

CHAPTER 59.

RESIDENTIAL HOME BUILDERS

ARTICLE 1.

RESIDENTIAL HOME BUILDERS GENERALLY

**SECTION 40-59-5.** Application of Chapter 1; conflicts.

Unless otherwise provided for in this chapter, Article 1, Chapter 1 of Title 40 applies to any entities or individuals regulated by the Department of Labor, Licensing and Regulation. If there is a conflict between this chapter and Article 1, Chapter 1 of Title 40, the provisions of this chapter control.

**SECTION 40-59-10.** South Carolina Residential Builders Commission; membership; oath to perform properly.

(A) There is created the South Carolina Residential Builders Commission which must be composed of seven persons who shall have been residents of the State for at least five years and two of whom must be consumers not engaged in the business of residential building, four of whom have been actively engaged in residential building for a period of at least five years before the date of their appointment, and who must be recommended to the Governor by the South Carolina Home Builders Association and one of whom has been actively engaged in residential specialty contracting for a period of at least five years before the date of appointment. One member must be appointed from each congressional district, and one must be appointed from the State at large. Members of the commission must be appointed by the Governor with the advice and consent of the Senate for a term of four years or until their successors are appointed and qualify. A vacancy occurring by reason of death, resignation, removal for cause, or otherwise must be filled for the remainder of the unexpired term in the manner of the original appointment. The Governor may remove any member of the commission in accordance with Section 1-3-240.

(B) Before entering upon the discharge of the duties of his office, each member of the commission shall take and file with the Secretary of State, in writing, an oath to perform properly the duties of his office as a member of the commission and to uphold the Constitution of this State and the United States.

(C) Commission members from the general public may be nominated by an individual, group, or association and must be appointed by the Governor in accordance with Section 40-1- 45.

**SECTION 40-59-15.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-20.** Definitions.

As used in this chapter unless the context clearly indicates otherwise:

- (1) "Commission" means the South Carolina Residential Builders Commission.
- (2) "Department" means the Department of Labor, Licensing and Regulation.
- (3) "Director" means the Director of the Department of Labor, Licensing and Regulation.
- (4) "Firm" means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, joint venture or other legally constituted organization which practices or offers to practice residential building or residential specialty contracting.

(5) "License" means a license, registration, or certification issued in accordance with this chapter.

(6) "Residential builder" means one who constructs, superintends, or offers to construct or superintend the construction, repair, improvement, or reimprovement of a residential building or structure which is not over three floors in height and which does not have more than sixteen units in any single apartment building, when the cost of the undertaking exceeds five thousand dollars. Anyone who engages or offers to engage in such undertaking in this State is considered to have engaged in the business of residential building.

(7) "Residential specialty contractor" means an independent contractor who is not a licensed residential builder, who contracts with a licensed residential builder, general contractor, or individual property owner to do construction work, repairs, improvement, or reimprovement which requires special skills and involves the use of specialized construction trades or craft, when the undertakings exceed two hundred dollars and are not regulated by the provisions of Chapter 11. Residential specialty contracting includes the following areas of contracting and other areas as the commission may recognize by regulation:

(a) plumbers;

(b) electricians;

(c) heating and air conditioning installers and repairers;

(d) vinyl and aluminum siding installers;

(e) insulation installers;

(f) roofers;

(g) floor covering installers;

(h) masons;

(i) dry wall installers;

(j) carpenters;

(k) stucco installers;

(l) painters/wall paperers.

(8) As used in this chapter, the terms defined in Section 40-1-20 have the same meaning as stated in that section.

**SECTION 40-59-30.** License requirement; enforcement of contracts; restraining orders.

(A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) A person or firm who has not first procured a license may not bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

(C) If it appears to the commission that a person or firm has violated, or is about to violate, a provision of this chapter, the commission may in its own name petition an administrative law judge, as provided under Article 5 of Chapter 23 of Title 1, to issue a temporary restraining order enjoining the violation of this chapter, pending a full hearing to determine whether or not the injunction must be made permanent.

**SECTION 40-59-40.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-50.** Compensation of members; chairman; bylaws and seal; administrator and staff; meetings; roster of licensees.

(A) The members of the commission must be compensated for their services at the regular per diem, mileage, and subsistence rates as provided by law for members of state boards, committees, and commissions and must be reimbursed for actual and necessary expenses incurred in connection with, and as a result of, their work on the commission. Compensation paid and costs and expenses incurred must be paid only from the fees received by the commission pursuant to the provisions of this chapter.

(B) The commission, at its first meeting after appointment, shall organize by electing a chairman and a vice-chairman and other officers as the commission considers appropriate who shall serve for a term of one year and until their successors are appointed and qualify. The commission shall adopt bylaws for the governance of its proceedings and shall adopt a commission seal on which shall appear the words "South Carolina Residential Builders Commission".

(C) The Director of the Department of Labor, Licensing and Regulation, pursuant to Section 40-1-50, may employ an administrator to serve at the discretion of the director of the department. The duties of the administrator must be prescribed by the director.

(D) The director may also employ clerical and stenographic assistance and other personnel as may be necessary to effectuate the provisions of this chapter. The compensation of all employees of the commission must be fixed by the director and paid from the fees received by the commission pursuant to the provisions of this chapter.

