

# CHAPTER 113

## Secretary of State

(Statutory Authority: 1976 Code §§ 35-1-50, 35-1-60, 35-1-70, 35-1-150, 35-1-170, 35-1-310, 35-1-330, 35-1-410, 35-1-510, 35-1-520, 35-1-530, 35-1-590, 35-1-600 to 35-1-620, 35-1-950, 35-1-970, 35-1-990, 35-1-1010, and 35-1-1240)

### ARTICLE 1 SECURITIES DIVISION [REPEALED]

#### **113-1. Repealed.**

HISTORY: Former Regulation, titled Agents Registered with Only One Broker-Dealer or Issuer at One Time, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

#### **113-2. Repealed.**

HISTORY: Former Regulation, titled Sales Permits and Examinations for Principals, Partners, Officers and Directors of Broker-Dealer and Issuers, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

#### **113-3. Repealed.**

HISTORY: Former Regulation, titled Examinations for Securities Agents, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

#### **113-4. Repealed.**

HISTORY: Former Regulation, titled Provisions Applicable in General to Securities Examinations, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

#### **113-5. Repealed.**

HISTORY: Former Regulation, titled Examinations for Investment Advisers, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

#### **113-6. Repealed.**

HISTORY: Former Regulation, titled Deposits in Lieu of Bond, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

#### **113-7. Repealed.**

HISTORY: Former Regulation, titled Records to Be Kept and Financial Statements to Be Filed by Broker-Dealers, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

#### **113-8. Repealed.**

HISTORY: Former Regulation, titled Securities Issued After Release of Impounded Funds, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

#### **113-9. Repealed.**

HISTORY: Former Regulation, titled Release of Portion of Commission Where Proceeds Impounded, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–10. Repealed.**

HISTORY: Former Regulation, titled Financial Statements Used in a Prospectus, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–11. Repealed.**

HISTORY: Former Regulation, titled Options or Warrants, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–12. Repealed.**

HISTORY: Former Regulation, titled Underwriting Expenses and Commissions, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–13. Repealed.**

HISTORY: Former Regulation, titled Pre-Incorporation Stock Subscriptions, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–14. Repealed.**

HISTORY: Former Regulation, titled Form and Minimum Provisions for Debt Securities, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–15. Repealed.**

HISTORY: Former Regulation, titled Expenses and Fees Payable by Investment Companies, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–16. Repealed.**

HISTORY: Former Regulation, titled Approved Securities Exchanges, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–17. Repealed.**

HISTORY: Former Regulation, titled Recognized Securities Manuals, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–18. Repealed.**

HISTORY: Former Regulation, titled Securities of Nonprofit Organizations, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–19. Repealed.**

HISTORY: Former Regulation, titled Examination Fees to Accompany Filing of Prospectus or Offering Circular, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–20. Repealed.**

HISTORY: Former Regulation, titled Fees to Accompany a Request for Confirmation of the Availability of An Exemption or Exception, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–21. Repealed.**

HISTORY: Former Regulation, titled Exemption Pursuant to Regulation D and Section 35–1–320(9), had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

**113–22. Repealed.**

HISTORY: Former Regulation, titled Limited Offering Exemption to Ten or Less Persons, had the following history: Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

### **113–23. Repealed.**

**HISTORY:** Former Regulation, titled Dishonest or Unethical Practices by Investment Advisers and Investment Adviser Representatives, had the following history: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993. Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

### **113–24. Repealed.**

**HISTORY:** Former Regulation, titled Custody of Client Funds or Securities by Investment Advisers, had the following history: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993. Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

### **113–25. Repealed.**

**HISTORY:** Former Regulation, titled Dishonest or Unethical Practices by Broker–Dealers and Agents, had the following history: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993. Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

### **113–26. Repealed.**

**HISTORY:** Former Regulation, titled Financial Reporting Requirements for Certain Investment Advisers, had the following history: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993. Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4649, eff May 26, 2017.

## **ARTICLE 2 MUNICIPAL CORPORATIONS**

(Statutory Authority: 1976 Code §§ 5–1–10, 5–1–20, 5–1–30, 5–1–40, 5–1–50, 5–1–60, 5–1–70, 5–1–80, 5–1–90, 5–1–100, 5–1–110)

### **113–200. Municipal Incorporations**

#### **A. Certification of Population Density.**

The incorporators of any proposed municipality must provide to the South Carolina Secretary of State a certification by the Research and Statistical Services Division of the South Carolina Budget and Control Board that the area in the proposed municipality has a population density of at least three hundred persons per square mile.

