

# **2018 South Carolina Legislation on Homeowners Associations**

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

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

### **SCHA Act - South Carolina Homeowners Association Act**

The SCHA Act creates several new requirements which will impact HOAs throughout the state. The SCHA Act requires HOAs to record in county public records any governing documents adopted by the HOA on or before January 10th of the calendar year following the year in which such document was adopted. Documents such as HOA bylaws, and amendments thereto, are subject to this new rule. In addition, any rules or regulations adopted by the HOA must also be recorded. The bill remains somewhat unclear as to what types of documents constitute "rules and regulations" so until this is clarified - by the courts or by other means - some documents not customarily recorded, such as architectural review standards, will likely need to be recorded, pursuant to this new rule. This precaution ensures that a diligent buyer, title abstractor or closing attorney will have access to such records, which increases transparency which benefits buyers. Many well-established communities managed by HOAs have already recorded such documents or otherwise made them publicly available, however, in order to ensure compliance with the SCHA Act, many HOAs will be required to review various records, governing documents and adopted rules to confirm that all relevant documents are recorded.

Of note, governing documents adopted prior to the enactment of the SCHA Act are not grandfathered in to the recording requirements implemented by the SCHA Act. No HOA will have the ability to enforce the terms found within such documents unless the documents are recorded by January 10, 2019. Also, the new recording requirement applicable to rules and

regulations only appear to apply to those rules adopted by an HOA. Rules adopted by another governing entity within the same community, such as a recreational club, are not subject to this rule.

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

## **DCA Act - Department of Consumer Affairs Services for Homeowners and Homeowners Association Act**

The Department of Consumer Affairs Services for Homeowners and Homeowners Association Act (DCA Act) expands the role of the Department of Consumer Affairs (Department) to field complaints filed by homeowners concerning the governance of HOAs in South Carolina. Upon receiving a complaint, the DCA Act requires the Department to provide the complaint to the HOAs board of directors, thereby providing the board with the opportunity to submit a formal response. The DCA Act also requires the Department to submit a report to the General Assembly on an annual basis containing information compiled from the complaints and responses it receives. Although the DCA Act is silent as to what the General Assembly may use the data for, some assume this data may serve as research for implementing additional HOA regulations in the future. The DCA Act, however, does not provide the Department with any "teeth" to enforce conduct among HOAs which a homeowner may believe is improper. Although the Department may collect complaints, the DCA Act does not provide the Department with the ability to reprimand an HOA, nor does it provide it with any dispute resolution powers.

## **Disclosure Act - New Seller Disclosure Requirement**

*H.3886* also amends the Residential Property Condition Disclosure Act (Disclosure Act) to require sellers of real property not exempted by the Disclosure Act to disclose whether the property is subject to the governance of an HOA. Although this new disclosure requirement itself is minimal, failure to disclose such information can potentially expose a seller of real property to civil liability.