(E) The Department of Labor, Licensing and Regulation shall administer the commission as a revenue funded commission in accordance with Section 40-1-50.

(F) The commission shall meet quarterly and at other times as the chairman may designate; however, the commission shall meet within thirty days after appointment for the purpose of organizing and transacting business. Four members of the commission constitute a quorum at all meetings. The administrator shall keep records of each meeting as required by the commission.

(G) A roster including the names and places of business of the residential builders and residential specialty contractors licensed or registered by the commission during the preceding year must be prepared annually by the commission and forwarded to and filed with the clerk of court for each county.

**SECTION 40-59-60.** Additional commission operations.

In addition to the commission operations provided in this chapter, the commission may act in accordance with those set forth in Section 40-1-60.

**SECTION 40-59-70.** Promulgation of regulations.

The commission may promulgate regulations as may be necessary to effectuate the provisions of this chapter.

**SECTION 40-59-75.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-77.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-80.** Investigation of complaints; initial complaints.

The Department of Labor, Licensing and Regulation shall investigate complaints and violations of this chapter as provided for in Section 40-1-80. A person, including the commission, may file

an initial complaint against a licensee or registrant. The complaint must be in writing and sworn to by the person filing the complaint.

**SECTION 40-59-85.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-90.** Hearings before commission; notice; appearance; order; appeals.

Charges, unless dismissed without hearing by the commission as unfounded or trivial, must be heard by the commission in an open hearing. A copy of the charges and a notice of the time and place of the hearing must be served on the respondent at least thirty days before the fixed date for the hearing. At the hearing the respondent may appear personally or be represented by counsel and may cross-examine witnesses against him and produce evidence and witnesses in his defense. After the commission issues its order, the respondent has thirty days to file with the commission written notice of his intention to appeal to an administrative law judge from the order of the commission. An appeal from an order of the commission is governed by the provisions of Article 3, Chapter 23 of Title 1, the Administrative Procedures Act.

**SECTION 40-59-95.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-100.** Cease and desist order; temporary restraining order.

In addition to other remedies provided for in this chapter or Chapter 1, Title 40, the commission in accordance with Section 40-1-100 may issue a cease and desist order or may petition an administrative law judge for a temporary restraining order or other equitable relief to enjoin a violation of this chapter.

**SECTION 40-59-105.** Administrative citations and penalties; appeal.

(A) The department may refer reports of violations of this chapter and Article 1, Chapter 1 or any reports of violations of regulations promulgated under this chapter directly to the commission or may issue administrative citations and cease and desist orders in person or by certified mail and may assess administrative penalties against an entity or individual, including unlicensed persons, for violations of this chapter as specified by the commission.

(B) Separate citations may be issued and separate administrative penalties may be assessed for each violation; however, no more than two thousand five hundred dollars in administrative penalties may be assessed against an entity or an individual per day.

(C) Administrative penalties authorized under this section are separate from and in addition to all other remedies, either civil or criminal, and these penalties may not exceed the following limits:

(1) for a first offense, not more than a five-hundred dollar penalty;

(2) for a second offense in a five-year period, the citation must be referred to the commission for action in accordance with Sections 40-59-90 and 40-59-110.

(D) An entity or individual assessed administrative penalties may appeal those penalties to the commission within ten days of receipt of the citation. If an appeal is filed, the department shall schedule a hearing before the commission, which shall make a determination in the matter. If no appeal is filed, the citation is deemed a final order and the administrative penalties must be paid within thirty days of receipt of the citation or other written demand.

**SECTION 40-59-110.** Revocation, suspension or restriction of license; misconduct; determination of compliance with applicable professional standards.

In addition to the grounds provided for in Section 40-1-110, the commission, upon a majority vote, may revoke, suspend, or restrict the license or registration of a licensee or registrant who the commission finds has committed fraud or deceit in obtaining a license or registration under this chapter or has engaged in misconduct in the practice of residential building or residential specialty contracting. For purposes of this section, misconduct includes a pattern of repeated failure by a residential builder or residential specialty contractor to pay labor or material bills. For purposes of disciplinary matters, or otherwise, compliance with the construction standards adopted by the commission is prima facie evidence of compliance with applicable professional standards.

**SECTION 40-59-115.** Jurisdiction over actions of licensees and former licensees.

The commission has jurisdiction over the actions of licensees and former licensees as provided for in Section 40-1-115.

**SECTION 40-59-120.** Fines.

Upon a determination by the commission that one or more of the grounds for discipline of a licensee exists, as provided in Section 40-59-110 or 40-1-110, the commission, in addition to the actions provided for in Section 40-1-120, may impose a fine of not more than two thousand five hundred dollars per offense.

**SECTION 40-59-130.** Grounds for denial of license.

As provided for in Section 40-1-130, the commission may deny licensure to an applicant based on the same grounds for which the commission may take disciplinary action against a licensee.

**SECTION 40-59-140.** Prior criminal record.

A person may be denied licensure or registration based on a person's prior criminal record only as provided for in Section 40-1-140.

**SECTION 40-59-150.** Surrender of license.

A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Section 40-1-150.

