

Questions & Answers

Regarding Architectural Enforcement Procedures for Community Associations

Where should an Association start in order to implement an effective architectural enforcement procedure?

Start by reviewing the CC&Rs. Many contain an application submission process, a decision-making process according to specific criteria, and even a construction monitoring procedure with time limits. Procedures set forth in the CC&Rs can be implemented by either the Board or Architectural Committee or as specified in the CC&Rs.

What is the best way to develop architectural guidelines?

First, include any “criteria” for approval specified in the CC&Rs. Second, cover as many of the major items as possible which homeowners are likely to request. Fences, patio covers, balcony improvements, decks, and landscaping are frequently encountered items. Third, ensure that whatever is included is easy to understand. Homeowners should be able to tell exactly what their application should include, what items are totally prohibited, and what items may be approved if they meet the specified criteria. Fourth, consider pre-approvals; that is, a list of improvements a homeowner can install without applying for prior approval, such as painting a structure its original color or constructing a patio cover whose size, materials, design and color are all “pre-approved”.

Should the Board also serve as the Architectural Committee?

Many CC&Rs require a separate committee. If they permit either, it is probably better practice to have an independent committee which reports to the Board. The two major benefits are:

- (1) easing the work load on a likely overburdened Board; and

- (2) creating the opportunity for an appeal process to the Board. If you do have appeals, develop a written procedure which identifies exactly what the Board will do if confronted with an appeal.

What role should the neighbors play in the approval process?

To avoid the anger of disgruntled neighbors, it is a good practice to require the notification of nearby homeowners whenever an application is submitted. Allow them to offer input. However, avoid permitting neighbor consent or apathy to constitute automatic approval or disapproval. Homeowners must be told that the neighbor input is merely “information” used in the approval process.

Can an Architectural Committee give oral, informal approvals?

Avoid a procedure which permits any form of approval other than written approval after a vote of the entire committee. One court decision upheld the oral approval of only one committee member because the homeowner relied upon it believing it represented the committee’s decision, and then proceeded to build the improvement. Your guidelines should specify that oral approvals are invalid, and the only effective approval is the one on the committee’s authorized approval form.

How much subjectivity can go into architectural decisions?

Many architectural decisions are inherently subjective, yet will be enforced. The key is having “criteria” such as “harmony with the architectural scheme of the community.” Always develop general criteria which are used or referred to in making a subjective decision. Many CC&Rs already contain such general criteria.

Can the committee grant variances or exceptions to the architectural guidelines?

Generally, yes if there is authority for a variance in the CC&Rs. However, variances should be very judiciously used only in those rare instances when it is necessary, for instance, in order to make use of a unique lot. If you contemplate variances, at least some reference to them should be made in the guidelines. Variances should be utilized only in unique situations where there is no or minimal effect on other homeowners. The idea behind using variances is to accomplish the result you desire (e.g., aesthetic uniformity) even though there is a technical violation of the guidelines. In other words, you are adhering to the “spirit” rather than the “letter” of your guidelines. One effective tool is the Restrictive Use and Indemnity Agreement whereby the homeowner agrees to defend and indemnify the Association if another homeowner complains or files a lawsuit because a violation is allowed to exist. This type of agreement can also be used to limit the duration of time a structure can be kept, and to require the homeowner to maintain it.

What should be done if a homeowner is ignoring the Architectural Committee?

This depends on the situation. If the committee seeks to compel the homeowner to take some particular action, a hearing should be held before the committee acts further. If a structure is already in place, the committee should rule upon it as if an application were filed. This is required by a court case entitled *Ironwood Owners Assn. IX v. Solomon*. If the homeowner is in the process of constructing something clearly prohibited, immediately consult legal counsel regarding a restraining order. Undue delay when construction is under way can result in a court refusing to issue an order prohibiting further construction.

How can the Association rule upon an application and avoid setting precedents?

In most cases, it cannot. If there is nothing unique about a particular situation, it may well be a precedent. Accordingly, always keep this in mind when ruling upon applications. Keep this in mind also when ruling upon an application for a variance discussed above. If there is a unique situation, or a variance is granted, document in writing the reason why an approval was issued. Associations should always justify in writing why an approval has been granted when they anticipate other homeowners will ask for the same approval, and the Association desires to limit its decision to that one homeowner.

What is the best way to ensure success in the architectural approval and enforcement process?

First, ensure that every step of the process is documented in writing. Second, be fair and develop architectural guidelines that are responsive to the needs of the community. Third, keep a perspective on the entire community rather than what any one particular homeowner is doing. Fourth, be mindful of the fact that architectural disputes can end up in arbitration or court, and that you may be asked to explain to an arbitrator or judge everything the Association has done. The best way to do this is through written documentation. The documentation-oriented approach to architectural enforcement has consistently proven to be the most effective.