

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

The Honorable Thomas L. Hughston, Jr.

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Case No.: 2020-CP-18-01856

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Joseph R. Davis and Jennifer Davis, individually  
and as representative of all those similarly situated.....Appellants-Respondent,

v.

River Oaks Homeowners Association, Inc.....Respondent-Appellant

Halcyon Real Estate Services, LLC, and  
Dorchester Real Estate Services, Inc.....Respondents.

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RESPONDENT-APPELLANT RIVER OAKS HOMEOWNERS ASSOCIATION, INC.'S  
MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF SAME

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WALL TEMPLETON & HALDRUP, P.A.

Neil S. Haldrup  
Ford H. Thrift  
145 King Street, Suite 300  
Post Office Box 1200  
Charleston, South Carolina 29402  
Telephone: 843.329.9500  
Facsimile: 843.329.9501  
Attorneys for Respondent-Appellant River Oaks  
Homeowners Association, Inc.

Respondent-Appellant River Oaks Homeowners Association, Inc. (“River Oaks”), respectfully moves pursuant to South Carolina Appellate Court Rules 203 and 260 for an order dismissing Appellants-Respondents Joseph R. Davis and Jennifer Davis’ (“Appellants”) Notice of Appeal dated September 13, 2024. River Oaks respectfully requests that the Clerk of Court and/or the Court issue and order dismissing this appeal pursuant to SCACR 260(a) for failure to comply with Rule 203(d)(1)(B) of the South Carolina Appellate Court Rules.

### Applicable Rules

#### 1. Rule 203, SCACR

- a. **Notice.** A Party intending to appeal must serve and file a notice of appeal and otherwise comply with these rules. . . .

...

- d. **Filing.**

- (1) **Appeals from the Circuit Court, Family Court and Probate Court.**

...

- (B) **When and What to File.** The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.

#### 2. Rule 260, SCACR

- a. **Involuntary Dismissal and Reinstatement.** Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. . . .

#### 3. Rule 6, SCRCP

- b. **Enlargement.** . . . The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order.

### Law & Argument

“[T]he South Carolina Appellate Court Rules are not mere technicalities . . .” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). This appeal should be dismissed because Appellants have not filed their notice of appeal with the Clerk of Court for Dorchester County as

required by Rule 203(d)(1)(B), SCACR. An appeal “is a matter of grace and is not an inherent or vested right.” *McCullough v. McCullough*, 242 S.C. 108, 110, 130 S.E.2d 77, 78 (1963). Thus, “the rules of court and statute must be followed in perfecting an appeal.” *Id.* A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules.” Rule 203(a), SCACR (emphasis added). “A party intending to appeal a judgment from the Circuit Court shall file the notice of appeal with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.” Rule 203(d)(1)(B), SCACR (emphasis added). If a party fails to timely file the notice of appeal, the appeal shall be dismissed. Rule 203(d)(3), SCACR (emphasis added). “The term ‘shall’ in a statute means that the action is mandatory.” *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003). “When interpreting a court rule, an appellate court applies the same rules of construction used in interpreting statutes.” *State v. Oglesby*, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009).

In this case, Appellants filed their Notice of Appeal with the Court of Appeals on September 13, 2024, via e-mail. (*See* Exhibit A – Appellants’ Correspondence and Notice of Appeal.) Appellants’ e-mail also included a Certificate of Service stating:

I certify that on this 13th day of September 2024, I have served Appellants Notice of Appeal upon the clerk of court for Dorchester county through the use of the SC Courts E-filing System and upon all other counsel of record at the email address listed for said counsel on AIS . . .

(Exhibit A.) Appellants’ e-mail included all counsel of record but did not include any employee or representative from the Clerk of Court for Dorchester County. It also did not include a copy of a Notice of Electronic Filing showing that the notice of appeal had been filed with the Clerk of Court’s Office. *See Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules*, S.C. Sup. Ct. Order dated April 24, 2024 (Adv. Sh. No. 15) (“The party shall file a copy of a Notice of Electronic Filing (NEF), or other similar document, as proof

of service of the notice of appeal.”) There is no record on the South Carolina Judicial Department Public Index of Appellants ever filing a Notice of Appeal with the Clerk of Court for Dorchester County nor has the undersigned received a Notice of Electronic Filing (“NEF”) documenting such a filing. Notices of Electronic Filing are automatically transmitted to all authorized e-filers associated with a case when any filing is submitted to the Clerk of Court. See Eberly v. Advanced Flooring & Design Div. of ISI, LLC, 442 S.C. 656, 659, 901 S.E.2d 273, 274 (2024) (providing guidance on service via e-filing). When a party is represented by an attorney, e-filing is the only valid method of filing in the Court of Common Pleas. Section 2(b), SCEF. Without a NEF, there is no evidence that Appellants filed their Notice of Appeal with the lower court as required by Rule 203, SCACR.