#### **B. Certification of Boundaries.**

The incorporators of any proposed municipality must provide to the South Carolina Secretary of State a certification by the Research and Statistical Services Division of the South Carolina Budget and Control Board or a County Planning or Zoning Office that no part of the area of the proposed municipality is within five miles of the boundary of any active incorporated, municipality. In addition, the incorporators must provide evidence that they served notice of their intent to incorporate by certified mail to the Mayor, Town Manager, or similar official of any active, incorporated, municipality within 10 miles of any point of the proposed municipality, as well as the South Carolina Municipal Association, at least 15 calendar days prior to the date of their application with the South Carolina Secretary of State. Such notice must include a copy of a map showing the proposed boundaries.

#### **C. Certification of Total Land Area.**

The incorporators of any proposed municipality must provide to the Secretary of State a certification by a County Planning or Zoning Office or the Research and Statistical Services Division of the South Carolina Budget and Control Board regarding the total land area in square miles within the proposed corporate limits.

#### **D. Certification of the Current Assessed Value.**

The incorporators of any proposed municipality must provide to the Secretary of State a certification by the Research and Statistical Services Division of the South Carolina Budget and Control Board or the County Assessor or Auditor of the current assessed value of the real and personal property within

the proposed corporate limits, together with a calculation of the general obligation bonding capacity available without a referendum.

E. Requirements for Service Feasibility Study.

South Carolina Code Section 5-1-30 provides that the Secretary of State must approve a service feasibility study for any proposed municipality. Pursuant to this statutory requirement, the incorporators of the proposed municipality must provide the following minimum information to the Secretary of State's Office:

(1) A map showing the proposed corporate limits with the distance from the corporate limits to the boundary of any active incorporated municipality.

(2) The total population within the proposed corporate limits based on the most recent U.S. Population Census.

(3) The total land area in square miles within the proposed corporate limits.

(4) A definite list of the proposed services to be provided by the proposed municipal.

(5) A detailed explanation of each service to be provided with the number, qualifications, and salary ranges of the personnel required to deliver each service.

(6) Any service to be obtained by contract must include a detailed description of the service and a realistic estimate of the cost of such service contract. The incorporators must attach consent letters, contracts or ordinances executed by the appropriate governmental officer for any services which will be provided by another governmental unit. For example, if a county was going to continue to provide planning and zoning functions after incorporation, the incorporator must attach a letter, contract or ordinance executed by either the County Manager/Supervisor, or the Chairman of County Council, indicating the county's willingness to continue providing such services, and indicating any terms or conditions.

(7) The current assessed value of the real and personal property within the proposed corporate limits, to include a calculation of the general obligation bonding capacity available without a referendum.

(8) A proposed operating budget for the first fiscal years detailing the sources and amounts of anticipated revenue to include the tax millage rate required to generate the required revenue and the anticipated revenue from property taxes. The expenditures will be detailed to include the normal line items of personnel, equipment, supplies and other operating costs for each department and/or service.

(9) A proposed capital budget itemizing the property, equipment, rolling stock, infrastructure and other items expected to be required within the first two years of operation and the proposed method of financing for each item.

(10) The applicants shall be required to use any forms promulgated by the Secretary of State's Office.

**HISTORY:** Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993.

**ARTICLE 3**  
**UNIFORM REAL PROPERTY RECORDING ACT**

(Statutory Authority: 1976 Code Sections 30-6-10 to 30-6-70)

**113-300. Definitions.**

A. "ACH" (automated clearing house) means a network processing and delivery system that provides for the distribution and settlement of electronic credits and debits among financial institutions.

B. "Authentication" means the act of tying an action or result to the person claiming to have performed the action. Authentication generally requires a password or encryption key to perform, and the process will fail if the password or key is incorrect.

C. “Authorized filer” means a party who has entered into a MOU with a register pursuant to the regulations herein.

D. “Digital electronic document” means an instrument containing information that is created, generated, sent, communicated, received, or stored by electronic means, but not created in original paper form.

E. “Digitized electronic document” means a scanned image of the original document.

F. “Document” means recorded information regardless of medium or characteristics that is:

(1) inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form; and

(2) eligible to be recorded in the real property records maintained by a register.

G. “E-government” means government’s use of information technology to conduct business or exchange information with citizens, businesses or other federal, state and local government offices.

H. “Electronic” as defined in the Uniform Real Property Electronic Recording Act means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

I. “Electronic document” means a document that is received by a register in an electronic form.

J. “Electronic recording delivery system” means an automated electronic recording system implemented by a register for recording instruments, and for returning to the party requesting the recording, digitized or digital electronic instruments.

K. “Electronic signature” means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

L. “FTP” means file transport protocol.

M. “HTTPS” means hypertext transport protocol secure.

N. “Instrument” means any deed or other document in recordable form in accordance with S.C. Code Section 30-5-30.

O. “Memorandum of understanding” (MOU) means a legal document outlining the terms and details of an agreement between parties, including each parties requirements and responsibilities.

