

South Carolina General Assembly

122nd Session, 2017-2018

A245, R245, H3886

STATUS INFORMATION

General Bill

Sponsors: Reps. Crawford, Ryhal, Hamilton, Sandifer, Fry, Putnam, Clemmons, Yow, Anderson, Johnson, Hardee, Huggins, Hewitt, Duckworth, Bowers, Sottile, Crosby, Felder, Bennett, Thigpen, Whipper, Brown, Hixon, Taylor, King, Daning, Spires, Henderson, Pitts, Kirby, White, McCravy, Hill, Gagnon, West, Wheeler, Davis, Murphy, Hayes, Ott, V.S. Moss, Lowe, Jordan and McKnight

Document Path: I:\council\bill\agm\19130wab17.docx

Companion/Similar bill(s): 82, 104, 122, 576, 3301

Introduced in the House on March 2, 2017

Introduced in the Senate on April 4, 2017

Last Amended on April 26, 2018

Passed by the General Assembly on May 1, 2018

Governor's Action: May 17, 2018, Signed

Summary: Homeowner's Associations

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/2/2017	House	Introduced and read first time (House Journal-page 9)
3/2/2017	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 9)
3/9/2017	House	Member(s) request name added as sponsor: Bowers
3/13/2017	House	Member(s) request name added as sponsor: Sottile
3/13/2017	House	Committee report: Favorable with amendment Labor, Commerce and Industry (House Journal-page 3)
3/14/2017	House	Member(s) request name added as sponsor: Crosby
3/14/2017		Scrivener's error corrected
3/14/2017	House	Member(s) request name added as sponsor: Felder
3/21/2017	House	Member(s) request name added as sponsor: Bennett, Thigpen
3/21/2017	House	Debate adjourned until Wed., 3-22-17 (House Journal-page 134)
3/22/2017	House	Requests for debate-Rep(s). Crawford, Sandifer, B Newton, Tallon, Norrell, Mack, Whitmire, Forester, Hamilton, GR Smith, Loftis, Crosby, Clary, Magnuson, McKnight, Hosey, Kirby, Clemmons, W Newton, Douglas, Williams, Jefferson, Ott, King, Cobb-Hunter, Finlay, Hart, Thigpen, Yow, Johnson, Henegan, West, Caskey, Hewitt (House Journal-page 33)
3/28/2017	House	Member(s) request name added as sponsor: S.Rivers
3/29/2017	House	Member(s) request name added as sponsor: Whipper, Brown
3/29/2017	House	Member(s) request name removed as sponsor: S.Rivers
3/29/2017	House	Member(s) request name added as sponsor: Hixon, Taylor, King, Daning, Spires, Henderson, Pitts, Kirby, White, McCravy, Hill, Gagnon, West, Wheeler, Davis, Murphy, Hayes, Ott, V.S.Moss, Lowe, McKnight, Jordan
3/29/2017	House	Debate adjourned until Thur., 3-30-17 (House Journal-page 79)
3/30/2017	House	Amended (House Journal-page 62)
3/30/2017	House	Read second time (House Journal-page 62)
3/30/2017	House	Roll call Yeas-91 Nays-0 (House Journal-page 71)