**SECTION 40-59-160.** Review of final action of commission.

A person aggrieved by a final action of the commission may seek review of the decision in accordance with Section 40-1-160.

**SECTION 40-59-170.** Costs.

A person found in violation of this chapter or regulations promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40-1-170.

**SECTION 40-59-180.** Collection and enforcement.

All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40-1-180.

**SECTION 40-59-190.** Confidentiality.

Investigations and proceedings conducted under the provisions of this chapter are confidential and all communications are privileged as provided for in Section 40-1-190.

**SECTION 40-59-200.** Penalty.

A person who knowingly violates the provisions of this article or regulations promulgated pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than two years, or both.

**SECTION 40-59-210.** Cease and desist orders; penalties; injunction.

(A) In addition to all other remedies provided by law, when it appears to the commission, either upon complaint or otherwise, that a person or combination of persons has engaged, or is engaging, in an act of contracting, practice, or transaction which constitutes a violation of this chapter or any regulation or order of the commission, whether or not the person is properly licensed or registered with the commission, the commission may:

(1) serve upon the person not licensed or registered under the chapter, by certified mail or by personal service, a cease and desist order requiring the person to cease and desist from engaging in the act, practice, or transaction immediately upon receipt of the order. If the person fails to comply with the order, the director or a designee may file an action with an administrative law judge for enforcement of the cease and desist order or file an action pursuant to item (2) for wilful violation of the order. If the administrative law judge finds that the person wilfully failed to obey a valid cease and desist order, the court shall impose a civil penalty of not less than two hundred fifty dollars and not more than two thousand dollars for each violation. Any amount collected as a civil penalty must be remitted pursuant to subsection (B);

(2) apply, on its behalf, through the Attorney General, the Director of the Department of Consumer Affairs, the county attorney, or solicitor of the county in which the violation is alleged to have been committed, to the court of common pleas of that county for an injunction restraining the person from further violation. Upon a proper showing, a temporary restraining order, a preliminary injunction, or a permanent injunction may be granted without bond. Process in the action may be served upon the defendant in any county of this State where the defendant transacts business or is found.

(B) In actions brought under item (2) of subsection (A), each violation of this chapter or regulation or order of the commission constitutes a separate offense, and the court may impose a civil penalty not to exceed two thousand dollars for each violation which is in addition to all other penalties provided by law.

**SECTION 40-59-220.** Licenses and certificates of registration; application; qualifications; bonds; examinations; reciprocity.

(A) All residential builders must be licensed, and all residential specialty contractors must be registered, by the commission for a period established by the commission in regulation. Licensees and registrants must pay an annual fee established by the department and based upon the department's costs in carrying out the provisions of this chapter.

(B) An applicant for a license or certificate shall file with the commission a written application on a form as may be prescribed by the commission. The application must be accompanied by the

payment of all applicable fees required by the commission. A prerequisite for taking the examination for a residential builder's license is a minimum of one year of actual experience under the supervision of a licensed residential builder, or other appropriately licensed professional who is engaged in residential building construction involving the trades or crafts for which the license is desired, or other education or experience or a combination of these as may be approved by the commission. The commission, in examining an applicant, may consider the following qualifications of the applicant:

- (1) experience;
- (2) ability;
- (3) character;
- (4) financial condition;
- (5) equipment;
- (6) workers' compensation insurance; and
- (7) other pertinent information the commission may require.

(C) The commission shall issue a residential builder's license if, as a result of examination, the commission finds that the applicant is qualified to engage in residential building in South Carolina, and the applicant submits an executed bond in the form and with a surety approved by the commission in the sum of not less than fifteen thousand dollars or proof of financial responsibility acceptable to the commission.

(D) The commission shall issue a residential specialty contractor's license for which the applicant is qualified if, as a result of examination, the commission finds that the applicant is qualified to engage in residential specialty contracting in South Carolina. When the cost of an undertaking performed by a residential specialty contractor for an individual property owner exceeds five thousand dollars, the residential specialty contractor must obtain an executed bond with a surety in an amount approved by the commission.

(E) An applicant who fails the examination must be given the opportunity to be reexamined after payment of an additional examination fee; however, if the applicant fails the examination three times, the applicant shall wait twelve months before being examined again. A record must be made and preserved by the commission of each examination of an applicant and the findings of the commission pertaining to the examination. A certified copy of the record must be furnished to an applicant requesting the record upon the payment of a fee to the commission that reasonably reflects the cost of furnishing the record to the applicant.

(F) A license may be granted by the commission without examination to those applicants who are licensed in good standing in other states which are determined by the commission to have comparable examinations.

**SECTION 40-59-230.** Renewal.; continuing education; notification of change of circumstances.

(A) Unless otherwise provided under the provisions of this chapter, the commission shall annually renew all licenses upon the applicant's submission to the commission of the completed renewal application, proof of financial responsibility or bond, acceptable to the commission and payment of all applicable fees. If a license has been in inactive status for more than three years, the person shall file a new application as in the case of the issuance of an original license and is required to take and successfully complete the examination.

(B) As a condition of license renewal, the commission may require by regulation a licensee to satisfactorily complete continuing education through a program approved by the commission.

