

1979 WL 52530 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 1, 1979

*1 Mr. John T. Watkins
Director
S. C. Residential Home Builders Commission
2221 Devine Street, Suite 312
Columbia, South Carolina 29205

Dear John:

You have asked for an opinion of this Office as to the number of residences an unlicensed residential home builder can construct for his own use. You referenced a situation where a builder constructs a residence with the announced intention of such being for his own use and then either sells before moving in or moves in but sells such residence shortly thereafter. You indicate that in-some instances, such actions develop into a pattern of building by individuals, presumably unlicensed.

As you are aware, [Section 40-59-10 of the 1976 Code of Laws of South Carolina](#) states:

(f) or the purpose of this chapter, a “residential home builder” shall be one who constructs a residential building or structure for sale or who, for a fixed price, commission, fee or wage, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not over three floors in height and which does not have more than sixteen units in the apartment complex, or the repair, improvement or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds ten thousand dollars.

Pursuant to [Section 40-59-70 of the 1976 Code of Laws](#) such persons coming within the above definition are required to be licensed by the South Carolina Residential Home Builders Commission. A residential home builder who undertakes or attempts to undertake residential home building without being licensed is, pursuant to [Section 40-59-130 of the 1976 Code of Laws](#), subject to criminal penalties. Furthermore, by such section, injunctive relief may be obtained on behalf of the Commission against such a builder. However, [Section 40-59-10, supra](#), also states that “(n)othing herein shall prevent any person, or his agents, from performing these acts on his own residence or on his other real estate holdings.” The referenced definitions are repeated in the Commission's Rules and Regulations. I am unaware of any regulations of the Commission which comment particularly to the question you have raised.

With reference to the above, it would appear that in light of the provision that an individual may construct a structure for his own use without being licensed, the only answer may be in the discovery of a particular builder's true intentions. However, as you are aware, reliance upon intentions obviously allow for much maneuvering so as to avoid the intent of the statute requiring the licensing of residential home builders. The only suggestion this Office can provide is that if it appears that a definite pattern is developing whereby a builder is circumventing the statutes requiring licensing, presumably the Commission could seek the relief available in [Section 40-59-130, supra](#). However a definite pattern would have to be apparent in light of the broad authority of [Section 40-59-10, supra](#), which allows construction by an unlicensed builder “on his own residence or his other real estate holdings.”

Sincerely,

*2 Charles H. Richardson
Assistant Attorney General

Approved By:

Deputy Attorney General

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