SPOTLIGHT ON PENDING LEGISLATION

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• Administrator, SC Dept. of Consumer Affairs
This presentation is not meant to serve as a substitute for reading the various laws discussed, seeking legal counsel or otherwise requesting guidance and/or interpretations on the laws from the appropriate party. The presentation merely serves as an introduction and overview of the material covered.
ROADMAP

• DCA Overview

• Legislative Process

• Pending Bills

• Resources
SCDCA Overview

• Created when the Consumer Protection Code was adopted in 1974, becoming effective January 1, 1975.

• 41 FTEs

• 1 office → 2221 Devine St., Columbia

• Over 40 statutes to administer & enforce, + accompanying regulations
  • Includes Title 37, SC Consumer Protection Code

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The Department is headed by the Administrator:

The Administrator is hired/appointed by the Commission on Consumer Affairs. The Commission is made up of 9 members:
- four appointed by the Governor,
- four elected by the General Assembly, and
- the Secretary of State
- (Commission elects its own chair.)

The Administrator also has a Council of Advisors from most areas of the creditor community to advise him on credit issues.
- The members of the Council are appointed by the Governor, and
- the Governor appoints the chair of the Council
• Organizational Structure

Commission on Consumer Affairs

Council of Advisors

Administrator

Consumer Services & Education

Administration

Advocacy

Legal

Public Information

Identity Theft Unit

Our Mission

Our mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement and education.
SCDCA Overview cont...

• Consumer Services Division

• The Consumer Services Division takes and attempts to resolve consumer complaints against businesses, with due regard for the rights of the business.

• Handle complaints against industries we regulate, and those where no one else has jurisdiction

• The Services Division receives approximately 4,000 written complaints annually

• The Division has consistently resolved about 85% of the complaints in a satisfactory manner

• Over $1 million to consumers in credits, refunds & adjustments annually


**SCDCA Overview cont...**

- Administration Division
  - Provides support for the other Divisions including personnel, accounting, data processing and purchasing
  - Houses the Administrator’s Office:
    - Issues interpretations
    - Drafts legislation, regulations
    - Advises the Governor and Legislature on issues affecting consumers
SCDCA Overview cont...

• Consumer Advocacy Division

  • Represents the public at large in intervening in insurance rate cases/ filings. Includes workers’ compensation, auto, home, etc.

  • Reviews state and federal regulations involving ratemaking or price fixing and intervenes on behalf of consumers: provides comments, briefs, testimony, etc.
• Legal Division

• The Legal Division helps the Administrator to administer and enforce the Consumer Protection Code and various other laws that have been assigned to the Department for Regulation.

• Process regulatory filings: Regulate 12 industries, 3 general filings

• Can investigate and bring enforcement actions, both administratively and in court, for violations of the Consumer Protection Code and various other laws.

• 2 of Department’s 4 investigators are commissioned law enforcement officers.
SCDCA Overview cont...

• Public Information Division

  • Serves as the main consumer education portal for consumers, business and media.

  • Staff also makes presentations and sponsors webinars on ID Theft, debt collection, foreclosures, credit and other popular topics

  • The Division also answers hundreds of calls per month pertaining to consumer scams and laws and disseminates press releases and consumer education brochures.

• Launched SCDCA-TV on YouTube and uses Twitter, Facebook
SCDCA Overview cont...

• Identity Theft Unit

  • Launched October 1, 2013

  • **Education:** Offer consumer education and outreach programs and build partnerships to increase awareness of identity theft and related consumer protection laws.

  • **Guidance:** Staff provides guidance and direction to consumers regarding identity theft issues ("detect, deter, defend") and scams, sample forms/letters and checklists. Answers hundreds of calls per month pertaining to identity theft and consumer scams.

  • **Enforcement:** General administration and enforcement of state and federal identity theft laws.
ROADMAP

• Background of Legislative Process

• Overview of General Housing Related Bills

• Overview of Homeowner Association Bills

• Resources

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS

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Legislative Process

Legislative Session (2 year, shortened)

Get involved

Crossover

Bill Assignment

Companion Bills

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www.scstatehouse.gov
Pending Bills

- General
  - Appraisal Management Companies
  - Landlord Tenant Act
  - Mortgage
    - Satisfaction
    - Application of Payment
    - Fees
    - Grace Period
  - Magistrates
    - Jurisdiction
    - Evictions

- Homeowner Associations
  - Background
  - Study Committee
  - Bills
General Bills: Appraisal Management Companies


• Amends Title 40, Chapter 60

• TO ENACT THE "APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT"

• Passed Senate, Assigned to House LCI 3/9/17
'Appraisal management company' means:

• an external third party, in connection with valuing properties, collateralizing mortgage loans, or incorporating mortgages into a securitization