(C) A licensee must notify the commission in writing within thirty days of any change in the information required to be on file with the commission including, but not limited to, the licensee's current mailing address.

**SECTION 40-59-240.** Residential specialty contractors; classification; examination; county and municipal business license ordinances; bonds.

(A) The commission by regulation shall classify residential specialty contractors in a manner consistent with established usage and procedure in the construction business and may limit the field and scope of the operations of a residential specialty contractor to those in which he is to be registered or certified. Residential specialty contractor registrations and certificates issued by the commission may not be for more than three of the classifications recognized by the commission. Residential specialty contractors registered or certified or wishing to be registered or certified for more than three classifications must be examined and licensed as residential builders.

(B) Residential specialty contractors must be qualified and experienced in the particular areas of the contracting vocation in which they intend to, and do, engage. The commission, by regulation, may require examination in these areas.

(C) Residential specialty contractors are not exempt from complying with county and municipal business license ordinances or other regulatory ordinances. A county or municipality may require a residential specialty contractor to be examined and licensed in accordance with standards adopted by the county or municipality; however, if a residential specialty contractor has passed an examination in his area of contracting and approved by the commission, no additional examination may be required by a county or municipality.

(D) When the total cost of materials and labor for an undertaking performed by a residential specialty contractor for an individual property owner exceeds five thousand dollars, the residential specialty contractor shall obtain an executed bond with a surety in an amount approved by the commission and shall furnish a signed original to the commission.

**SECTION 40-59-250.** Credit report; factors indicating reputation for timely performance; outstanding judgments.

(A) A person applying to the commission for licensure as a residential builder or registration as a residential specialty contractor must submit to a credit report. In addition to the information provided by the credit report, the commission may determine from the written application, the personal references provided by the applicant, written communications or complaints to the commission, and from any other reliable, documented sources whether an applicant for licensure as a residential builder or an applicant for registration as a residential specialty contractor has a reputation for the prompt payment of labor and material bills and for the timely completion of other contracts into which the applicant may have entered.

(B) The commission shall require the applicant to list on application and renewal forms any outstanding judgments issued against him or any entities with whom the applicant was associated for the past five years.

**SECTION 40-59-255.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-257.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-260.** Exception for projects by property owner for personal use; exemption disclosure statement; notice filed with register of deeds.

(A) This chapter does not apply to an owner of residential property who improves the property or who builds or improves structures or appurtenances on the property if:

(1) the owner does the work himself, with his own employees, or with licensed contractors or registered entities or individuals;

(2) the structure, group of structures, or appurtenances, including the improvements, are intended for the owner's sole occupancy or occupancy by the owner's family and are not intended for sale or rent; and

(3) the general public does not have access to this structure.

(B) In an action brought under this chapter, proof of the sale or rent or the offering for sale or rent of the structure by the owner-builder within two years after completion or issuance of a certificate or occupancy is prima facie evidence that the project was undertaken for the purpose of sale or rent, unless otherwise approved by the commission, and is subject to the penalties provided in this chapter. As used in this section, "sale" or "rent" includes an arrangement by which an owner receives compensation in money, provisions, chattel, or labor from the occupancy, or the transfer of the property or the structures on the property. This section does not exempt a person who is employed by the owner and who acts in the capacity of a builder or a specialty contractor of any kind.

(C) To qualify for exemption under this section, an owner must personally appear and sign the building permit application. The local permitting agency shall provide the person with a disclosure statement, provided by the department, in substantially the following form:

"Disclosure Statement

State law requires residential construction to be done by licensed residential builders and specialty contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family or two-family residence. The building must be for your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you have built yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your residential builder or specialty contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations."

(D) At the time an owner personally appears and signs the building permit application as required by subsection (C) of this section, the local permitting agency shall provide the owner with all forms necessary to comply with subsection (E) of this section.

(E) If a residential building or structure has been constructed by an owner under the exemption provided for in this section, the owner of the residential building or structure must promptly file as a matter of public record a notice with the register of deeds, indexed under the owner's name in the grantor's index, stating that the residential building or structure was constructed by the owner as an unlicensed builder. Failure to do so revokes the statutory exemption.

(F) Nothing in this chapter may be construed to authorize an owner of a residential building or structure to hire a person or entity that is not licensed or registered in accordance with this chapter.

**SECTION 40-59-265.** Omitted from Chapter 59 as amended by 2002 Act No. 359, Section 1.

**SECTION 40-59-270.** Applicability of Chapter 11 (Contractors).; exemption of mechanical contractor.

This chapter does not apply to a person licensed under Chapter 11 for the purpose of undertaking the construction, or superintending of construction, of a building or the improvement,

reimprovement, or repair of any building. A residential builder who is licensed pursuant to this chapter is not required to be licensed as a general contractor or mechanical contractor under Chapter 11 in order to engage in residential building as defined in Section 40-59-10. A mechanical contractor is exempt from this chapter relating to residential specialty contractors when engaged in contracting in the classification in which he is licensed to perform mechanical contracting. The commission is the exclusive licensing and registration entity for persons who engage solely in residential building and in residential specialty contracting.