Rule 203(d), SCACR, provides a ten (10) day window for compliance and states that the notice of appeal “shall be filed . . . within ten (10) days after the notice of appeal is served.” This deadline passed on September 23, 2024, without any filing of the notice of appeal in the Dorchester County Clerk of Court’s Office. Even if Appellants were to argue that this deadline was extended by the Court’s September 18, 2024, letter consolidating the two appeals<sup>1</sup> in this matter<sup>2</sup>, this extended deadline passed on September 26, 2024, without any filing with the Clerk of Court for Dorchester County. At the time of this filing, Appellants have not filed any notice of appeal with the Clerk of Court for Dorchester County and have unmistakably missed the deadline for filing the notice of appeal.

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<sup>1</sup> In their appeal, Appellants challenge the August 16, 2022, Class Certification Order and presumably will seek an order from this Court that the Appellants’ class should have been certified in its entirety. River Oaks originally opposed class certification in its entirety and filed a cross-appeal solely for the purpose of preserving this argument.

<sup>2</sup> By consolidating the appeals, the Clerk of Court instructed that “[t]he times for perfecting the appeal will run for the date of service of the last notice of appeal.” (Exhibit B – Court of Appeals Letter dated September 18, 2024.)

Indeed, Appellants' failure to file the notice with the Clerk of Court's Office is fatal to their appeal because timely filing and service of the notice of appeal is a jurisdictional requirement. *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). Compliance with statutory time periods for filing appeals is a prerequisite for an appellate entity to have jurisdiction to hear an appeal. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 380 S.C. 349, 377, 669 S.E.2d 899, 913 (Ct. App. 2008), *rev'd on other grounds*, 390 S.C. 418, 702 S.E.2d 246 (2010) (emphasis added). "[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction...." *State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (citation omitted). "A party who fails to timely appeal or take any other timely action necessary to correct an error is procedurally barred from contesting the validity of the conviction." *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60 (Ct. App. 2006). The South Carolina Rules of Civil Procedure make clear that "[t]he time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order." Rule 6(b), SCRCP; *compare Overland v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 433 (2018) (10-day deadline of Rule 59 is jurisdictional and may not be enlarged). Where a rule requires the filing of the notice of intent to appeal, failure to do so renders an appeal untimely. *See, e.g., Witzig v. Witzig*, 325 S.C. 363, 366, 479 S.E.2d 297, 299 (Ct. App. 1996) (failure to timely file notice of intent to appeal required reversal and reinstatement of original order). Simply put, timeliness of an appeal is a jurisdictional matter and the appellate court has no authority to "rescue" a party by extending or ignoring the deadline. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004).

**Conclusion**

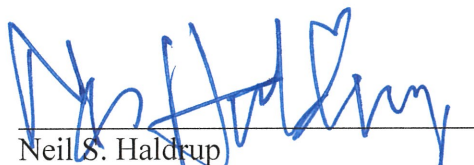
Wherefore, Appellants failed to file the notice of appeal with the Clerk of Court for Dorchester County as required by Rule 203(d)(1) SCACR and the appeal must be dismissed as untimely. River Oaks respectfully requests that the Court issue an order dismissing Appellants Notice of Appeal dated September 13, 2024, and their appeal in full.

Dated this 2nd day of Octoberr, 2024.

Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

By:



Neil S. Haldrup  
Ford H. Thrift  
145 King Street  
Post Office Box 1200  
Charleston, South Carolina 29402  
Telephone: 843.329.9500  
Facsimile: 843.329.9501  
Attorneys for Respondent River Oaks  
Homeowners Association, Inc.

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

**Sep 13 2024**

**SC Court of Appeals**

The Honorable Thomas L. Hughston Jr.

Case No. 2020-CP-18-1856

Joseph R. Davis and Jennifer Davis, individually  
and as representative of all those similarly situated,.....Appellants,

v.

River Oaks Homeowners Association, Inc.,  
Halcyon Real Estate Services, LLC, and  
Dorchester Real Estate Services, Inc. ....Respondents.