• authorized either by:
  • a creditor of a consumer credit transaction secured by a consumer's principal dwelling or
  • by an underwriter or
  • by other principal in the secondary mortgage markets

• that oversees a network or panel of:
  • more than fifteen certified or licensed appraisers in a state or
  • twenty-five or more nationally within a given year in order to:

  (a) recruit, select, and retain appraisers;
  (b) contract with licensed and certified appraisers to perform appraisal assignments;
  (c) manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or
  (d) review and verify the work of appraisers
Exemptions Include:

• a person or entity that exclusively employs appraisers on an employer and employee basis for the performance of appraisals;

• a department or unit within a financial institution subject to direct regulation by a federal or state agency and that receives a request for the performance of an appraisal from one employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser that is a certified or licensed appraiser. (does not include subsidiaries---see # 5)

• an appraisal management company that maintains an appraiser panel that consists of:
  • fifteen or fewer IC appraisers in SC, or
  • a total of twenty-four or fewer IC appraisers in two or more states;

• an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency
General Bills: Appraisal Management Companies cont...

• Fees & process for registration established by Real Estate Commission
  • Biannual renewal (June 30th)

• Designation of a controlling person to be the contact with the board

• Certification required

• Record retention: policy; keep at least 5 years after prep, or 2 years after final disposition of judicial proceeding.

• Lots of prohibitions
  • withholding or threatening to withhold timely payment for an appraisal
  • specific interactions with independent contractors

• Companies in business on effective date have 120 days to comply

• Adds a member to real estate commission to represent an appraisal management company
General Bills: Mortgage Satisfaction


- Amends 29-3-310, 320

- Introduced 12/15/2016, referred to House Judiciary 1/10/17

- Changes the timeframe that a mortgage holder has to respond to full payment or satisfaction from 3 months → 30 days
General Bills: Mortgage Satisfaction


• Amends Chapter 21, Title 8

• Introduced 12/15/16, Referred to House Judiciary 1/10/17

• Standardizes fees for filing and recording certain mortgage documents with clerks of court/record of deeds.
  • $35 for general mortgage documents, ie: deed, mortgage, land or real estate sales contract, UCCC filings.
  • $10 for other documents, including mortgage assignment, probates, mortgage satisfaction, mortgage subordination agreements.

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General Bills: Mortgage Payments


• Amends Title 29, Chapter 1

• Introduced, referred to House LCI 1/18/17

• Requires mortgagor apply at least 30% of mortgage payment to principal balance of loan secured by a mortgage.

• Amends Title 29, Chapter 1

• Puts a 20 day grace period for mortgage payment

• 'grace period' means the period of time during which payment on a mortgage loan may be made after its due date without incurring a late penalty

• Only applies to mortgages where interest calculated monthly
General Bills: Magistrates Court

- **S 118:**
  - Amends Title 22, Chapter 3
  - Passed Senate, Referred to House Judiciary 2/28/17
  - Increase magistrate’s jurisdiction from $7,500 → $10K
  - Requires mediation of cases involving $5k or more, except Landlord Tenant

- **S151**
  - Intro’d 12/13/16, referred to Senate Judiciary 1/20/17
  - Increase magistrate’s jurisdiction from $7,500 → $15K

- **H3193 (same)**
  - Intro’d 12/15/16, referred to House Judiciary 1/10/17
General Bills: Magistrates (Evictions)


• Amends Title 27, Chapter 37

• Intro’d, referred to Senate Judiciary 1/28/17

• Requires a magistrate to expedite an eviction (within 24 hours) if a tenant or another person who is on the premises with the tenant's permission:
  • (i) deliberately or negligently destroys, defaces, damages, impairs, or removes any part of the premises; or
  • (ii) engages in criminal activity on the premises.
General Bills: Landlord Tenant Act


• Amends Title 27, Chapter 40

• Intro’d 12/15/16, Referred to House LCI 01/10/17

• Creates tenant category of “protected tenant” and rights for them
General Bills: Landlord Tenant Act cont...

• 'protected tenant' means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others who holds a valid order of protection or restraining order against another person.

• A protected tenant may terminate his rental agreement on 30 days notice to landlord. The notice to the landlord must be accompanied by:
  • (1) copy of a valid order of protection (family court, magistrate, other) OR
  • (2) valid restraining order issued pursuant to Section 16-3-1750 that restrains a person from contact with a protected tenant.

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General Bills: Landlord Tenant Act cont...

- Upon termination, the tenant:
  - is liable for the **rent due** under the rental agreement **prorated to the effective date of the termination**
  - is not liable:
    - for other rent or fees due only to the early termination of the tenancy.
    - If terminates the rental agreement **14 days or more before occupancy**

- If there are remaining tenants residing in the dwelling unit:
  - the tenancy must continue for those tenants,
  - the perpetrator who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.
General Bills: Landlord Tenant Act cont...