**SECTION 40-59-280.** Proof of licensure as condition of issuance of local building permit; reports of violations.

The building official, or other authority charged with the duty of issuing building or similar permits, of any incorporated municipality or subdivision of the municipality or county shall refuse to issue a permit for an undertaking which requires licensure or registration under this chapter unless the applicant has furnished evidence that he is either licensed or registered in accordance with this chapter or exempt from the requirements of this chapter. The building official, or other authority charged with the duty of issuing building or similar permits, also shall report to the commission the name and address of an person who, in his opinion, has violated this chapter by accepting or contracting to accomplish work requiring licensure or registration under this chapter when the person has not produced evidence of licensure or registration or exemption from this chapter.

**SECTION 40-59-290.** Severability.

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this chapter is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this chapter, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**SECTION 40-59-300.** Construction of low-income housing using volunteer labor by 501(c)(3) eleemosynary organization without presence of “qualifier”.

Notwithstanding any other provision of law, a 501(c)(3) eleemosynary organization may construct a residential home with volunteer labor without the presence of a qualifier if the home without consideration is to be transferred to or made available for the use of an underprivileged or low-income family or individual. “Qualifier” for purposes of this provision means a builder or specialty contractor licensed to perform the particular work being done on the site. The cost of the building permit must be borne by the 501(c)(3) organization.

## ARTICLE 2.

### CERTIFICATES OF AUTHORIZATION

**SECTION 40-59-400.** Definitions.

For purposes of this article:

(1) “Branch office” means a place of business separate from the principal place of business where building services are offered or provided. A specific project or construction site office is not a branch office.

(2) “Commission” means the South Carolina Residential Builders Commission established in Article 1.

(3) “Firm” means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, joint venture, or other legally constituted organization which offers or provides building services through licensed residential builders, residential specialty contractors, or home inspectors.

(4) “Private practice firm” means a firm through which the practice of residential building, residential specialty contracting, or home inspecting requires a residential business certificate of authorization as described in this chapter.

(5) “Resident licensee” means a licensed practitioner who spends a majority of each normal workday working out of a principal or branch office and who is in responsible charge of the office and the building services provided from that office including, but not limited to, responsibility for applying for permits for the firm.

(6) “Responsible charge” means the direction of building services by a residential builder, residential specialty contractor, or home inspector to the extent that successful completion of the building services is dependent on the personal supervision, direct control, and final decisions by the qualified registrant to the extent that the qualified registrant assumes professional responsibility for the building services.

**SECTION 40-59-410.** Residential business certificate of authorization as requirement for firm to engage in residential home building, residential specialty contracting, and home inspecting.

(A) The practice or offer to practice residential building, residential specialty contracting, or home inspecting through a firm is authorized only through entities holding a residential business certificate of authorization issued by the commission. For the purposes of this section, a residential business certificate of authorization is also required for any firm practicing in this State under a fictitious name. However, when an individual is practicing residential home building, residential specialty contracting, or home inspecting in his name as individually licensed, or if an individual has at least fifty-one percent of the ownership interest and is the sole resident licensee for the firm, that person or entity is not required to be issued a residential business certificate of authorization.

(B) The practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by an individual residential home builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if:

(1) one or more of the corporate officers in the case of a corporation, or one or more of the principal owners in the case of a firm, or one or more employees are designated as the resident licensee in responsible charge of each principal or branch office for the building services regulated by the commission and are licensed under the provisions of this chapter;

(2) the firm has obtained an executed surety bond approved by the commission in the sum of fifteen thousand dollars initially and as subsequently provided by regulation; and

(3) the firm has been issued a residential business certificate of authorization by the commission. Nothing in this section may be construed to mean that a license or registration to practice residential home building, residential specialty contracting, or home inspecting may be held by a firm.

(C) Approval of firms seeking to incorporate or register to do business in this State under this section must be conditioned upon proper filing with the Secretary of State of the articles of incorporation and revisions to the articles, as certified by the Secretary of State. This section may not be construed to require an additional filing with the Secretary of State not otherwise required by law.

(D) A firm desiring a residential business certificate of authorization shall file with the department an application on forms provided by the department accompanied by all applicable fees. Each residential business certificate of authorization must be renewed by July first of the licensing period. A renewal form provided by the department must be completed and submitted with all applicable fees. The initial application fee and annual renewal fee are one hundred dollars and as subsequently provided by regulation. Information to be provided on the application and renewal forms shall include the names and addresses of all officers and directors of the firm or officers and partners of the partnership who are licensed or registered to practice residential home building, residential specialty contracting, or home inspecting in this State, including those in responsible charge of all principal and branch offices providing building services in the State.

(E) Disciplinary action against a firm must be administered in the same manner and on the same grounds as disciplinary action against an individual under this chapter and Section 40-1-110. No firm is relieved of responsibility for conduct or acts of its agents, officers, or employees by reason of its compliance with this section, and no individual practicing residential home building, residential specialty contracting, or home inspecting is relieved of responsibility for professional services performed by reason of his employment or relationship with the firm.

(F) Nothing in this section may be construed to prohibit firms from joining together to offer residential home building, residential specialty contracting, or home inspecting services to the public, if each separate entity providing the services in this State otherwise meets the requirements of this section. For firms practicing as a professional corporation under the laws of this State, the joint practice of residential home building, residential specialty contracting, or home inspecting with other professions is approved by the commission.