3/30/2017 House Unanimous consent for third reading on next legislative day ([House Journal-page 72](#))
3/31/2017 House Read third time and sent to Senate ([House Journal-page 2](#))
4/4/2017 Senate Introduced and read first time ([Senate Journal-page 10](#))
4/4/2017 Senate Referred to Committee on **Judiciary** ([Senate Journal-page 10](#))
4/7/2017 Senate Referred to Subcommittee: Rankin (ch), Hutto, Johnson, Turner, Gambrell
4/19/2017 Senate Committee report: Favorable **Judiciary** ([Senate Journal-page 9](#))
3/29/2018 Senate Amended ([Senate Journal-page 30](#))
3/29/2018 Senate Read second time ([Senate Journal-page 30](#))
3/29/2018 Senate Roll call Ayes-39 Nays-0 ([Senate Journal-page 30](#))
4/3/2018 Scrivener's error corrected
4/9/2018 Senate Read third time and returned to House with amendments ([Senate Journal-page 31](#))
4/11/2018 House Debate adjourned until Tues., 4-17-18 ([House Journal-page 16](#))
4/17/2018 House Debate adjourned until Wed., 4-18-18 ([House Journal-page 16](#))
4/18/2018 House Debate adjourned until Thur., 4-19-18 ([House Journal-page 69](#))
4/19/2018 House Debate adjourned until Wed., 4-25-18 ([House Journal-page 48](#))
4/25/2018 House Debate adjourned until Thur., 4-26-18 ([House Journal-page 69](#))
4/26/2018 House Senate amendment amended ([House Journal-page 28](#))
4/26/2018 House Roll call Yeas-104 Nays-0 ([House Journal-page 37](#))
4/26/2018 House Returned to Senate with amendments ([House Journal-page 28](#))
5/1/2018 Senate Concurred in House amendment and enrolled ([Senate Journal-page 19](#))
5/1/2018 Senate Roll call Ayes-41 Nays-0 ([Senate Journal-page 19](#))
5/14/2018 Ratified R 245
5/17/2018 Signed By Governor
5/30/2018 Effective date 05/17/18
5/31/2018 Act No. 245

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VERSIONS OF THIS BILL

[3/2/2017](#)
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[4/3/2018](#)
[4/26/2018](#)

(A245, R245, H3886)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 30 TO TITLE 27 SO AS ENACT THE “SOUTH CAROLINA HOMEOWNERS ASSOCIATION ACT”, TO PROVIDE NECESSARY DEFINITIONS, TO PROVIDE RECORDING REQUIREMENTS FOR THE ENFORCEABILITY OF HOMEOWNERS ASSOCIATION GOVERNING DOCUMENTS, TO PROVIDE REQUIREMENTS CONCERNING HOMEOWNERS ASSOCIATION RULES AND REGULATIONS, TO PROVIDE HOMEOWNERS ASSOCIATIONS MUST COMPLY WITH CERTAIN NOTICE REQUIREMENTS BEFORE ADOPTING ANNUAL BUDGET INCREASES, AND TO PROVIDE MAGISTRATES COURTS HAVE JURISDICTION TO ADJUDICATE CERTAIN MONETARY DISPUTES BETWEEN HOMEOWNERS ASSOCIATIONS AND HOMEOWNERS; AND TO ENACT THE “DEPARTMENT OF CONSUMER AFFAIRS SERVICES FOR HOMEOWNERS AND HOMEOWNERS ASSOCIATIONS ACT”, TO PROVIDE RELATED DEFINITIONS, TO PROVIDE REQUIREMENTS OF THE DEPARTMENT OF CONSUMER AFFAIRS CONCERNING THE RECEIPT AND PROCESSING OF COMPLAINTS INVOLVING HOMEOWNERS ASSOCIATIONS, TO AUTHORIZE THE DEPARTMENT TO INCLUDE CERTAIN RELATED INFORMATION AND EDUCATIONAL MATERIALS ON ITS INTERNET WEBSITE, TO PROVIDE THE DEPARTMENT SHALL COMPILE AND ANNUALLY REPORT CERTAIN RELATED DATA TO THE GOVERNOR AND THE GENERAL ASSEMBLY, TO PROVIDE THE DEPARTMENT SHALL POST THESE REPORTS ON ITS INTERNET WEBSITE, TO PROHIBIT THE DEPARTMENT FROM PROMULGATING CERTAIN RELATED REGULATIONS OR ISSUING CERTAIN RELATED GUIDELINES, AND TO PROHIBIT THE DEPARTMENT FROM ARBITRATING DISPUTES BETWEEN HOMEOWNERS AND HOMEOWNERS ASSOCIATIONS; AND TO AMEND SECTION 27-50-40, RELATING TO RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENTS, SO AS TO REQUIRE THESE STATEMENTS INCLUDE WHETHER PROPERTY IS SUBJECT TO GOVERNANCE OF A HOMEOWNERS ASSOCIATION WHICH CARRIES CERTAIN RIGHTS AND OBLIGATIONS THAT MAY LIMIT USE OF THE PROPERTY AND INVOLVE FINANCIAL OBLIGATIONS.

