



## **Policy Paper and Position on Vested Rights and Vested Rights Ordinances**

Prior to the enactment of the South Carolina Vested Rights Act in 2004, South Carolina was known as a "late vesting state." That meant a property owner had to have a building permit in hand in order to be vested to develop property based on an approved development plan.

Property owners invested substantially in their real estate even though they were under the cloud of uncertainty that the rules would change before they reached the point of receiving a building permit. Many South Carolina REALTORS® had their development projects impacted or real estate transactions fall through when local government rezoned the property or otherwise changed the rules before a building permit was issued.

### **About the Vested Rights Act**

The South Carolina General Assembly enacted the South Carolina Vested Rights Act to provide additional protection for property owners from changes to laws, ordinances, regulations, and even permits after they began investing in real estate improvements. The law moved back the vesting point to affirmative approval of the site plan and exhaustion of administrative remedies like appeals of Planning Commission decisions. The law also required South Carolina cities and counties to adopt their own Vested Rights ordinances, which must be consistent with the act, before the act became effective on July 1, 2005.

Most, but not all, local governments complied with the law. Those local governments that did not adopt a vested rights ordinance must still comply with the law.

The most common way the law applies to real estate is to lock in the vested rights of a property owner when a preliminary plat for a subdivision of real property is approved by the local planning commission. The result is that a developer who invests a significant amount of money on new streets, stormwater improvements, new water, sewer, and other utilities, and amenities in a new home community do not fear a rezoning or change to a local ordinance before the home builder pulls the last building permit in the community. And the Vested Rights Act also applies to commercial and industrial developments, especially those with long lead times between the start of the project and the issuance of a building permit for new buildings.

The Vested Rights Act protects property owners for a minimum of two years after the site plan is approved and administrative remedies are exhausted. In addition, the property owner can apply for annual one-year extensions.

### **Our Position**

The Vested Rights Act was a priority on the REALTOR® Advocacy Agenda in 2003-2004 and has been a critical element in our state's economic surge since 2005. REALTORS® negotiated

with local government representatives and lobbied the South Carolina General Assembly and the Governor for the law's enactment.

Vesting of private property rights, including development rights, is a central tenet of preserving constitutionally-guaranteed private property rights. And in today's climate of aggressive NIMBYism, protecting property owners from punitive or politically-motivated changes to ordinances, laws, and even permits, after substantial investment in a development has begun not only makes sense but protects our state's long-term economic development efforts as well.

The Western Upstate Association of REALTORS® encourages local governments in the Western Upstate to adopt vested rights ordinances that are faithful to the law, and to faithfully protect property owners from unnecessary public and governmental interference once they have begun making investments in their real property. In particular, we recommend that local vested rights ordinances also include longer-term vesting for phased development plans that may last for many years longer than smaller-scale developments.

Adopted

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