(G) If the requirements of this section are met, the commission shall issue a residential business certificate of authorization to the firm, and the firm may engage or offer to engage in the business of residential home building, residential specialty contracting, or home inspecting. The commission, however, may refuse to issue a certificate or may suspend or revoke an existing certificate for due cause. A person or organization aggrieved by an adverse determination of the commission may seek judicial review in accordance with this chapter.

(H) Residential home builders, residential specialty contractors, or home inspectors engaged in practice through firms involving the practice of residential building, residential specialty contracting, or home inspecting may maintain branch offices as well as a principal place of business.

Each principal place of business as well as each branch office must have a resident residential builder, residential specialty contractor, or home inspector in responsible charge of the field and office building work or services provided. A residential home builder must supervise the residential home building aspects of the principal or branch office and may also supervise the residential specialty contracting from that location. A residential specialty contractor may supervise residential specialty contracting services of the principal or branch office as long as the services are within the scope of residential specialty contracting in the classifications for which the individual is authorized to engage. A home inspector may supervise home inspecting services of the principal or branch office as long as the services are within the scope of home inspecting for which the individual is authorized to engage. The resident residential home builder, residential specialty contractor, or home inspector is considered in responsible charge of only one place of business at a given time.

For purposes of this subsection, "engaged in practice" means holding oneself out generally to the public as qualified and available to perform residential building, residential specialty contracting, or home inspecting services.

(I) Nothing contained in this chapter prevents an authorized residential builder or residential specialty contractor from undertaking a residential building project anywhere in the State.

### ARTICLE 3.

#### LICENSING OF HOME INSPECTORS

##### **SECTION 40-59-500.** Definitions.

As used in this article:

(1) "Administrator" means the Executive Director for the South Carolina Residential Builders Commission provided for under Section 40-59-50.

(2) "Commission" means the South Carolina Residential Builders Commission.

(3) "Director" means the Director of the Department of Labor, Licensing and Regulation.

(4) "Home inspection" means the rendering of a written or oral report in exchange for compensation of any sort, regarding the condition of the construction or improvements to a residence including, but not limited to, structural problems or conditions, damage, safety problems, deterioration, equipment, and systems that are visible and readily accessible. Home inspection does not include a contract or proposal for repair, renovation, or remodeling of the improvements to a residence. The parties to a home inspection may limit or expand the scope of the inspection by agreement.

(5) "Home inspector" means an individual who, for compensation of any sort, engages in the business of home inspection.

(6) "Residence" means a structure including, but not limited to, condominiums and townhouses intended to be used or in fact used primarily for living quarters which is not over three floors in height and which does not have more than sixteen units.

##### **SECTION 40-59-510.** Administration; roster of licensed home inspectors.

The administrator is authorized to administer the provisions of this article. The administrator shall keep a register of all applicants for licensure, including the date of application and the name, qualifications, place of business, and place of residence of the applicant and the status of the license application. The administrator also shall maintain a roster including the name, place of business, residence, and business telephone number of each licensed home inspector. A copy of the roster must be available to anyone upon a written request to the commission. The commission may charge a reasonable fee for complying with a request for a roster. The amount of the fee must be established by the commission in regulation.

##### **SECTION 40-59-520.** Licensing requirement; licensing of business entity.

(A) No person may engage in or transact any home inspection business or hold himself out to the public as a home inspector or offer to engage in or transact any home inspection business in this State unless the person is licensed by the commission.

(B) No license may be issued under this article to a partnership, association, corporation, firm, or group. However, nothing in this article precludes a licensed home inspector from performing home inspections for or on behalf of a partnership, association, corporation, firm, or group or from entering into contracts or enforcing contracts as a partnership, association, corporation, firm, or group.

**SECTION 40-59-530.** Exceptions.

This article does not apply to a person:

- (1) employed by the State or any political subdivision of the State as a code enforcement official when acting within the scope of that employment;
- (2) inspecting a home exclusively for the use of a bank, savings and loan association, or credit union unless otherwise required by federal law or regulation;
- (3) licensed, registered, or certified pursuant to Chapter 3 or a person duly licensed as a general contractor pursuant to Chapter 11 or a person duly licensed pursuant to Article 1 of Chapter 59 or a person duly licensed or registered as a professional engineer pursuant to Chapter 22. Notwithstanding the exemption from licensure under this article, the provisions of this article relating to the conduct of a person in the performance of a home inspection shall apply to that person. A violation of this article is considered a violation against the person's license and subjects the person to disciplinary action by the licensing board under which the person is licensed;
- (4) who is duly licensed under the provisions of Section 46-13-55 for the purpose of issuing CL100 Wood Infestation Reports, provided such inspection is limited solely to the requirement of the CL100 report.

**SECTION 40-59-540.** Application; examination; regulations establishing minimum standards.

(A) A person desiring to be licensed as a home inspector shall submit written application to the commission on forms as the commission prescribes. Upon the submission of a completed application form and the payment of the fee required by the commission, the applicant is entitled to take the home inspector licensing examination as prescribed by the commission. Upon successful completion of the examination, the commission shall issue the applicant a license authorizing the applicant to engage in the business of home inspection in this State. The issuance of a license is evidence that the licensee is entitled to all the rights and privileges of a licensed home inspector while the license remains active.