P. “Metadata” means “data about data”; it is information that describes another set of data. Metadata is descriptive information that facilitates the management of and access to other information. In the electronic recording context, metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of electronic recordings.

Q. “MISMO” means mortgage industry standards maintenance organization.

R. “PDF”(portable document format) means a file format created for document exchange. PDF is a fixed-layout document format used for representing two-dimensional documents in a manner independent of the application software, hardware, and operating system.

S. “PDF/A” means a subset of PDF that is an electronic document file format for long-term preservation of electronic documents that ensures the documents can be reproduced the exact same way in years to come. A key element is the requirement for PDF/A documents to be 100 percent self-contained. All of the information necessary for displaying the document in the same manner every time is embedded in the file. This includes, but is not limited to, all content (text, raster images and vector graphics), fonts, and color information.

T. “PRIA” means the Property Records Industry Association. PRIA is a not-for-profit association representing business and government members of the property records industry. The main goal of the association is to facilitate recordation and access to public real property records through research and the development and implementation of national standards and systems for the industry.

U. “PKI” (public key infrastructure) means a method of enabling a user of an unsecured public network such as the Internet to securely and privately exchange data and money through the use of a public and a private cryptographic key pair that is obtained and shared through a trusted authority.

The public key infrastructure provides for a digital certificate that can identify an individual or an organization and directory services that can store and, when necessary, revoke the certificates.

V. “Register” means a Register of Deeds, Clerk of Court or Register of Mesne Conveyances.

W. “Schema” means a method for specifying the structure and content of specific types of electronic documents which use XML.

X. “SMART Doc™” means a technical framework for representing documents in an electronic format. This format links data, the visual representation of the form, and signature. The visual representation of the documents can utilize a variety of technologies such as XHTML, PDF, and TIFF. Previously SMART docs™ were called eMortgage documents. In order to better describe the actual capabilities of the technology, the word “eMortgage” was replaced by the acronym “SMART” which represents: securable, manageable, achievable, retrievable, and transferable.

Y. “UETA” (Uniform Electronic Transaction Act) means a body of recommended legislation drafted in 1999 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. UETA allows electronic documents and digital signatures to stand as equals with their paper counterparts. UETA was adopted in South Carolina in S.C. Code Section 26–6–10, et seq.

Z. “URPERA” (Uniform Real Property Electronic Recording Act) means a body of recommended legislation drafted in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. URPERA authorizes recorders to accept electronic documents for recording in accordance with established standards. South Carolina adopted URPERA in 2008 Act. No. 210.

AA. “XHTML” means extensible hypertext mark-up language.

BB. “XML” (extensible markup language) means a computer language used to create markup languages. XML allows developers to specify a document type definition or schema in order to devise new markup languages for general or specific uses.

**HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.**

### **113–305. General Provisions.**

In accordance with the provisions of the Uniform Real Property Electronic Recording Act, the URPERA Committee adopted the electronic recording standards issued by PRIA as the foundation for the standards promulgated as rule under Regulations 113–300 to 113–400.

A. A register may accept instruments for filing and recording electronically in accordance with the requirements of the Uniform Real Property Electronic Recording Act pursuant to S.C. Code Sections 30–6–10 et seq.

B. Any real property record created by electronic recording means shall meet established records management standards for electronic records and record retention requirements identified in the local government records retention and disposition schedule for registers.

C. A participating register shall retain control and ownership of the electronic records created or received by the office of the register and shall be responsible for their maintenance as public records.

**HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.**

### **113–310. Electronic Recording Models**

For registers that elect to offer electronic recording, authorized filers shall submit real property records for electronic filing and recordation utilizing one of three methods described below as allowed by the individual recorder. The methods are based on levels of automation and transaction structures identified in the PRIA *URPERA Enactment and E-recording Standards Implementation Guide*© utilized nationally to implement electronic recording.

A. Method One. An authorized filer transmits to the register a digitized (scanned) document of an original document created in paper, signed in ink and notarized. The register completes the recording process in the same way as paper using the imaged copy as the source document and determines the recording fees. Fees are usually paid from an escrow or ACH account the authorized filer establishes with the register. Documents may be submitted in batches. Once the register accepts the documents for recording the scanned image is “burned” with the recording information, including

recording date and time as well as the unique recording reference number, such as book and page number or instrument number. Indexing is performed by the indexing staff of the register's office. The recorded image is returned to the authorized filer. Usually a recording receipt, together with the recording endorsement data, the authorized filer uses the data to create and print a label with the recording endorsement information. The label is affixed to the paper document, which is then processed as usual by the authorized filer.