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

Homeowners Associations, Consumer Affairs services

SECTION 1. Title 27 of the 1976 Code is amended by adding:

“CHAPTER 30

Homeowners Associations

Article 1

South Carolina Homeowners Association Act

Section 27-30-110. This article may be cited as the ‘South Carolina Homeowners Association Act’.

Section 27-30-120. As used in this article:

(1) ‘Board’ means the representative body, regardless of name, designated in the governing documents to act on behalf of a homeowners association and govern the association.

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

(a) as part of a common promotional plan, subdivide and offer to dispose of an interest the person or group has in a unit in real property; or

(b) reserve or succeed to a special declarant right, which means a right created under the declaration or bylaws for the person or group to retain or exercise authority in addition to regular declarant rights in a unit of real property.

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

(4) ‘Governing documents’ means declaration, master deeds, or bylaws, or any amendments to the declaration, master deeds, or bylaws.

(5) ‘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.

(6) ‘Homeowners association’ or ‘association’ means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned

community or horizontal property regime, to pay assessments 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. A 'homeowners association' or 'association' does not include a vacation timesharing plan organized and subject only to the provisions of Chapter 32.

(7) 'Homeowners association management company' means a corporation, limited liability company, partnership, trust, association, sole proprietorship, or other similar organization engaging in the business of managing homeowners associations.

(8) 'Unit' means an apartment in a horizontal property regime, or a lot in a subdivision.

Section 27-30-130. (A)(1) Except as otherwise provided in this section, in order to be enforceable, a homeowners association's governing documents must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.

(2) To continue to be enforceable, any governing document not recorded prior to the effective date of this section must be recorded by January tenth of the year following the effective date of this section in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.

(B)(1) Rules, regulations, and amendments to rules and regulations:

(a) are effective upon passage or adoption; and

(b) must be made accessible to a homeowners association member upon the request of that member of the homeowners association, and, at the option of the homeowners association, via electronic mail or through methods provided by the homeowners association's bylaws that ensure actual notice, unless they are:

(i) posted in a conspicuous place in a common area in the community; or

(ii) available on an Internet website maintained by the homeowners association, where they may be downloaded by the homeowner.

(2) In order to remain enforceable, a homeowners association's rules, regulations, and amendments to rules and regulations must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county in which the property is located by January tenth of each year following their adoption or amendment.

(C) Homeowners associations in existence on the effective date of this section must record the documents required by subsections (A)(1) and (B)(2) by January tenth following the effective date of this section.

(D) The recording of the rules, regulations, bylaws, and amendments to rules and regulations are not subject to the requirements of witnesses and acknowledgements required under Section 30-5-30.

Section 27-30-140.(1) Before a homeowners association may take action to increase an annual budget in any single year, the homeowners association must provide notice to homeowners at least forty-eight hours in advance of the meeting in which a decision to raise the annual budget is made. Notice of the meeting may be through posting notice:

- (a) in a conspicuous place in a common area in the community;
- (b) on an Internet website maintained by the homeowners association;
- (c) by electronic mail; or
- (d) through methods provided in the association's bylaws that ensure actual notice.

(2) The provisions of this section do not apply to a homeowners association that is incorporated under the South Carolina Nonprofit Corporation Act found in Chapter 31, Title 33.

Section 27-30-150. The access to documents provisions of Sections 33-31-1602, 33-31-1603, 33-31-1604, and 33-31-1605 apply to all homeowners associations not subject to the South Carolina Nonprofit Corporation Act for the purposes of allowing homeowners access to inspect and copy a homeowners association's annual budget and homeowners membership lists.

Section 27-30-160. Pursuant to Section 22-3-10, the magistrates court shall have concurrent jurisdiction to adjudicate monetary disputes arising under this article, provided the dispute meets the jurisdictional requirements of Section 22-3-10.

Section 27-30-170. No provision of this article may be construed to be in conflict with the provisions of the South Carolina Nonprofit Corporation Act.