(B) The commission shall promulgate regulations to establish the minimum qualifications and uniform criteria for the granting of a home inspector license.

**SECTION 40-59-550.** Display of license; address changes; renewal; inactive status.

(A) The licensee shall display the license in the manner prescribed by the commission.

(B) The licensee shall inform the commission of any change in his business or home address.

(C) A license must be renewed before July first of each year for a period of one year upon payment of the renewal fee and upon compliance with this article. If the home inspector has not complied with any provision of this article during the year, the licensee shall submit a new application as in the case of the issuance of an original license.

(D) The commission may provide for the late renewal of a license upon payment of a late fee in an amount established by the commission in regulation.

(E) A licensee who does not intend to engage in the business of home inspection for at least one year may request upon written notice to the commission that his license be placed in inactive status. While in inactive status, the person is not subject to payment of any renewal fees and may not perform home inspections in this State. When the person desires to resume the performance of home inspections, he shall file an application for license renewal, pay the renewal fee, and demonstrate continuing competence as defined by the commission in regulation. If a license has been in inactive status for more than three years, the person shall submit a new application as in

the case of the issuance of an original license and shall take and successfully complete the examination.

**SECTION 40-59-560.** Inspection reports; form; disclosure of scope and limitations.

(A) An inspection report issued by a licensed home inspector under this chapter must be on a form approved by the commission. For purposes of this section, a form that contains the same information as the commission-approved form is considered to have met the requirements of this section.

(B) Nothing in this section may require a home inspector to inspect every item contained in the commission-approved form, and nothing in this section may limit a home inspector from performing a home inspection beyond the scope of information contained in the commission-approved form. A home inspector shall indicate on the inspection report which items, if any, were not inspected.

(C) A home inspector shall disclose the scope and limitations, if any, of each inspection before performing a home inspection.

**SECTION 40-59-570.** “Advertisement” defined.

“Advertisement” means any form of public notice, however disseminated. An advertisement by a licensed home inspector shall include the name, business name, address, and license number of the licensee. The use of any false, misleading, unfair, or deceptive practice in any advertisement is grounds for disciplinary action as provided for under this chapter.

**SECTION 40-59-580.** Denial, suspension or revocation; civil penalties; hearing; review.

(A) The commission may deny, refuse to renew, temporarily suspend, or revoke a license or issue a civil penalty under this section if the licensee or applicant for licensure:

(1) makes a false or misleading statement in that portion of a written report that deals with professional qualification or in any testimony concerning professional qualifications;

(2) engages in an act or omission involving dishonesty, fraud, or misrepresentation with the intent to substantially benefit a home inspector or other person or with the intent to substantially injure another person;

(3) engages in an act of fraud, misrepresentation, or deceit in the making of a home inspection;

(4) pays a finder’s fee or a referral fee to a person in connection with an inspection of a residence;

(5) fails or refuses without good cause to exercise reasonable diligence in developing a home inspection report, preparing a report, or communicating a report;

(6) accepts a home inspection assignment when the employment itself is contingent upon the home inspector reporting a predetermined estimate, analysis, or opinion or when the fee to be paid is contingent upon the opinion, the conclusions, analysis, or report reached or upon the consequences resulting from the assignment;

(7) performs work or improvement to a residence upon which the home inspector performed a home inspection within the previous twelve months;

(8) employs fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or renewal of a license;

(9) commits an act or acts of malpractice, gross negligence, or incompetence in the performance of home inspections;

(10) practices as a licensed home inspector without a current license;

(11) engages in conduct that could result in harm or injury to the public;

(12) engages in an act or practice violative of any of the provisions of this article or a regulation promulgated by the commission under this article or aids, abets, or assists a person in such violation.

(B) The commission may impose a civil penalty for violations of any provision of this article or a regulation promulgated by the commission, as follows:

- (1) for a first violation, a penalty in an amount not to exceed one hundred dollars;
- (2) for a second violation, a penalty in an amount not to exceed two hundred dollars; and
- (3) for a third and any subsequent violation, a penalty in an amount not to exceed one thousand dollars.

Civil penalties collected by the commission must be remitted to the State Treasurer for deposit in the state's general fund.

(C) The denial, refusal to renew, temporary suspension, or revocation of a license or the issuance of a civil penalty under this section may be ordered by a decision of a majority of the commission after a hearing held in accordance with Article 3, Chapter 23 of Title 1, the Administrative Procedures Act. A decision of the commission to deny, refuse to renew, temporarily suspend, or revoke a license or impose a civil penalty is subject to review by an administrative law judge as provided under Article 5, Chapter 23 of Title 1.

(D) An individual may apply to the commission for reinstatement of a revoked license if the revocation has been in effect for at least one year. The license may be granted upon an affirmative vote by a majority of the commission.

**SECTION 40-59-590.** Restrictions; appraisals and real estate activities.

A home inspector is prohibited from engaging in real estate appraisal activity unless the inspector meets the requirements of Chapter 60. Further, a home inspector is prohibited from engaging in any real estate activity regulated under Chapter 57 unless the inspector meets the requirements of that chapter.