B. Method Two. An authorized filer transmits to the register a digitized (scanned) document of an original document created in paper, signed in ink and notarized wrapped in an XML wrapper containing the data necessary for processing, indexing and returning the document. In the case of a scanned paper document, method 2 further extends method 1 by adding data that improves the process, specifically the indexing process in the register's office. The recordable documents are generally delivered to the register's website by whatever means the parties agree, including HTTPS, web services, and FTP. Documents may be submitted in batches. Authentication of the submitter is required based on an account and personal identification number. Digital signatures and certificates may be used. The documents are stored in a secure area on the register's web site until the register's system retrieves them. Once imported into the register's system, the register's system handles the recording functions. The system imports the data from an XML wrapper, including index data. The indexing process is partially automated, but the image must be visually inspected to determine that it meets recording requirements as well as possibly to validate against the data in the XML wrapper. If a document meets the requirements, it is recorded. The recording information is "burned" onto the image and returned to the authorized filer by means agreed upon by the parties in a MOU. Fees are paid based on the method agreed upon through the MOU, usually fees are paid from an escrow or ACH account the authorized filer maintains with the register.

C. Method Three. An authorized filer transmits to the register digital electronic documents that have been created, signed and notarized electronically along with the electronic indexing information. Real property documents are typically generated on a vendor's document preparation system usually in XHTML format. [Currently the XHTML format (XML data - HTML formatting) is used or other similar formats, such as MISMO's SMART Doc format or PDF's intelligent document that incorporate the XML data and link it to the content displayed.] The submitter logs on to the system and enters the information necessary to generate the document. Once the document has been generated, the person signs it if he or she has the authority, or notifies the person with signing authority to sign. Secure access is required for all parties that must sign the document because signing is done by digital signature. Once the documents are electronically signed and notarized, they are released for recording. The document preparation system compares each document against recording rules to ensure its recordability and then calculates recording fees. Documents may be submitted in batches. Documents received at the register's system are re-checked against the requirements to determine whether or not they may be recorded. If not, they are rejected and returned to the authorized filer. Otherwise they are accepted for recording and the data for recording is extracted from the documents and passed to the register's recording system. The endorsement data is received from the register's system and entered onto the respective documents usually in XML format. Fees are paid based on the method agreed upon through the MOU.

**HISTORY:** Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

### **113-315. Memorandum of Understanding.**

A filer shall apply to a participating register to be enrolled in the participating register's electronic filing and recording program.

A. The authorized filer and a participating register shall enter into a memorandum of understanding (MOU) relating to the terms and conditions of participation in the register's electronic filing and recording program. The provisions of the MOU shall be consistent with the regulations herein and the Uniform Real Property Electronic Recording Act. At a minimum the MOU shall address the items described immediately below.

(1) Instruments permitted to be filed electronically. The agreement shall identify the types of real property records permitted to be filed electronically, which may be amended from time to time by the register.

(2) Payment of filing fees. The MOU shall require the payment of recordation taxes, recording fees or register's fees assessed by statute, and establish the manner and method of such payment.

(3) Notarization. The MOU shall provide that electronic real property recordings shall comply with requirements for notarization pursuant to South Carolina statutes and rules adopted by the Secretary of State.

(4) Notification of submission for recordation. The MOU shall provide that the register shall issue to the authorized filer an electronic or other written notification that the electronic document has been received by the register. The notification shall include the date and time of the receipt of the electronic instrument.

(5) Notification of rejection. The MOU will provide that the electronic instruments submitted for recordation shall be rejected if they fail to meet regulation image or file-format specifications and security requirements; comply with South Carolina statute requirements; or comply with the requirements established by the register for electronic recording of real property records.

(6) Transmittal sheet requirements. The MOU shall provide that authorized filers shall comply with transmittal sheet requirements as determined by the individual county recorders.

(7) The MOU shall establish an effective date and duration of the MOU or conditions for termination.

(8) Authorized filer contact information. The MOU shall require authorized filers to provide complete information on persons to contact, including an administrative contact person and an information technology contact person.

(9) Liabilities and responsibilities of the authorized filer. The MOU shall require authorized filers to be responsible for keeping their encryption keys secure pursuant to the regulations herein and for establishing internal controls to ensure the security of the private key is not compromised and shall charge them with the responsibility to notify the register's office of a compromise to address any breach of internal controls.

(10) Breach of agreement by authorized filer. If an authorized filer fails to take immediate corrective and remedial action for any security compromise, the register may revoke the authorized filer's privileges to file electronically.

B. A participating register may include in the MOU other procedures and requirements consistent with S.C. Code Section 30-6-10 et seq. in order to implement fully an electronic filing and recording program.

**HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.**

### **113-320. Document and System Security Requirements.**

Security procedures shall be implemented to ensure the authenticity and integrity of the electronically filed instrument, including the ability to verify the identity of the filer, as well as the ability to verify that an instrument has not been altered since it was transmitted or filed. In order to protect the integrity of instruments to be recorded electronically, a participating register and authorized filers shall meet the security procedure requirements set forth below.