**NOTICE OF APPEAL**

Joseph R. Davis and Jennifer Davis, individually and as representative of all those similarly situated (“Appellants”) appeal the Order filed July 24, 2024, Granting River Homeowners Association, Inc.’s Motion for Summary Judgment and Denying Appellants’ Motion for Partial Summary Judgment; and the Order filed August 16, 2022, Granting Class Certification in Part. Appellants timely filed respective motions to reconsider for each Order which were denied by Orders denying said motions to reconsider, the Orders being filed on August 15, 2024, and December 6, 2022, respectively. Notice of the orders was received on the dates they were filed.

RESPECTFULLY SUBMITTED,

THE LAW OFFICE OF  
DAVID CONOR KEYS, LLC  
*s/ D. Conor Keys*  
D. Conor Keys (100148)  
P.O. Box 14225  
Charleston, SC 29422  
Phone: 843-906-3998  
[conor@dconorkeyslaw.com](mailto:conor@dconorkeyslaw.com)

MARY LEIGH ARNOLD, PA

**Exhibit "A"**

s/ Mary Leigh Arnold  
749 Johnnie Dodds Blvd., Suite B  
Mt. Pleasant, SC 29464  
Phone: 843-971-6053  
sammie@maryarnoldlaw.com  
*Attorneys for Appellants*  
*Joseph R. Davis and Jennifer Davis*

Other Counsel of Record:

WALL TEMPLETON & HALDRUP, PA  
Neil S. Haldrup  
Ford Hamby Thrift  
PO Box 1200  
Charleston, SC 29402  
P. 843-329-9500  
Neil.Haldrup@Walltempleton.com  
Ford.Thrift@WallTempleton.com  
*Attorneys for River Oaks, Inc.*

LUZURIAGA MIMS, LLP  
Kevin W. Mims  
Chase McNair  
50 Immigration St., Suite 200  
Charleston, SC 29403  
P. 843-410-4713  
kmims@lmlawllp.com  
cmcnair@lmlawllp.com  
*Attorney for Halcyon Real  
Estate Services, LLC*

SHEPHERD LAW FIRM, LLC  
Andrew T. Shepherd  
204 Brighton Park Blvd, Suite B.  
Summerville, SC 29486  
P. 843-900-3575  
andrew@sheplawfirm.com  
*Attorney for Dorchester  
Real Estate Services, Inc.*

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

**Sep 13 2024**

The Honorable Thomas L. Hughston Jr.

**SC Court of Appeals**

Case No. 2020-CP-18-1856

Joseph R. Davis and Jennifer Davis, individually  
and as representative of all those similarly situated,.....Appellants,

v.

River Oaks Homeowners Association, Inc.,  
Halcyon Real Estate Services, LLC, and  
Dorchester Real Estate Services, Inc. .... Respondents.

**CERTIFICATE OF SERVICE**

I certify that on this 13<sup>th</sup> day of September 2024, I have served Appellants' Notice of Appeal upon the clerk of court for Dorchester county through the use of the SC Courts E-filing System and upon all other counsel of record at the email address listed for said counsel on AIS as follows:

MARY LEIGH ARNOLD, PA  
Mary Leigh Arnold  
749 Johnnie Dodds Blvd., Suite B  
Mt. Pleasant, SC 29464  
Phone: 843-971-6053  
sammie@maryarnoldlaw.com  
*Attorneys for Appellants*  
*Joseph R. Davis and Jennifer Davis*

WALL TEMPLETON & HALDRUP, PA  
Neil S. Haldrup  
Ford Hamby Thrift  
PO Box 1200  
Charleston, SC 29402  
P. 843-329-9500  
Neil.Haldrup@Walltempleton.com

Ford.Thrift@WallTempleton.com  
*Attorneys for River Oaks, Inc.*

LUZURIAGA MIMS, LLP  
Kevin W. Mims  
Chase McNair  
50 Immigration St., Suite 200  
Charleston, SC 29403  
P. 843-410-4713  
kmims@lmlawllp.com  
cmcnair@lmlawllp.com  
*Attorney for Halcyon Real  
Estate Services, LLC*

SHEPHERD LAW FIRM, LLC  
Andrew T. Shepherd  
204 Brighton Park Blvd, Suite B.  
Summerville, SC 29486  
P. 843-900-3575  
andrew@sheplawfirm.com  
*Attorney for Dorchester  
Real Estate Services, Inc.*

