

HOA Bill Revised, Signed into Law

Written by Sen. Tom Davis

Monday, 11 June 2018 07:09 - Last Updated Wednesday, 13 June 2018 05:44



Last October, I published an opinion piece explaining why, as the 2017 legislative session in Columbia drew to a close, I blocked the so-called HOA bill that had been passed by the House. I now offer this update, outlining how that bill was amended in the 2018 session, thereby allowing it to be passed by the Legislature and signed into law by the governor.

The HOA bill in 2017 contained some solid reforms: for instance, it obligated a seller of property to give copies of association documents to a purchaser and expressly provided magistrate courts (where litigants often appear *pro se*) with jurisdiction to adjudicate civil disputes that pertain to associations. And if that is all that it did, I would not have blocked it.

But that version of the HOA bill also created a new state agency called the Office of the Homeowners Association Ombudsman and vested it with broad powers to supervise and regulate the affairs of homeowners and associations, including the power to employ and supervise staff necessary to assist in carrying out the powers and duties.

I thought then, and still think now, that establishing a new state agency to regulate the private affairs of homeowners and associations was a bad idea – that creating a new system for the filing of complaints with an agency in Columbia, with the attendant requirement of homeowners and association officers traveling there to hash out their disputes, was in neither's best interests.

Equally bad, I thought, was the section that laid the groundwork for the new state agency's expansion and established a predicate for government levies; it was conceded during the subcommittee process that homeowners would end up paying fees to fund the new bureaucracy (which would be in addition to, of course, the association dues and fees they're already paying).

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At the start of the 2018 legislative session, I met with the HOA bill's author, state Rep. Heather Crawford from Myrtle Beach, and with homeowners, realtors and property managers, to see if common ground could be reached. And over the course of several weeks we worked in good faith to resolve differences, with each committed to understanding the concerns of the others.

They understood that, for me, creating a new state agency and giving it regulatory authority over what I consider to be essentially private contractual relationships was a deal killer, and that the Office of the Homeowners Association Ombudsman had to be completely excised from the HOA bill. And so it was.

For my part, I came to understand that, for Rep. Crawford, the most important thing was to insure that homeowners got actual notice of meetings where an association intended to consider fee increases. She pointed out that many homeowners associations are not incorporated under the South Carolina Nonprofit Corporation Act and, without the constraints imposed by that act, had a track record of running roughshod over homeowners.

So we added language to the HOA bill to provide that, in cases where it is not governed by the state's Nonprofit Act, "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."

I also came to understand that homeowners are often not aware of their rights and obligations under restrictive covenants, and that for many the hiring of an attorney is a prohibitively expensive option.

To address this, we added language that directed the state Department of Consumer Affairs to include on its website information on the governance of homeowners associations and other educational materials about associations, "including general information about the roles, rights, and responsibilities of the board, declarant, homeowners, and other parties."

Our finished work product ended up being something all sides were happy with, and Rep. Crawford and I offered it as a comprehensive amendment to the HOA bill. The bill as amended

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was then passed unanimously by both legislative chambers and signed into law by the governor. Now *that's* the kind of outcome we need more of in Columbia.

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