A. An electronic recording delivery system implemented by a register shall provide a secure method for accepting and recording digital or digitized electronic instruments. The system shall not permit an authorized filer or its employees and agents, or any third party, to modify, manipulate, insert or delete information in the public record maintained by the register, or information in electronic records submitted pursuant to Regulation 113-300 to 113-400. Security standards implemented by registers shall accommodate electronic signatures and notarization of documents in a manner that complies with S.C. Code Section 30-6-10 et seq. and that address the following encryption requirements. The electronic recording delivery system shall:

- (1) support, at a minimum, 128-bit file and image encryption over a secure network;
- (2) provide for periodic updates to encryption by the electronic recording delivery system vendor;
- (3) advise the authorized filer of its liabilities and responsibilities for keeping its keys secure;
- (4) provide a secure key management system for the administration and distribution of cryptographic keys; and



(5) require all encryption keys to be generated through an approved encryption package and securely stored.

B. The electronic recording delivery system shall control interactive access to the system through authentication processes that:

(1) utilize a process of requesting, granting, administering and terminating accounts;

(2) address the purpose, scope, responsibilities and requirements for managing accounts;

(3) designate one or more individuals to manage accounts; and

(4) provide for secure delivery of the authorized filer(s) initial password(s) and prohibit the transmission of identification and authentication information (password) without the use of industry accepted encryption standards.

C. Registers shall have a key management system in place for the secure administration and distribution of cryptographic keys.

(1) The electronic recording delivery system shall authenticate the authorized filer's private key.

(2) Authorized filers shall establish internal controls to ensure the security of the private key is not compromised and certify compliance with the register as part of the MOU.

(3) Security of private keys compromised within the electronic recording delivery system shall be promptly addressed by the register.

D. A risk analysis to identify potential threats to the electronic recording delivery system and the environment in which it operates shall be conducted at least once every three years by the register. The purpose of the risk analysis is to prevent the filing and recording of fraudulent instruments or alteration of instruments that were previously filed and recorded electronically. A risk analysis shall identify and evaluate system and environmental vulnerabilities and determine the loss impact if one or more vulnerabilities are exploited by a potential threat. The risk analysis shall include:

(1) a risk mitigation plan that defines the process for evaluating the system;

(2) documentation of management decisions regarding actions to be taken to mitigate vulnerabilities;

(3) identification and documentation of implementation of security controls as approved by management; and

(4) a reassessment of the electronic recording delivery system security after recommended controls have been implemented or in response to newly discovered threats and vulnerabilities.

E. Authorized filers who are enrolled in a participating register's electronic filing and recording program shall implement security procedures for all electronic filing transmissions and shall be responsible for maintaining the security of the systems within their respective offices.

F. Electronic recording delivery systems shall protect against system and security failures and, in addition, shall provide normal backup and disaster recovery mechanisms.

**HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.**

### **113-325. Electronic Transmissions.**

A. Instruments shall be transmitted through either a secured website or an electronic recording delivery system. The method of transmission shall be identified in the MOU signed by the authorized filer and the register.

B. An authorized filer shall visually inspect each instrument prior to transmitting to ensure compliance with existing statutory recording requirements and the regulations herein.

C. Information contained in the transmittal sheet may be received in XML format as permitted by the register.

D. The register may post guidelines to assist customers submitting documents electronically.

**HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010. Amended by SCSR 44-5, Doc. No. 4876, eff May 22, 2020.**

### **113–330. Electronic Recording Process Requirements.**

A. An MOU between a participating register and an authorized filer shall include information required by the participating register in order to provide electronic notice of confirmation or rejection of an electronic filing and subsequent recording, or if such electronic notice is not possible, by telephone or facsimile. The MOU shall address the requirements outlined in the regulations herein.

B. When a participating register provides acknowledgment of receipt of an instrument filed electronically, the instrument shall be considered to have been filed in compliance with the applicable regulations and laws relating to filing of an instrument with the register.

C. A notice of confirmation of recording or a notice of rejection for recording shall be provided by a participating register to an authorized filer no later than the first business day after the instrument is filed electronically.

(1) A notice of confirmation shall include recording information for the instrument accepted for recording and shall identify the instrument accepted for recording, as provided in the agreement.

(2) A notice of rejection shall include a brief explanation of the reason or reasons for rejection and shall identify the instrument rejected for recording, as provided in the agreement.

(3) If a participating register complies with the notice provisions of the agreement, the failure of an authorized filer to receive notice of confirmation or rejection of filing and subsequent recording shall not affect the validity of the confirmation or rejection.

D. The authorized filer shall be responsible for returning the original instrument to the party or parties entitled to it after notice of confirmation of recording is received by the authorized filer and for providing to such party or parties the recording information set forth in the notice of confirmation from the participating register.

**HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.**

### **113–335. Document Formats**

A. Authorized filers may elect to transmit either a digitized (scanned) electronic document of an original ink signed instrument or an electronic document electronically signed and notarized along with electronic indexing information to the register.

B. Digitized (scanned) electronic documents shall meet the following specifications:

(1) provide fidelity to the original appearance of any instrument at the time such instrument was first created, whether by electronic or other means;

(2) retain the original content;

(3) be scanned at a minimum of 300 dpi;

(4) be scanned in TIFF or PDF/A formats;

(5) be scanned in portrait mode;

(6) shall capture document images in any multi-page storage format as specified by the register; and

(7) shall be legible to enable reproduction onto microfilm or microfiche to meet regulation requirements.

C. Digital electronic documents transmitted to the register for recording shall meet PRIA formatting and document data field standards in accordance with state and local recording laws as applicable.

D. Electronic recordings shall be converted to (if necessary) and preserved as TIFF or PDF files along with their associated metadata. Method 3 submissions shall be converted to TIFF or PDF.

**HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.**

### **113–340. Document and Indexing Requirements.**

Electronic recording delivery systems implemented by registers shall have the capacity at a minimum to process documents that are compatible with indexing requirements established by PRIA for file formatting and indexing.

A. The *PRIA eRecording XML Standard v2.4.1* is adopted by reference. The most current version of the PRIA indexing and document format standards may be found at the PRIA website at <http://pria.us/>

- B. Indexing fields for each document code shall require the minimum index fields listed below:
- (1) grantor(s) or equivalent grantee(s) or equivalent;
  - (2) document type recording fee related (original document number, in the case of releases, assignment, amendments, etc.);
  - (3) legal description fields as specified by county;
  - (4) standard PRIA tags defined for these fields must be used. <http://pria.us/>

**HISTORY:** Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

### **113–345. Payment of Filing Fees.**

Payment of recording fees shall be collected by a register as prescribed by statute. The register shall provide an electronic or other written receipt to the authorized filer indicating that the payment for the recordation of the electronic instrument has been received and processed by the register. The electronic recording delivery system may generate an automated electronic report which complies with this requirement. The register shall provide authorized filers with a list of payment methods which may be used for the recordation of electronic real property records.

**HISTORY:** Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

### **113–350. Preservation.**

Real property records in the custody of the register are permanent records and must be preserved. The preservation of electronic real property records requires consistent and complex management in order to maintain authenticity and integrity. Electronic records are subject to the same threats of destruction as other mediums such as natural or human-made disasters. There are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling. The durability of electronic records has not been proven to be as enduring as microfilm. In order to secure and preserve information created and stored electronically, permanent digital real property records shall be converted to microfilm.

**HISTORY:** Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

## **ARTICLE 4 ELECTRONIC NOTARIES PUBLIC**

(Statutory Authority: 1976 Code §§ 26–2–5 et seq.)

### **113–400. Registration.**

A. A notary public shall register to perform electronic notarial acts with the Secretary of State before performing notarial acts electronically.

B. The term of registration as an electronic notary shall coincide with the term of the notary's commission pursuant to Section 26–2–20(B). An electronic notary may commence performing electronic notarial duties upon receipt of confirmation of registration as an electronic notary public from the Secretary of State.

**HISTORY:** Added by SCSR 46–6 Doc. No. 5104, eff June 24, 2022.

### **113–410. Application for Registration as an Electronic Notary.**

A. A notary public must submit the application for registration electronically with the Secretary of State. This electronic application shall include:

- (1) The notary's full legal name and the name under which the notary public's commission was issued, if different;
- (2) The residential address of the notary public and the county in which the notary public's commission is enrolled pursuant to Section 26–1–50;
- (3) The email address of the notary;

(4) Proof of the successful completion of the electronic notary course of instruction, including the date of completion and name of the course of instruction on the duties of an electronic notary as approved by the Secretary of State;

(5) The expiration date of the notary public's commission;

(6) The disclosure of all license or commission revocations or other disciplinary actions against the notary public;

(7) A description of the notary technology that the notary public intends to use to perform notarial acts with respect to electronic notarizations, including the name of the electronic notary system provider. The description must include:

(a) The technology to be used in attaching an electronic notarial certificate, signature, or seal to an electronic document;

(b) The technology used to maintain the electronic journal; and

(c) The technology used to render electronic records tamper-evident;

(8) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, then the application must include:

(a) The name of that authority;

(b) The source of the license; and

(c) The starting and expiration dates of the device's term of registration; and

(9) A copy of the notary public's electronic signature, electronic notarial certificate and electronic seal, along with any necessary instructions or techniques supplied by the vendor or notary public that allows the signature and stamp to be read and authenticated.

B. The Secretary of State may exempt from disclosure under the Freedom of Information Act the residential address and email address of the notary, except as otherwise required by statute, regulation, or court order.

