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Exterior Application Procedures

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It is certainly true that a good set of design guidelines or standards is important for any community to help the community to maintain its desired aesthetic appearance. Yet, the design guidelines and standards of a community will be only as effective in protecting the community's appearance if the appropriate procedures are in place to govern the application and review process. This memorandum discusses some of the important considerations for a community in establishing design application and review procedures.

As noted above, a community's design guidelines and standards for the appearance of the community should set forth a clear set of procedures for owners to follow when applying for approval to make alterations or additions to their homes. The procedures can follow many formats, so long as they are within the Association's authority under the Declaration and Bylaws, and so long as they are reasonable. We recommend, however, that the procedures make clear: (1) what alterations or additions will require approval from the Association; (2) what the review and appeal process will entail; and (3) what must be included in an application for

approval to make the application "complete."

First, the guidelines or standards should give the owners clear information about whether an application for approval will be required. It should be clear whether a particular change is "pre-approved." In cases of common alterations or additions, such as exterior painting, storm doors, landscaping, etc., the Association can avoid the burden of reviewing numerous applications by establishing clear standards for such pre-approved alterations or additions. However, the guidelines or standards should also provide specific guidance to show that applications are required for any deviation from the pre-approved items. In establishing such clear standards or guidelines, the Association may avoid confusion among owners about whether they are permitted to make changes without prior approval.

Second, in many cases, the Association's governing documents or a committee charter will proscribe the review process for applications. However, the guidelines or standards should set forth the process by

which the Association will receive and review applications, including the timeline for review, the manner in which the applicant will be notified of the Association's decision, and the procedures for any appeal of the Association's decision on the application. For example, many association documents will require the architectural control committee to decide upon all applications within 45 days of receiving a complete application, and to notify the owners of the Association's decision in writing. In addition, many communities will limit the time for an owner to appeal a decision to the Board of Directors to 10 days.

Third, where an application for approval is required, the guidelines or standards should state the required contents of the application. Often, owners may not realize the amount of information the Association needs to fully understand and decide upon a proposed change, and may not provide adequate information for the Association to make a decision. For that reason, the guidelines or standards should establish a checklist of required items, including drawings or plats, specifications, colors, materials, etc. Importantly, the procedures should make clear that any review-period will begin only upon receipt of a "complete application," and that the Association will notify the owner of an incomplete application. That way, the Association will have a full review period for all applications, even where owners submit piecemeal applications, or where owners fail to include required information. The clock will begin to run only when the application has been completed.

As a final note, clear procedures will help an association to apply the design guidelines or standards consistently over time and across the community. Often, homeowners are reluctant to follow any design guidelines, believing that they have an absolute right to maintain their properties without interference from a homeowners or condominium association. Such defiance can be difficult to address, but a clear set of procedures can help to ensure fairness and to diffuse possible tension or misunderstandings. Consequently, we recommend that all design standards or guidelines, as well as the application and review procedures, are published to the community.

If your association has any additional questions on exterior application procedures, please contact any one of our community association attorneys.