THE LAW OFFICE OF  
DAVID CONOR KEYS, LLC  
s/ D. Conor Keys  
D. Conor Keys (100148)  
P.O. Box 14225  
Charleston, SC 29422  
Phone: 843-906-3998  
conor@dconorkeyslaw.com  
*Attorneys for Appellants  
Joseph R. Davis and Jennifer Davis*

**Exhibit "A"**

THE LAW OFFICE OF  
**DAVID CONOR KEYS LLC**  
PO Box 14225 CHARLESTON, SC 29422  
CONOR@DCONORKEYSLAW.COM  
843-906-3998

September 13, 2024

Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
ctappfilings@sccourts.org

**RECEIVED**  
**Sep 13 2024**  
**SC Court of Appeals**

**RE: Joseph R. Davis and Jennifer Davis individually and as representative of all those similarly situated, v. River Oaks Homeowners Association, Inc., Halcyon Real Estate Services, LLC, and Dorchester Real Estate Services, Inc.**  
**Case No. 2020-CP-18-1856**

Madam Clerk:

Enclosed please find in regard to the above referenced matter the following:

- 1) Appellants, Joseph R. Davis and Jennifer Davis' Notice of Appeal;
- 2) Proof of Service for the Notice of Appeal;
- 3) A copy of the Orders on Appeal dated July 24, 2024, and August 16, 2022, and a copy of the Orders Denying Appellants' corresponding Motions to Reconsider dated August 15, 2024 and December 6, 2022, respectively
- 4) A corresponding check for the same.

I kindly request that you file the same.

With kind regards,

RESPECTUFLY SUBMITTED,

THE LAW OFFICE OF  
DAVID CONOR KEYS, LLC



---

D. Conor Keys (100148)  
P.O. Box 14225  
Charleston, SC 29422  
Phone: 843-906-3998  
conor@dconorkeyslaw.com

and

**Exhibit "A"**

MARY LEIGH ARNOLD, PA  
Mary Leigh Arnold  
749 Johnnie Dodds Blvd., Suite B  
Mt. Pleasant, SC 29464  
Phone: 843-971-6053  
sammie@maryarnoldlaw.com  
*Attorneys for Appellants*  
*Joseph R. Davis and Jennifer Davis*

Enclosures:

(as stated)

CC: Mary Leigh Arnold  
Niel S. Haldrup  
Ford Hamby Thrift  
Andrew T. Shepherd  
William Chase McNair



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

September 18, 2024

Ms. Mary Leigh Arnold, Esquire  
749 Johnnie Dodds Blvd, Ste B  
Mt. Pleasant SC 29464

Mr. David Conor Keys, Esquire  
PO Box 14225  
Charleston SC 29422

Mr. Andrew T. Shepherd, Esquire  
204 Brighton Park Blvd.  
Suite B  
Summerville SC 29486

Mr. William Chase McNair, Esquire  
1156 King Street  
Charleston SC 29403

Mr. Kevin W. Mims, Esquire  
1156 King Street  
Charleston SC 29403

Mr. Thomas B Boger, Esquire  
Wall Templeton & Haldrup. P.A.  
145 King Street, Ste. 300  
Charleston SC 29401

Mr. Neil S. Haldrup, Esquire  
Wall Templeton & Haldrup

PO Box 1200  
Charleston SC 29402

Mr. Ford Hamby Thrift, Esquire  
PO Box 1200  
Charleston SC 29402

Re: Joseph R. Davis v. River Oaks Homeowners Association, Inc.  
Appellate Case No. 2024-001547

Dear Counsel:

The Court received multiple notices of appeal in this case. The notices of appeal have been consolidated for consideration by the Court, and we anticipate receiving one record on appeal. The times for perfecting the appeal will run from the date of service of the last notice of appeal.

The title in this matter has been changed to read as follows:

**Joseph R. Davis and Jennifer Davis, Individually and as Representatives of all those similarly situated, Appellants-Respondents,**

**v.**

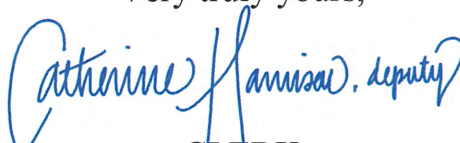
**River Oaks Homeowners Association, Inc., Respondent-Appellant,**

**and**

**Halcyon Real Estate Services, LLC, and Dorchester Real Estate Services, Inc., Respondents.**

All future filings should be changed to reflect this title. If you have any questions, please do not hesitate to contact the Clerk's office.

