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Architectural Guidelines and Standards: Mandatory or Recommended?

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In most cases, the recorded covenants of a community association require the members to seek “pre-approval” from the Association before making any changes to the exterior appearance of the property. Because the human mind cannot often conceive of the changes that others might wish to make to their property, community associations are periodically, if not routinely, confronted with applications which request approval for changes for which there aren’t any specific written standards or guidelines to assist the community officials who are responsible for the review process. This situation begs the question as to whether community associations can lawfully enforce unwritten policy standards relating to the architectural appearance of the community.

When community association officials make a decision to deny an application without being able to resort to a specific written standards or guidelines to justify the decision, the disappointed applicants commonly complain about the fact that there were no written standards to guide the Board, committee or owners. In many cases, the owners will question the integrity of the process and allege that the decision in his or her case was arbitrary and capricious.

A case from Pennsylvania, Hoffman v. Gould, 714 A.2d 1071 (1998), addressed this issue. In this case, the owners purchased a home from a builder in a community association where the Board and architectural control committee were under the control of the developer. In its application for

approval, the builder had represented to the developer-board that the siding on the home would be natural wood. In fact, the builder installed vinyl siding. When the developer-board demanded later that the owner remove the siding and install wood siding, the owners filed a lawsuit challenging the legality of the Association’s demand, as it was not based upon any written policy or standard ever published to the members.

The trial court ruled in the owner’s favor, holding the demand of the Board was arbitrary and capricious. The judge decided that the discretionary authority of the Board should be very limited because of the fact that they hadn’t adopted and published any written policy or standards on the issue of siding. The judge went on to hold that he found that the vinyl siding was “compatible” with the neighborhood and, in some cases, more “attractive” than the wooden counterpart.

The Association appealed the ruling. The appellate court reversed the decision of the trial court. It found that the Association had broad “approval” powers under the covenants, and that the Association had consistently applied its standards, written or otherwise. The fact that the Board hadn’t adopted written guidelines did not eliminate the Board’s authorities. In the end, the appellate court decided that the Association’s consistent and uniform enforcement of the unwritten prohibition against non-wooden siding defeated any argument that the Board acted arbitrarily.

This type of decision is consistent with the law locally. In 1977, the Virginia Supreme Court, in J.F. Friedberg v. Riverpoint Building Committee, 238 SE 2d 106 (1977), upheld a decision of an architectural control committee to deny approval for an addition erected by an owner which did not meet the committee's minimum square footage requirements. The owner claimed that the architectural committee was not empowered to establish minimum square footage requirements since the covenants were silent on the issue.

The Virginia Supreme Court held that as long as the committee acted consistently and fairly, it was empowered to make decisions based on reasonable criteria (whether in the covenants, guidelines or just consistent with a "uniform scheme" of development within the community).

Similarly, in Kirkley v. Seipelt, 128 A.2d 430 (1957), the Court of Appeals of Maryland upheld the decision of a community association which denied approval to a member who wished to erect a metal awning. As in the cases mentioned above, the owners filed a legal challenge, alleging that the association's decision was made in an arbitrary fashion because there wasn't a written policy concerning the approvability of metal awnings.

In upholding the decision by the association, the Court stated that the association had broad discretion to act under the general "pre-approval" covenant even if there were no specific, written standards dealing with metal awnings. The Court held that the evidence showed that the unwritten standards had been uniformly (with one or two exceptions) enforced by the association.

Given the case law, should community associations adopt written guidelines and standards if the Courts will typically defer to decisions rendered pursuant to the broad "pre-approval" language found in the recorded covenants? We believe the answer is an unqualified yes.

Guidelines or standards stating which architectural changes the association will or will not approve can aid the owners by giving the owners advance notice as to how the association is likely to rule on certain requests. This will, in turn, help the Association's position by establishing that the owner knew or should have known about the existing standards as to their particular improvement before making the request. Written guidelines or standards will also help Boards and committees from inadvertently making inconsistent or arbitrary decisions. Given the turnover on the average Board or architectural committee, the threat of inconsistent decisions is great. Having a written set of standards will help educate new members to the standards that ought to govern their decisions.

At a minimum, the guidelines or standards should address the Association's position on major and recurring alterations (e.g., fences, paint colors, windows, doors, driveways, pools/spas, additions, etc.). While the guidelines should be specific enough to offer the owners a high degree of guidance, community association officials and committee members should remember that the case law shows that many judges do not consider "guidelines" to be on the same level as "standards" or "rules". The term "guidelines" suggests that the Board or its committee may exercise its discretion when addressing unusual situations (e.g., placement of video and television antennae).

Thus, while standards and guidelines are typically not required to support a decision to approve or reject an alteration under the "pre-approval" covenants, they can be very helpful, and we recommend them. If you have any questions about this topic, please feel free to contact any of the community association attorneys at the firm.