- Amends Title 27, Chapter 40

- Intro’d 12/15/16, Passed House 7 Referred to Senate Judiciary 3/9/17

- Removes the exclusion for rental agreements covering premises used by occupant primarily for agricultural purposes.
General Bills: Landlord Tenant Act cont...


• Amends Title 27, Chapter 40

• Healthy Rental Housing Act of 2017

• Intro’d 12/13/16, Referred to Senate Judiciary 1/10/17
Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord:

- may require the tenant to temporarily vacate for mold remediation in accordance with professional standards for a period not to exceed 30 days;

- shall provide the tenant with either a comparable dwelling unit, as selected by the landlord, or a hotel room, at no expense or cost to the tenant;
  - The tenant continues to be responsible for payment of rent
  - The landlord shall pay all costs of the mold remediation, unless the mold is a result of the tenant's failure to comply with Section 27-47-510.
• Required written notice by landlord to tenant:
  
  • *whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit.*

  • **NO MOLD**
    - = this written statement must be considered correct unless the tenant objects to it in writing within 5 days after receiving the report

  • **MOLD**
    - = tenant may terminate the tenancy and not take possession or remain in possession of the dwelling unit.
    - If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord promptly shall **within 5 business days** remediate the mold condition and reinspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on an updated written disclosure that there is no visible evidence of mold in the dwelling unit upon reinspection.
Homeowner Association Bills

• Background
  • History of Bills
  • Study Committee
    • http://www.scstatehouse.gov/CommitteeInfo/HomeownersAssociationStudyCommittee/HOAStudyCommitteeFinalReport12182015.pdf
    • Disclosure of Governing Documents to Homebuyers
    • Education for Homeowners & Board Members
    • Manager Certification or Licensing
    • Time Period for Developer Control of Association
    • Need for a comprehensive Act
S. 104 (S. 82, H. 3301) SC Homeowners Association Act (HOA)

- Gives magistrates civil jurisdiction regarding specific performance and access to official records
- Requires disclosure that the home is under a HOA when purchased for the 1st time or sold
- Gives the A.G. (or his designated “Ombudsman”) authority to investigate the organization, conduct and management of a non-profit – specifically a HOA
  - Permits access to all books, accounts, records, minutes, checks, bylaws...any and all documents as deemed necessary by the A.G
Duties of A.G. or his designee

- Receive complaints concerning possible violations of the law, regulations and governing documents
- Make an annual report to the Governor and the General Assembly prior to December first that includes the following information:
  - statistics on the number of inquiries and complaints handled by the Ombudsman;
  - information on education and outreach efforts by the Ombudsman
S. 576 (h. 3886) SC Homeowners Association Act (HOA)

- Defines necessary terms
  - “Governing documents” means any documents
- Requires disclosure from the HOA of governing documents for prospective owners; printed or electronic copies of financial information upon request at no charge
- Limits the increase of fees and the like without notice
  - This notice must be provided at least forty-eight hours before the meeting at which such action is to be taken. Property owners must be allowed to attend the meeting.
S. 576 continued

- Creates Ombudsman in SCDCA, provides qualifications, powers and duties of the Ombudsman
  - Appointed by the Administrator
  - Should be a licensed attorney in good standing in this State
  - Have experience in real estate law
  - Be a certified mediator
  - Not engage in any business or profession that conflicts
  - Maintains an internet website with office information, contact information, services available and other pertinent information
  - Requires disclosure from the seller to the purchaser of property
S. 576 continued

- Allows the Ombudsman to offer online instruction covering the basics HOA management, rules and responsibilities
  - The course may include, but is not limited to, the following subjects:
    - federal and state laws concerning governance of HOA
    - ethical and fiduciary duties;
    - rules of parliamentary procedure;
    - procedure for conducting public hearings;
    - state and local governmental structures;
    - relationships with developers;
    - insurance;
    - infrastructure; and
    - security
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>3/02/17</td>
<td>House Introduced &amp; Read for the 1st time</td>
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<tr>
<td>3/13/17</td>
<td>Committee (LCI) report favorable with amendment</td>
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<tr>
<td>3/22/17</td>
<td>Request for debate</td>
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<tr>
<td>3/29/17</td>
<td>Debate adjourned until 3/30/17</td>
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<td>3/30/17</td>
<td>Amended Read for the 2nd time</td>
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<td>3/31/17</td>
<td>Read for the 3rd time &amp; sent to the Senate</td>
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<tr>
<td>4/04/17</td>
<td>Introduced &amp; Read for the 1st time Referred to</td>
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<td>4/07/17</td>
<td>Referred to subcommittee</td>
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Contrast w/ 576

