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Navigating Architectural Review Guidelines

**By: Ursula Koenig Burgess
Erik W. Fox**

Architectural Standards or Guidelines (“Standards”) regulate the exterior appearance of lots. They exist to promote visual harmony throughout the community, which ultimately helps lots retain their market value. The responsibility for promoting such visual harmony lies both with the Association and with homeowners. Associations have an obligation to make sure that any Standards that are adopted conform to the authorities contained in the Association’s recorded governing documents. In most communities, the Board or one of its committees is tasked with enforcing each owner’s compliance with the community’s Standards. Meanwhile, owners must make sure that they adhere to the Standards and follow all required procedures set forth therein when they plan to modify the exteriors of their residences.

In most cases, both state law and the Association’s recorded governing documents grant the Board of Directors of an Association the power to adopt Standards for the community. In some cases, there may be some requirements for publication of the proposed Standards to the community before they are adopted. The Board should take care to follow these requirements. In

Maryland, the Standards and any subsequent changes are unenforceable in homeowners Associations until they are filed with the homeowners association depository in the county where the Association was first created.

Whether derived directly from the governing documents, or rules and regulations, communities typically use Standards in one of two ways: 1) prospective use – applications for exterior changes; or 2) violation enforcement.

Standards usually provide that any residents wishing to make exterior changes to their lots or structures are required to submit an application to the Association’s architectural review committee or board of directors (“Review Authority”). In order to protect the Association against claims of arbitrary and capricious or discriminatory practices, the application process should be handled in as standardized of a manner as possible. Applications must be reviewed solely on their merit and compliance with established community Standards.

Review Authorities should establish standardized application packages to ensure

that each applicant submits, among other details, their proposed changes as modifications to the plat for their lot or unit drawings and details such as elevation drawings, color samples, and construction details should be detailed on both the plat and narrative areas of the application. In most cases, the Review Authority should not accept or rule on any application unless and until all of the necessary information is presented for the Review Authority to make a reasoned decision on the application. Many Standards state that if an application is incomplete, it must be physically returned to the owner or summarily denied. In some instances our clients have found that their failure to physically return the application resulted in the court holding that the Association did not follow their application review procedures properly. Accordingly, it is extremely important that the Review Authority follow to the letter all procedures associated with the review process set forth in the Standards as well as the Association's governing documents.

In addition, when reviewing applications, Review Authorities must be aware of any deadlines which would grant automatic approval of an application if the Review Authority does not act within a set period of time. Such deadlines are typically set out clearly in the Standards and in many cases, the Association's recorded Declaration, and failure to deny an application within the applicable time frame may prevent the Association from later ruling that the application or modification did not conform to the Association's Standards.

To avoid timing issues like this, the Association should establish clear procedures for the submission of applications to the Association that detail when they may be delivered, who is a valid Association recipient, and what constitutes a complete application, etc. Generally, Associations require owners to submit

applications to the management office where the application can be stamped with the date it was either received or returned as incomplete. If the Review Authority accepts an application at a meeting from an owner, it should be noted in the meeting minutes so that the date the application was received is clear to all parties.

Applications should be reviewed carefully to ensure that all aspects of the application are fully considered by the Reviewing Authority. This requires the Reviewing Authority to carefully and thoughtfully examine all aspects of the application, including any plats, samples, or other supplemental information.

If an application proposes several changes and less than all of the proposed modifications are approved by the Reviewing Authority, the decision letter to the applicant must clearly indicate which aspects are approved and which are denied. Any modification which is not explicitly denied may be deemed approved – so clarity in all correspondence and interactions with the applicant are key.

When an application is disapproved, the Review Authority must review the Standards to detail the proper application requirements when they notify the applicant of the denial. The notification of “denied” application should also clearly advise the applicant of any potential rights of appeal and the pertinent timelines for an appeal, if any.

When a violation has been noted on a property, the Association should move quickly to notify the owner about the violation and must detail the action required to correct the violation. If the Association does not act promptly, a court may consider the Association's delay as a potential waiver of the cited violation. Accordingly, regular inspections of the community are

strongly recommended so that violations will be noted expediently and any unapproved lot modifications may be documented.

There are essentially two types of violations that can exist within a community. The first involves improvements were made to a lot that were either not previously approved by the Reviewing Authority or were made differently than what was approved. The second involves conditions on the property which violate the Standards outright.

In either event, when enforcing the Guidelines, must Standards contain a procedure for notifying the owner of the violation. Usually, a first notice of violation is sent to the owner, requesting the owner to either submit an application retroactively or remove the improvement (in the case of an unauthorized improvement), or abate the violation (in the event of a violating condition). If the first letter does not result in compliance by the deadline provided for, then usually, a second notice is sent to the owner requesting abatement and informing the owner of the Association's right to impose monetary charges, and the owner's right to request a hearing prior to those charges being imposed, and other enforcement rights that the Association may have available, for Virginia and D.C. associations. There is a specific section in the Maryland Condominium Act which details the process for dispute resolution and that process should be strictly followed.

When seeking to take enforcement action, Associations should be mindful of due process requirements. Procedures set forth in a due process resolution and, for Maryland condominiums, the Maryland

Condominium Act, should be followed. In Montgomery County, once the Association is aware that a dispute exists, the owner must be notified of his or her right to file a complaint with the Montgomery County Commission on Common Ownership Communities. Managers should take care to ensure that this language is included.

In Virginia, if a hearing is requested and conducted, results of the hearing must be sent to the owner within 7 days of the date of the hearing prior to monetary charges being imposed.

In the District of Columbia, the Condominium Act provides broad enforcement rights to Associations which includes the right to impose reasonable fines. The process and procedures governing architectural enforcement will be governed by the Association's governing documents and duly-adopted rules and regulations. Please note, however, that courts impose a reasonableness standard on their review of a Board's decision on architectural modifications and architectural enforcement; accordingly, a Board must be careful to render decisions in architectural matters in a reasonable, rational manner based on the facts and information at their disposal.

By carefully following the procedures, policies and time limits set forth in the Guidelines, other Association governing documents and relevant statutes, an Association can navigate the murky waters of enforcement of architectural guidelines and standards.