**SECTION 40-59-600.** Penalties; actions to enforce contract; injunction.

(A) The administrator is authorized to use the powers granted to him pursuant to this chapter to enforce the provisions of this article.

(B) A home inspector who is not otherwise exempt from this article who undertakes or attempts to undertake the business of home inspection without first obtaining a license or who knowingly presents, or files with, the commission false information for the purpose of obtaining a license is guilty of a misdemeanor and:

- (1) for the first offense, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both;
- (2) for a second offense, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than ninety days, or both.
- (3) for a third and subsequent offense, upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than one hundred eighty days, or both.

(C) A home inspector who does not have a license as required by this article may not bring an action either at law or in equity to enforce the provisions of a contract for home inspection which he entered into in violation of this article.

(D) If it appears to the commission that a home inspector has violated, or is about to violate, a provision of this article, the commission may in its own name petition an administrative law judge to issue a temporary restraining order enjoining the violation of this article, pending a full hearing to determine whether or not the injunction must be made permanent.

**SECTION 40-59-610.** Regulations.

The commission is authorized to promulgate regulations to administer the provisions of this article.

**SECTION 40-59-620.** Applicability of building code in effect at time of construction.

When an inspection report includes a deficiency that is alleged to be a building codes violation, the inspector is responsible for determining the construction dates and building codes in effect at the time of construction and must conduct the inspection using the building codes in effect at the time of construction.

## ARTICLE 5.

### NOTICE AND OPPORTUNITY TO CURE CONSTRUCTION DWELLING DEFECTS

**SECTION 40-59-810.** Short Title.

This article may be cited as the “South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act”.

**SECTION 40-59-820.** Definitions.

As used in this article:

(1) “Action” means any civil lawsuit or action or arbitration proceeding for damages or indemnity asserting a claim for injury or loss to a dwelling or personal property caused by an alleged defect arising out of or related to the design, construction, condition, or sale of the dwelling or a remodel of a dwelling.

(2) “Claimant” means a homeowner, including a subsequent purchaser, who asserts a claim against a contractor, subcontractor, supplier, or design professional concerning a defect in the design, construction, condition, or sale of a dwelling or in the remodel of a dwelling.

(3) “Construction defect” means a deficiency in or a deficiency arising out of the design, specifications, surveying, planning, supervision, or observation of construction or construction of residential improvements that results from any of the following:

(a) defective material, products, or components used in the construction of residential improvements;

(b) violation of the applicable codes in effect at the time of construction of residential improvements;

(c) failure of the design of residential improvements to meet the applicable professional standards of care at the time of governmental approval of the design of residential improvements; or

(d) failure to construct residential improvements in accordance with accepted trade standards for good and workmanlike construction at the time of construction. Compliance with the applicable codes in effect at the time of construction conclusively establishes construction in accordance with accepted trade standards for good and workmanlike construction, with respect to all matters specified in those codes.

(4) “Dwelling” means a single-family house or duplex or a multifamily unit not to exceed sixteen units and not to exceed three stories in height, and which is intended for residential use. A dwelling includes the systems and other components and improvements that are part of a single or multifamily unit at the time of construction.

(5) “Serve” or “service” means personal service or delivery by certified mail to the last known address of the addressee.

**SECTION 40-59-830.** Stay of action upon non-compliance with article.

If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article.

**SECTION 40-59-840.** Notice of claim; timing; contents; request for clarification.

(A) In an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor. The notice of claim must contain the following:

- (1) a statement that the claimant asserts a construction defect;
- (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect; and
- (3) a description of any results of the defect, if known.

The contractor or subcontractor shall advise the claimant within fifteen days of receipt of the claim if the construction defect is not sufficiently stated and shall request clarification.

**SECTION 40-59-850.** Contractor's election to inspect, remedy, settle, or deny claim; inspection of construction defect; response to contractor's offer; admissibility.

(A) The contractor or subcontractor has thirty days from service of the notice to inspect, offer to remedy, offer to settle with the claimant, or deny the claim regarding the defects. The claimant shall receive written notice of the contractor's or subcontractor's, as applicable, election under this section. The claimant shall allow inspection of the construction defect at an agreeable time to both parties, if requested under this section. The claimant shall give the contractor and any subcontractors reasonable access to the dwelling for inspection and if repairs have been agreed to by the parties, reasonable access to affect repairs. Failure to respond within thirty days is deemed a denial of the claim.

(B) The claimant shall serve a response to the contractor's offer, if any, within ten days of receipt of the offer.

(C) If the parties cannot settle the dispute pursuant to this article, the claimant may proceed with a civil action or other remedy provided by contract or by law.

(D) Any offers of settlement, repair, or remedy pursuant to this section, are not admissible in an action.

**SECTION 40-59-860.** Claims for personal injury or death; designation for stay on Civil Action Cover Sheet.

(A) Nothing in this article applies to actions arising out of claims for personal injury or death, or both.

(B) Court Administration must develop a designation on the Civil Action Cover Sheet which indicates whether a stay has been granted for a civil action filed pursuant to the South Carolina Notice and Opportunity to Cure Construction Defects Act.