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H. 3065 Creates an ombudsman office in SCDCA

- Provides qualifications, powers and duties of the Ombudsman
  - Appointed by the Administrator
  - Should be a licensed attorney in good standing in this State
  - Have experience in real estate law
  - Be a certified mediator
  - Not engage in any business or profession that conflicts
- Creates Ombudsman in SCDCA, provides qualifications, powers and duties of the Ombudsman

12/15/16 House Prefiled & Referred to LCI
1/10/17 Introduced & Read for the 1st time
House Referred to LCI
Duties continued...

- Ombudsman shall
  - Contact declarants (i.e. HOA’s, executive boards, interested parties to inform them of the services available;
  - Assist declarants in understanding their rights and processes available to them according to the law
  - The ombudsman is not the attorney for declarants
No attorney-client relationship may be implied or established

Requires DCA facilitate and maintain a registry of HOA’s

Create and maintain a registry, which HOA’s must register by January 1, 2018, that includes:

- Number of units in the HOA, to be update quarterly to reflect the units no longer owned;
- Names, mailing address, physical address, telephone number and email of the association and each officer;
- A registration must update within thirty days of any change in required information
H. 3065 cont....

- DCA to establish procedures for filing and resolving complaints
- Provides certain definitions:
  - ‘Declarant’ means a person or group of persons acting in concert who
  - ‘Department’ means the Department of Consumer Affairs
  - ‘Director’ means the Director of the Department of Consumer Affairs
H. 3301 (S. 82 & S. 104) Defines terms & instruction to be provided through LLR/real estate commission

- Defines ‘Association’ as an incorporated entity
- Requires disclosure of governing documents to prospective owners
- Assigns responsibility to the Real Estate Commission to offer (at no cost) online instruction regarding the basic of HOA management and the rights and responsibilities of property owners
  - To include, but not limited to –
    - Federal and state laws concerning governance of HOA
    - Rules of parliamentary procedure
    - Procedure for holding public meetings
    - State and local government structure
    - Relationships with developers
    - Insurance
    - Security
H. 3301 continued

- Grants magistrates concurrent civil jurisdiction in certain actions between HOA and property owners regarding
  - Payment of dues, assessments, fines or fees if the amount claimed does not exceed the amount [allowed in magistrates court by statute]
  - Actions for injunctive relief, including temporary injunctive relief pending a hearing
  - Access to governing documents
  - The magistrate court, may in its discretion, may award to the prevailing party costs associated with bringing or defending an action under this section
**S. 122** (S. 82, S. 104, H. 3301) Defines terms & Instruction to be provided through LLR/real estate commission

- Defines necessary terms
  - 'Association' or 'Previous homeowners' association' means an incorporated entity with:
    - the responsibility to manage and maintain a planned community or horizontal property regime; and
    - a voting membership of owners required by the governing documents to pay assessments to the association
Requires LLR/real Estate Commission to provide online instruction covering the basics of governing and the rights and responsibilities of property owners, enumerate subjects to be included in the course, but is not limited to—

- the South Carolina Nonprofit Corporation Act, Chapter 31, Title 33, and other state and federal laws concerning governance of associations;
- ethical and fiduciary duties;
- owner responsibilities to an association and other owners;
- board responsibilities to an association and owners, including, but not limited to, disclosure of association records;
- procedure for conducting meetings;
- insurance;
- budgeting and reserves;
- governing documents; and
- rights of owners as members of an association.
S. 122 continued

- Requires the seller to disclose and provide governing documents to prospective buyers
- Allows the Ombudsman to offer online instruction covering the basics of HOA management, rules and responsibilities
- Requires disclosure from the seller to the purchaser of property subject to HOA governance
  - A selling owner is solely responsible for the costs of providing the governing documents to a prospective owner in compliance with this section.
- An association must make governing documents available to owners and may establish and collect reasonable fees for the actual cost of a photocopy of the governing documents. An association may not charge for electronic access to the governing documents on a website or electronic transmission of the governing documents."
S. 82 SC Homeowners Association Act

- Defines terms
  - 'association' means an incorporated entity
  - An 'association' does not include a vacation time sharing plan organized and subject only to the provisions of Chapter 32 of this title
  - 'property owner' means a voting member of the association or the voting member's tenant or designee.
  - Magistrates have concurrent jurisdiction

12/13/16 Senate Prefiled
12/13/16 Senate Referred to Judiciary
1/10/17 Introduced & Read 1ST time
1/10/17 Referred to Judiciary
1/20/17 Referred to Subcommittee
RESOURCES

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