

Policy Directive

Homeowners Associations Rules, Covenants and Restrictions

Effective Immediately

During the last legislative session, the General Assembly amended The South Carolina Homeowner's Association Act as follows: Effective May 17, 2018 the South Carolina Homeowners Association Act amended Title 27 to the SC Code of Laws to include Section 27-30-130. The Act states that to be enforceable, a homeowners association must record their governing documents in the clerk of court's or register of deeds office in which the property is located. Documents not recorded prior to the effective dates of this Act must be recorded by January 10th of the year following the effective date of this Act in order to be enforceable. Any HOA formed after the effective date of this Act or any amendments to governing documents of an existing HOA must be recorded by January 10th of the year following their adoption or amendment to continue to be enforceable. The recording of the rules, regulations, bylaws, and amendments to rules and regulations are not subject to the requirements of witnesses and acknowledgements required under Section 30-5-30.

We will accept these documents electronically and across the counter. They will be recorded as doc type 082 Restrictions. As stated in Paragraph (D), the documents will not require two witnesses or an acknowledgment. However the document must still be signed with an original wet ink signature, (unless it is recorded electronically).

There will be some locally imposed requirements meant to insure that everyone is aware of precisely to what properties these rules, restrictions, bylaws and amendments to such are being applied. In addition we will require contact information such as address, email or telephone number and title and printed listing of person recording the document.

- Signature of person recording, included in print and title
- Property HOA name
- Physical address or legal description of the property, (a good faith effort to identify precisely what is impacted, i.e. differences in name from larger master deed or Phase number of project, if applicable)
- Contact information for the association or the person recording

It is also highly recommended that the Book and Page Reference for the Master Deed or Governing Documents be listed, however this is not a requirement. This additional information may be attached as a cover sheet for documents, particularly for older documents that may have been executed in the past, rather than preparing new documents.

Horry County has now adopted this new lessened requirement for the recording of Covenants, Rules, Restrictions or other types of requirements for Homeowners Associations, Horizontal Property Regimes, Binding Deed Restrictions or other such documents. The Master Deed that allows such rules, restrictions, by-laws and amendments to such must be recorded under the usual recording criteria to include witnesses, notary, acknowledgement, etc. This new policy is effective from this day forward.

South Carolina Code:

Section 27-30-130. (A)(1) Except as otherwise provided in this section, in order to be enforceable, a homeowners association's governing documents must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.

(2) To continue to be enforceable, any governing document not recorded prior to the effective date of this section must be recorded by January tenth of the year following the effective date of this section in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.

(B)(1) Rules, regulations, and amendments to rules and regulations:

(a) are effective upon passage or adoption; and

(b) must be made accessible to a homeowners association member upon the request of that member of the homeowners association, and, at the option of the homeowners association, via electronic mail or through methods provided by the homeowners association's bylaws that ensure actual notice, unless they are:

(i) posted in a conspicuous place in a common area in the community; or

(ii) available on an Internet website maintained by the homeowners association, where they may be downloaded by the homeowner.

(2) In order to remain enforceable, a homeowners association's rules, regulations, and amendments to rules and regulations must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county in which the property is located by January tenth of each year following their adoption or amendment.

(C) Homeowners associations in existence on the effective date of this section must record the documents required by subsections (A)(1) and (B)(2) by January tenth following the effective date of this section.

(D) The recording of the rules, regulations, bylaws, and amendments to rules and regulations are not subject to the requirements of witnesses and acknowledgements required under Section 30-5-30.

Explanation by South Carolina Association of Counties

(taken from '2018 Acts That Affect Counties' published by SCAC)

ACT NO. 245

R. 245, H. 3886

EFFECTIVE DATE: MAY 17, 2018

This legislation amends Title 27 of the 1976 Code by adding § 27-30-110 to create the 'South Carolina Homeowners Association Act.' Section 27-30-130 of the Act states that to be enforceable, a homeowner's association (HOA) governing documents must be recorded in the clerk of court's, register of mesne conveyance (RMC), or register of deeds office of the county in which the property is located. Any governing documents not recorded prior to the effective date of this Act must be recorded by January 10th of the year following the effective date of this Act in order to continue to be enforceable. Any HOA formed after the effective date of this Act or any amendments to the governing documents of an existing HOA must be recorded by January 10th of the year following their adoption or amendment to continue to be enforceable. The recording of the rules, regulations, bylaws, an amendment to rules and regulations are not subject to the witness and acknowledgements required under § 30-5-30.