Article 3

Department of Consumer Affairs Services for Homeowners and Homeowners Associations

Section 27-30-310. This article must be known and may be cited as the 'Department of Consumer Affairs Services for Homeowners and Homeowners Associations Act'.

Section 27-30-320. For the purposes of this article:

(1) 'Board' means the representative body, regardless of name, designated in the governing documents to act on behalf of a homeowners association and govern the association.

(2) 'Bylaws' means the document, and 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.

(3) 'Declarant' means a person or group of persons acting in concert who:

(a) as part of a common promotional plan, subdivide and offer to dispose of an interest the person or group has in a unit in real property; or

(b) reserve or succeed to a special declarant right, which means a right created under the declaration or bylaws for the person or group to retain or exercise authority in addition to regular declarant rights in a unit of real property.

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

(5) 'Department' means the Department of Consumer Affairs.

(6) '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.

(7) 'Homeowners association' or 'association' means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments 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. A 'homeowners association' or 'association' does not include a vacation timesharing plan organized and subject only to the provisions of Chapter 32.

(8) 'Homeowners association management company' means a corporation, limited liability company, partnership, trust, association, sole proprietorship, or other similar organization engaging in the business of managing homeowners associations.

(9) 'Unit' means an apartment in a horizontal property regime, or a lot in a subdivision.

Section 27-30-330. The department is authorized to include on its publicly available Internet website:

(1) information for homeowners and homeowners associations concerning how they may contact the department on its toll free number or submit complaint forms;

(2) information concerning the governance of homeowners associations as provided in this chapter and other provisions of the South Carolina Code of Laws; and

(3) educational and reference materials about homeowners associations, including general information about the roles, rights, and responsibilities of the board, declarant, homeowners, and other parties.

Section 27-30-340. (A) The department shall receive and record data from any calls or written complaints from homeowners or homeowners associations.

(B) When a call or written complaint is received, the department shall, at a minimum, include the following information to be completed on a form completed by a homeowner or homeowners association or, if received by telephone, on a form completed by a department employee who is identified on the form:

(1) homeowner's name;

(2) name of the homeowners association and their contact information, including the county and city where it is located;

(3) name of the homeowners association management company, if any, and its contact information, including telephone number, owner's name, and street and mailing addresses;

(4) whether a homeowner:

(a) was informed of the requirement of membership in a homeowners association as a condition of home ownership, including when that information was provided and by whom;

(b) received a copy of the governing documents of the homeowners association and if the copy was obtained before or after receiving title to the unit;

(c) was denied access to the governing documents and, if so, what remedies the homeowner took to obtain the governing documents;

(d) understands his rights and obligations under the governing documents;

(5) the nature of the homeowner's or homeowners association's complaint;

(6) whether the homeowner attempted to communicate his complaint to the homeowners association or homeowners association management company, if any, and whether the homeowner exhausted all of his remedies in accordance with any terms set out in the homeowners

association governing documents or rules and regulations, what action, if any, the homeowners association or homeowners association management company, if any, took concerning the complaint;

(7) whether the homeowner agrees or disagrees with the provisions of the governing documents;

(8) whether the homeowner agrees or disagrees with how the provisions were enforced, his recommendations for changing the provisions or means of enforcement, and whether the homeowner feels that more or less enforcement is needed; and

(9) any response received from a homeowners association or homeowner, relative to a specific complaint provided by the department and whether or not a response was provided by the applicable homeowners association or homeowner.

(C) Upon receiving a homeowner's or homeowners association's complaint, the department shall provide the complaint to the homeowners association or the homeowner complained against in a manner that verifies receipt of such complaint by the homeowners association or homeowner, so the homeowner, board, or homeowners association may determine if the homeowner, board, or homeowners association desires to make a response to the complaint.

(D) By January thirty-first of each year, the department shall make a report of all data collected from the full report categories collected and complaints received as provided in this section to:

(1) the Governor and the General Assembly; and

(2) the public through the department's website. The public report must include categorized, filterable, and searchable information compiled from the complaints and responses and redact any personal or private information, such as names, addresses, and telephone numbers, contained in the complaints and responses. This redaction requirement does not apply to information concerning a homeowners association and a homeowners association management company.