**HISTORY: Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.**

### **113-420. Course of Instruction.**

A. Before each registration to perform electronic notarial acts, a notary public shall complete a course of instruction approved by the Secretary of State, and pass an examination of this course.

B. The Secretary of State, or his designee, will administer the training course and testing for applicants for electronic notary public registration.

C. The content of the course shall include notarial rules, procedures, and ethical obligations pertaining to electronic notarization as provided in the South Carolina Electronic Notary Public Act or in any other law or official guideline of this State.

**HISTORY: Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.**

### **113-430. Electronic Notary Signature and Electronic Notary Seal.**

A. An electronic notary signature must meet all of the following requirements.

(1) The electronic notary signature shall be independently verifiable and unique to the electronic notary;

(2) The electronic notary signature shall be retained under the electronic notary's sole control;

(3) When the electronic notary performs an electronic notarization, the electronic signature used by the electronic notary must be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization;

(4) The electronic notary signature shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination; and

(5) An image of the electronic notary's handwritten signature shall appear on any visual or printed representation of an electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic signature.

B. An electronic notary seal must meet all of the following requirements:

(1) The electronic notary seal shall be independently verifiable and unique to the electronic notary;

(2) The electronic notary seal shall be retained under the electronic notary's sole control;

(3) When the electronic notary performs an electronic notarization, the electronic seal used by the electronic notary shall be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization;

(4) The electronic notary seal shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination;

(5) An image of the electronic notary's electronic seal shall appear on any visual or printed representation of the electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic seal;

(6) The perimeter of the electronic notary seal may contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper; and

(7) The electronic notary seal must have, within its border, the electronic notary public's name exactly as commissioned, the title "Notary Public", the words "State of South Carolina", the electronic notary public's registration number indicating that the electronic notary public may perform electronic notarial acts, and the expiration date of the electronic notary public's commission.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.

### **113-440. Employers of Electronic Notaries.**

A. Neither the employer of an electronic notary public nor any of the employer's employees or agents shall use or permit the use of an electronic notary seal or signature by anyone other than the electronic notary public to whom it is registered.

B. Upon the cessation of employment of an electronic notary public, the employer of the notary must do the following, if applicable:

(1) Relinquish any and all control of the electronic notary public's electronic notary seal conveyed by the employer's provision of an electronic notarization system as part of the electronic notary's employment;

(2) Transfer possession of the electronic notary seal to the electronic notary public; and

(3) Eliminate the ability of any other person to use the former employee's electronic notary seal if the electronic notarization system used by the employer does not permit transfer of possession of the electronic notary seal.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.

### **113-450. Rejection of Electronic Notary Public Application.**

The Secretary of State may reject an application for registration as an electronic notary public for failure to comply with any of the requirements of the South Carolina Electronic Notary Public Act. In addition, the Secretary of State may reject an application for registration as an electronic notary public for the following reasons:

A. If the application is incomplete or contains any misstatement or omission of fact;

B. If there is a pending inquiry by the Secretary of State's Office or law enforcement into the applicant's alleged failure to comply with any of the statutes, regulations or policies governing notaries public and electronic notaries public;

C. If there has been a finding against or an admission of liability by the applicant in any legal proceeding or disciplinary action based on the applicant's conduct as a notary public or an electronic notary public; or

D. The applicant has been convicted of a criminal offense involving fraud, theft, forgery, or breach of trust.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.

### **113-460. Change of Registration Information.**

A. An electronic notary public shall notify the Office of the Secretary of State of any changes in the information submitted in the notary public's application for registration within thirty (30) days following the change in information.

B. Notifications to the Office of the Secretary of State as required by this section must be made in a form or manner prescribed by the Secretary of State and must be accompanied by a fee of ten dollars.

C. Failure to timely notify the Secretary of State as required under this section may subject the electronic notary public to having his or her registration terminated.

D. Nothing herein shall be construed to prohibit an electronic notary public from receiving, installing, or using hardware and/or software updates to the technologies that the electronic notary public identified in the electronic notary public's application if the hardware or software update does not result in technologies that are materially different from the technologies that the electronic notary public identified previously.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.

### **113-470. Access and Use of Electronic Notary Seal and Electronic Signature.**

A. The electronic notary public's electronic signature and seal shall remain within the exclusive control of the electronic notary public. Access to electronic notary signatures and electronic notary seals must be protected by the use of a biometric verification, password authentication, token authentication, or other form of authentication approved by the Secretary of State according to the South Carolina Electronic Notary Public Act.

B. An electronic notary public shall not disclose any access information used to affix the electronic notary public's electronic signature or electronic seal to electronic records except:

- (1) When requested by the Secretary of State's Office or a law enforcement officer;
- (2) When required by court order or subpoena; or
- (3) Pursuant to an agreement to facilitate electronic notarizations with a vendor or other technology provider identified in an application submitted under the South Carolina Electronic Notary Public Act.

