ombudsman may not act as or appear to act as an attorney in a legal action brought by those persons;

(4) organize and conduct meetings to educate declarants, homeowners associations, executive boards of homeowners associations, and other interested parties about their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective homeowners association;

(5) prepare, publish, and make available online educational and reference materials about homeowners communities, including general information about the roles, rights, and responsibilities of the various parties, suggestions for the orderly operation of the homeowners association, mechanisms for internal dispute resolution, and other information considered appropriate by the ombudsman;

(6) develop and publicize procedures intended to result in fair elections for members and officers of a homeowners association;

(7) provide monitors and vote counting services to homeowners associations, intended to result in fair elections for members and officers of a homeowners association, when fifteen percent of the total voting interests of a homeowners association, or six homeowners, whichever is greater, petition the ombudsman for these services;

(8) provide meetings, mediation, or other forms of alternative dispute resolution as requested by declarants, homeowners, homeowners associations, executive boards of homeowners associations, or other interested parties;

(9) receive complaints from declarants, homeowners associations, executive boards of homeowners associations, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective homeowners association;

(10) investigate 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;

(11) subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of books, papers, records, or other evidence needed to exercise the powers or the performance of the duties vested in the ombudsman or his designee, who must be an employee of the office and who is a licensed attorney in good standing in this State;

(12) establish and publish, in print and on the office’s website:

(a) procedural rules for meetings, mediation, or other forms of alternative dispute resolution organized pursuant to this section; and

(b) procedures and forms for accepting complaints from declarants, homeowners associations, executive boards of homeowners associations, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective homeowners association;

(13) make an annual report of the office’s activities to the Governor and the General Assembly before December first, provided this report must include:

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

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

(c) concerns expressed to the office by declarants, homeowners, homeowners associations, executive boards of homeowners associations, or other interested parties, including input received in county meetings conducted pursuant to item (15);

(d) legal developments impacting homeowners communities, associations, or both;

(e) recommendations to the General Assembly for changes to state law to improve the regulation and operation of homeowners communities; and

(f) other information considered appropriate by the ombudsman;

(14) organize and hold public meetings as the ombudsman considers necessary, to gain a comprehensive sense of the issues facing homeowners communities in this State, with at least one meeting held in each county at a convenient place within that county;

(15) direct the work of the office consistent with the powers and duties established by this section;

(16) employ and supervise staff necessary to assist in carrying out the powers and duties established by this section, within the limitations of funds appropriated by the General Assembly; and

(17) perform any other function necessary to fulfill the powers and duties outlined in this section.

Section 37‑32‑160. (A) When a declarant, homeowner, homeowners association, executive board of a homeowners association, or other interested party contacts the office to make an inquiry, request services, or file a complaint, the declarant, homeowner, homeowners association, executive board, or other interested party shall provide the office with the:

(1) name, address, telephone number, and any other contact information for the homeowners association;

(2) name of the person engaged in property management for the homeowners association or the name of the person who manages the property at the site of the homeowners association;

(3) name, mailing address, telephone number, and other contact information for those on the executive board of the homeowners association;

(4) name, mailing address, telephone number, and other contact information for the declarant;

(5) declaration, bylaws, and rules for the homeowners association;

(6) annual budget adopted by the homeowners association;

(7) number of units in the homeowners association; and

(8) total annual assessment made by the homeowners association pursuant to Section 37‑32‑180.

(B) The ombudsman may waive the requirement created in subsection (A), and shall make such a waiver if the complainant provides any reasonable evidence that an adverse party that possesses the information is failing to timely provide the information in good faith.

Section 37‑32‑170. (A) The department shall develop and maintain a registry of homeowners associations, which must be known as the Homeowners Association Registry, before September 1, 2017.

(B)(1) Each homeowners association in the State shall register with the department before January 1, 2018.

(2) For each homeowners association, the registry must include the:

(a) number of units in the association, updated quarterly to reflect the number of units no longer owned by the declarant; and

(b) name, mailing address, physical address, telephone number, and email address of the association and each of its officers.

(3) A registration must be updated within thirty days of any change in required information.”

SECTION 2. This act takes effect upon approval by the Governor.

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