

# CLIENT ADVISORY

A 2005 INFORMATIONAL ADVERTISEMENT

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## COMPLYING WITH THE NEW LAW ON ARCHITECTURAL PROCEDURES

By James F. Danow, Esq.

Beginning January 1, 2005, all Associations must comply with a new statute (Civil Code Section 1378) which sets forth minimum standards for architectural review procedures. This new law requires architectural procedures to be “fair, reasonable, and expeditious” according to the following requirements.

1. The architectural review process must include prompt deadlines by which the Association must respond to architectural applications, and a maximum time for responding to any request for reconsideration directed to the Board of Directors.
2. All decisions on architectural applications must be made in a good faith manner, in writing, and if a request is denied, must include a description of why the application was disapproved and the process for seeking reconsideration by the Board of Directors.
3. The Association must provide all members with an annual notice of the requirements for approval of a physical change to a unit, and the notice must include the types of changes that require approval, and the procedure used to review proposed changes.
4. The Association must provide for the right of appeal at an open meeting of the Board of Directors, unless the denial was by the Board or a body that has the same membership as the Board of Directors.
5. All newly enacted architectural rules and procedures are subject to the rules enactment notice requirements of Civil Code section 1357.120.

The one element of these new requirements that may require the Board’s decision are the time requirements. Many declarations (“CC&Rs”) use thirty days as the standard time interval. That time period is probably acceptable for consideration of average applications for modifications. However,

if an application involves complex structures, such as an entire home, then what is considered prompt will be proportionately longer, and the governing documents should provide for that extra time, which may require a formal amendment of the CC&Rs. We suggest using thirty days for initial architectural decisions, resubmittals when requested, requesting an appeal, and hearing an appeal. Further, consider adding ten days to those time limits when a time period begins inside ten days of the next committee or Board meeting to give the decision-making body sufficient time to review and consider the request. Finally, make sure that your governing documents provide that there is no submission, and the time periods do not begin to run, until all prescribed portions of the application have been delivered to the Association.

Once the time periods are established, the Board may then enact any “architectural rules” which may be necessary to supplement what is in the CC&Rs to ensure compliance with this new standard.

Some Associations may well find their current CC&Rs and architectural procedures need no changes. Others may find a number of new rules will be required. If any new rules are required, the Association must comply with Civil Code Section 1357.120 which requires all new rules to be published to the membership at least thirty days before they are effective.

With respect to the annual notification, most Associations should be able to satisfy this requirement merely by sending the members (1) a copy of their CC&R provisions on architectural procedures, and (2) a copy of their architectural rules on the same subject. Together, this should satisfy the requirements of the new law.

If a Board needs further guidance or has specific questions, we recommend you consult legal counsel.