C. An electronic notary public must replace an electronic seal or signature under any of the following circumstances:

- (1) The electronic notary public's registration has expired.
- (2) The electronic seal or signature is for any reason no longer valid or capable of authentication.
- (3) The electronic notary public has changed any of the following information, or the following information has changed for any reason:
  - (a) The electronic notary public's name;
  - (b) The electronic notary public's jurisdiction;
  - (c) The electronic notary public's registration number; or
  - (d) The expiration date of notary public commission.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.

### **113-480. Electronic Notary Journal Preservation.**

A. An electronic notary journal shall be created and stored in a computer or other electronic storage device or process that protects the electronic journal against unauthorized access by password, biometric verification, token, or other form of authentication.

B. An electronic notary journal is the exclusive property of the notary public and no employer or vendor of e-notary services may retain control of a notary public's electronic record for any reason.

C. An electronic notary journal shall be retained for at least ten (10) years after the last notarial act chronicled in the journal.

D. An electronic notary journal shall be tamper-evident.

E. A notary public shall not allow a record entry to be deleted or altered in content or sequence by the electronic notary public or any other person after a record of the electronic notarization is entered and stored.

F. An electronic notary journal must be capable of providing tangible or electronic copies of any entry made in the journal.

G. Upon the death or adjudication of incompetency of a current or former notary public who is registered to perform notarial acts with respect to electronic records, the electronic notary's personal representative or guardian or any other person knowingly in possession of a journal shall:

(1) comply with the retention requirements of this section;

(2) transmit the journal to a third person contracted to act as a repository to provide the storage required by this section; or

(3) transmit the journal in an industry-standard readable data storage device to the electronic notary public's notary technology provider.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.

### **113-490. Application for Electronic Notary Providers.**

Electronic notarization system providers applying to the Secretary of State for designation as a registered electronic notarization system provider must complete and submit electronically an application to the Secretary of State for review and approval before authorizing any electronic notary seals, digital certificates or electronic signatures for use by electronic notaries public in this State. The application must include the following information:

A. The legal name of the technology provider;

B. The mailing address of the technology provider;

C. The physical address of the technology provider;

D. A designated contact person for the technology provider;

E. The phone number, physical address, and email address of the contact person for the technology provider;

F. The name of the technology provided;

G. A description of the technology used, including hardware and software specifications and requirements for the provider's electronic notarization system; and

H. A plan for the retention and disposition of records created, generated, or retained in conjunction with the use of the technology, including any electronic journal or records created or retained during an electronic notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.

### **113-500. Requirements for Systems and Providers.**

Each electronic notarization system provider must:

A. Provide a free and readily available viewer/reader to enable all parties relying on the electronically notarized record or document to view the electronic notary public's electronic signature and the electronic notary seal without incurring any cost;

B. Comply with the laws, policies, and rules that govern South Carolina notaries public;

C. Provide an electronic notarization system that complies with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in South Carolina;

D. Verify that a notary public is registered to act as a South Carolina electronic notary public prior to authorizing an electronic notary seal and electronic signature for that notary public;

E. Notify the Secretary of State of the name of each notary public who enrolls in the provider's electronic notarization system within five days after enrollment by means prescribed by the Secretary of State;

F. Provide prorated fees to align the usage and cost of the electronic notarization system with the commission term limit of the electronic notary public purchasing the electronic notary seal and electronic signature;

G. Suspend the use of any electronic notarization system for any notary public whose commission has been revoked, suspended, or canceled by the Secretary of State, within 10 calendar days of receipt of notification from the Secretary of State;

H. Submit an exemplary of the electronic notary public's electronic signature and the electronic notary seal to the Secretary for each electronic notary public who subscribes to the provider's electronic notarization system;

I. Require access to the system by a password or other secure means of authentication;

J. Enable a notary public to affix the notary's electronic signature in a manner that attributes such signature to the notary as evidenced by a digital certificate and render every electronic notarial act tamper-evident; and

K. Respond to a request for information from the Office of the Secretary of State within the time directed. Any request for information shall be sent to the contact person designated by the provider upon registration, or as updated pursuant to Regulation 113-510.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.

### **113-510. Electronic Notarization System Provider Changes.**

A. An electronic notarization system provider shall notify the Secretary of State's Office within 30 days of any changes, modifications or updates to information previously submitted to the Secretary of State. Notifications to the Office of the Secretary of State as required by this section must be made in a form or manner prescribed by the Secretary of State.

B. An electronic notarization system provider must be registered with the Secretary of State at the time it makes available to South Carolina electronic notaries any updates or subsequent versions of the provider's electronic notarization system.

**HISTORY:** Added by SCSR 46-6 Doc. No. 5104, eff June 24, 2022.