

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