Very truly yours,

  
CLERK

**RECEIVED**

**Oct 02 2024**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

The Honorable Thomas L. Hughston, Jr.

---

Case No.: 2020-CP-18-01856

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Joseph R. Davis and Jennifer Davis, individually  
and as representative of all those similarly situated.....Appellants-Respondents,

v.

River Oaks Homeowners Association, Inc.....Respondent-Appellant

Haylcyon Real Estate Services, LLC, and  
Dorchester Real Estate Services, Inc.....Respondents.

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**CERTIFICATE OF SERVICE**

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I certify that on this 2nd day of October 2024, I have served the Respondent-Appellant River Oaks Homeowners Association, Inc’s Motion to Dismiss and Memorandum in Support of Same by depositing a copy of it in the United States Mail, postage prepaid, on September 27, 2024, addressed to their attorneys of record, D. Conor Keys, Esquire, Post Office Box 14235, Charleston, South Carolina 29422 and Mary Leigh Arnold, Esquire, 749 Johnnie Dodds Blvd., Ste. B, Mt. Pleasant, South Carolina 29464 and upon all other counsel of record at the addresses listed as follows:

D. Conor Keys, Esq.  
The Law Office of David Conor Keys, LLC  
Post Office Box 14225  
Charleston, South Carolina 29422  
[conor@dconorkeyslaw.com](mailto:conor@dconorkeyslaw.com)

-and-

Mary Leigh Arnold, Esq.  
Mary Leigh Arnold, PA  
749 Johnnie Dodds Blvd., Suite B  
Mt. Pleasant, SC 29464  
[sammie@maryarnoldlaw.com](mailto:sammie@maryarnoldlaw.com)  
**Attorneys for Plaintiffs**

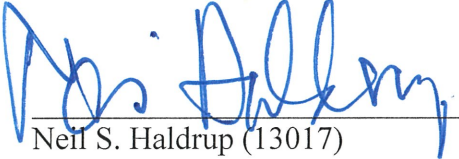
Andrew T. Shepherd, Esq.  
Shepherd Law Firm, LLC  
204 Brighton park Blvd., Ste. B  
Summerville, S.C. 2986  
[andrew@sheplawfirm.com](mailto:andrew@sheplawfirm.com)  
**Attorneys for Dorchester Real Estate  
Services, Inc.**

Dated this 2nd day of October, 2024.

Kevin W. Mims, Esq.  
Chase McNair, Esq.  
Luzuriaga Mims, LLP  
50 Immigration Street, Suite 200  
Charleston, SC 29403  
[kmims@lmlawllp.com](mailto:kmims@lmlawllp.com)  
[cmcnair@lmlawllp.com](mailto:cmcnair@lmlawllp.com)  
**Attorneys for Halcyon Real Estate  
Services, LLC**

Respectfully submitted,

WALL TEMPLETON & HALDRUP, PA



Neil S. Haldrup (13017)  
Ford H. Thrift (103294)  
Post Office Box 1200  
Charleston, SC 29402  
Tel: 843-329-9500  
[Neil.Haldrup@WallTempleton.com](mailto:Neil.Haldrup@WallTempleton.com)  
[Ford.Thrift@WallTempleton.com](mailto:Ford.Thrift@WallTempleton.com)  
**Attorneys for Defendant River Oaks  
Homeowners Association, Inc.**



October 2, 2024

**RECEIVED**  
**Oct 02 2024**  
**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: *Joseph R. Davis and Jennifer Davis vs. River Oaks Homeowners Association, et al*  
Case No: 2020-CP-18-01856  
Appellate Case No.: 2024-001547

Dear Ms. Kitchings:

Please find enclosed an original and copy of Respondent-Appellant River Oaks Homeowners Association, Inc's Motion to Dismiss and Memorandum in Support of Same. I am also enclosing the requisite filing fee.

By copy of this letter to all counsel of record, I am serving them with the enclosed Respondent-Appellant River Oaks Homeowners Association, Inc's Motion to Dismiss and Memorandum in Support of Same via electronic mail.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Neil S. Haldrup

NSH/sjs  
enclosures

cc: D. Conor Keys, Esquire (*w/ encl, via electronic mail only*)  
Mary Leigh Arnold, Esquire (*w/ encl, via electronic mail only*)  
Kevin W. Mims, Esquire (*w/ encl, via electronic mail only*)  
Andrew T. Shepherd, Esquire (*w/ encl, via electronic mail only*)