(3) For data to be included in the report, the form must be executed by the homeowner, homeowners association, or department employee.

(E) Under the provisions of this article, the department is prohibited from:

(1) promulgating regulations or issuing guidelines concerning homeowners association administration, governance, or governing documents; or

(2) serving as an arbiter in disputes between the homeowner and homeowners association."

Residential property condition disclosure statements

SECTION 2. Section 27-50-40(A) of the 1976 Code is amended to read:

“(A) Except for transactions exempted under Section 27-50-30, 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 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;
- (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) whether the property is subject to governance of a homeowners association, as provided in Chapter 30 of this title, which carries certain rights and obligations that may limit the use of his property and involve financial obligations.”

Time effective

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

Ratified the 14th day of May, 2018.

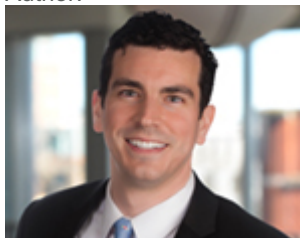
Approved the 17th day of May, 2018.

2018 South Carolina Legislation on Homeowners Associations

New Residential Real Estate Law Requires Public Access to Homeowner Association Documents, New Seller Disclosures and Authorizes State Government to Field Homeowner Complaints in South Carolina

June 27, 2018

Author:



[John P. Carroll](#)

For years the South Carolina legislature has considered regulating the operation of homeowner associations (HOAs) within the

state. In 2016, the South Carolina Committee on Homeowners Associations (Committee) was established by the 2015-2016 Appropriation Act. The Committee researched a variety of issues, including expanding the role of state government to regulate the governance of HOAs. Two years later, the Committee's efforts resulted in legislative support of *House Bill H.3886*, which was signed into law by Governor Henry McMaster and made effective on May 17, 2018. The enacted legislation created the South Carolina Homeowners Association Act (SCHA Act), the Department of Consumer Affairs Services for Homeowners and Homeowners Associations Act (DCA Act) and revises other portions of the South Carolina Code of Laws to accommodate new seller disclosure requirements.

SCHA Act - South Carolina Homeowners Association Act

The SCHA Act creates several new requirements which will impact HOAs throughout the state. The SCHA Act requires HOAs to record in county public records any governing documents adopted by the HOA on or before January 10th of the calendar year following the year in which such document was adopted. Documents such as HOA bylaws, and amendments thereto, are subject to this new rule.

In addition, any rules or regulations adopted by the HOA must also be recorded. The bill remains somewhat unclear as to what types of documents constitute "rules and regulations" so until this is clarified - by the courts or by other means - some documents not customarily recorded, such as architectural review standards, will likely need to be recorded, pursuant to this new rule.

This precaution ensures that a diligent buyer, title abstractor or closing attorney will have access to such records, which increases transparency which benefits buyers. Many well-established communities managed by HOAs have already recorded such documents or otherwise made them publicly available, however, in order to ensure compliance with the SCHA Act, many HOAs will be required to review various records, governing documents and

adopted rules to confirm that all relevant documents are recorded.

Of note, governing documents adopted prior to the enactment of the SCHA Act are not grandfathered in to the recording requirements implemented by the SCHA Act. No HOA will have the ability to enforce the terms found within such documents unless the documents are recorded by January 10, 2019. Also, the new recording requirement applicable to rules and regulations only appear to apply to those rules adopted by an HOA. Rules adopted by another governing entity within the same community, such as a recreational club, are not subject to this rule.

The SCHA Act also requires some HOAs to adhere to certain mandatory procedures before it can take action to increase its annual budget as well as allowing member access to certain HOA records, however these new procedures only apply to HOAs not organized pursuant to the South Carolina Nonprofit Corporation Act. Since many well-established HOAs are organized as nonprofit corporations pursuant to the South Carolina Nonprofit Corporation Act, many HOAs will not be impacted by this new rule. However, most HOAs will likely need to review various organizational documents to confirm the type of entity the HOA is organized as to confirm. Lastly, the SCHA Act provides local magistrate courts with concurrent jurisdiction to adjudicate monetary disputes among homeowners and HOAs.