

HOA members learn about new requirements

BY JASON EVANS

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SENECA — New requirements created by state legislation will affect local homeowners associations, according to attorney Andrew Smith, who spoke at a recent workshop hosted by the Mountain Lakes Community Association.

"This legislation, the South Carolina Homeowners Association Act, is going to affect every single property owners' association, whether they know it or not," Glen McPheeters of the Mountain Lakes Community Association said.

Smith said there hasn't been any law pertaining to homeowners associations until this year, when House Bill 3866 passed. S.C. Nonprofit Corporation Act 1994 governed all nonprofits, including incorporated homeowners associations.

The S.C. Homeowners Association Act requires HOAs to record governing documents, and have rules and regulations recorded in the county where the real property is located.

The law does not change requirements for covenants, which are already required to be recorded.

"That's been happening forever," Smith said. "That's how they have their power. They're on the record, just like a deed, because they affect what happens on land."

The act states that HOAs must record with the register of deeds the rules and regulations they want to be enforceable.

The documents must be recorded by Jan. 10, 2019.

"You have them existing right now," Smith said.

"They are enforceable right now. If somebody violates them right now, you can enforce them. If you don't record them by Jan.

10 next year, on Jan. 11 you can't enforce them."

Going forward, the act states any rule, regulation, bylaw, etc. created, amended or adopted by a HOA are effective upon adoption, but must be recorded by Jan. 10 of the following year to remain enforceable.

"Any year you make new ones, you've got to record them," Smith said.

Smith was asked if an association that misses the filing deadline must wait another year to record.

"No," Smith replied. "If you record them on Jan. 30, they are enforceable."

He said many HOAs have environmental guidelines, he said.

"If you want these things to be a suggestion, don't record them," Smith said. "If you want to be able to enforce them, record them. Anything you want to enforce, you've got to record."

The act also requires an HOA's rules and regulations to be accessible to a member homeowner upon request, by email or other method established in bylaws, unless they are posted in a common area or available to download on the association's website.

Informal, unincorporated HOAs are required to provide 48 hours notice to homeowners before making a decision that would raise the annual budget, according to the act.

The act also requires unincorporated HOAs also provide members with the membership list and annual budget, upon request.

"Part of what the act is doing is it's trying to give informal HOAs and members of those organizations, not incorporated, a little bit of the benefit that members get from incorporated HOAs, giving them notice and better access to documents," Smith said.