



Creating a Constructive Architectural Review Committee

MULCAHY Community Association Cheat Sheet®

**BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS**

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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July, 2011

ARCHITECTURAL REVIEW COMMITTEE OVERVIEW

One of the most important committees of an association is the architectural review committee. Typically, the architectural review committee is established in the association's governing documents (usually the CC&Rs). The main purpose of an architectural review committee is to review and approve or disapprove architectural submissions from owners. In our firm's experience, decisions by or inaction of the architectural committee is a large source of litigation for associations. We hope that this cheat sheet will assist boards and architectural review committees with carrying out their responsibilities under an association's documents.

ARCHITECTURAL REVIEW COMMITTEE (ARC)

A standing committee, the ARC is one of the association's most active committees. The function of this committee is to review and approve homeowner requests for additions, renovations and exterior changes of members' homes or landscaping in compliance with the association deed restrictions (deed restrictions provide land use restrictions along with limits on what physical changes may or may not be made to the exterior of the property) and aesthetic standards or architectural design policy. Typically, CC&Rs require written approval before any changes are made to the exterior appearance of a home or property, including landscaping. The committee makes design policy recommendations to the board of directors and may meet regularly or as necessary. Governing documents may provide for the board to assume the responsibility of design review if there is no architectural review committee.

THE ARCHITECTURAL DESIGN POLICY

The architectural design policy is the most important step in the development of an architectural design review process. It should help the members when designing their proposed project, guide them through the review process and provide a guide for consistent review by the committee and future review committees.

A well-structured architectural design policy will:

- Create a clear and easy to understand process, including time lines
- Clarify the governing documents regarding architectural alterations issues
- State exactly what is expected in the architectural process
- Provide guidance for the committee to follow in the review process
- Satisfy due process requirements of the community association

The policy should explain:

- The basis for architectural review as stipulated in the governing documents
- The objectives of architectural review
- Architectural committee structure, creation, empowerment and staffing
- What projects require architectural review and approval
- Architectural review procedures
- Specific standards and criteria needed for design approval; contractor licensing, permits, bonding, etc.
- Specifications and specific design practices that will help assist members when applying for approval of projects

STANDARDS AND AESTHETICS

For commonly requested owner projects, the association should establish standards and specifications that include durability, color and aesthetics so that all such changes are uniform.

FORM OR APPLICATION

A standard form, or application is a good way to help association members meet the requirements of the architectural review committee. (See typical questions for a change request on reverse side) Most associations have architectural variance or change requests, which are filled out by the owner and submitted, with appropriate architectural drawings if necessary, to the association's board of directors or property management office. Those requests are then forwarded to the architectural review committee members who review and discuss the proposal at the committee meetings. The meetings of the architectural review committee should be publicly-posted and open to attendance by association members.

REVIEW

The architectural review committee's responsibility requires that committee members are familiar with the standards, aesthetics and the rules and regulations of the association allowing them to apply these to each request. The committee must strictly adhere to time lines for approval or disapproval. Failure to respond to a member's request in the time specified could result in project approval.

ENFORCE THE RULES CONSISTENTLY

Consistent, unbiased application of the architectural design policy is important. Committee members should be able to clearly rationalize each decision the committee makes and decisions should follow the governing documents or architectural policies established. Failure to adhere to unbiased application of the policy can result in lawsuits against the association.

Keep accurate notes and minutes for each decision, rationalization and action taken regarding each property considered and place them in the lot/unit folder.

APPEAL PROCESS

A project rejection letter should be sent to the owner on association letterhead with an explanation of the decision, requirements to properly complete the project and the process to appeal the decision. For those requests that are rejected, if the documents allow, an association can have a formal appeals process, preferably to the full board of directors, allowing the owner to discuss the requested change and decision.

When a community member has an architectural violation, it is imperative that the board of directors notify the member in writing and clearly describes the violation, referring to the policy that has been violated. The letter should outline the process for addressing the violation including how and when the member has the opportunity to be heard.

All official correspondence should be in writing, and minutes should be taken at each meeting to record the board of director's and committee's actions.

The board of directors should also encourage alleged violators to correspond in writing and keep copies of their mailings. This ensures everyone remains on the same page and helps if legal action is required.

Important to remember: The board of directors usually enforces the CC&Rs, not the ARC committee.

WORK WITH THE HOMEOWNER

The board should make every effort to work with a homeowner; however, a homeowner in violation must correct the violation. When dealing with homeowners who refuse to correct architectural violations it is wise for the board of directors to seek the advice of their attorney.

MAINTAINING ACCURATE RECORDS

Each and every application for change and the actions taken should be placed/attached with the unit/lot file so that going forward if the property is sold the change information is attached to that unit/lot.

D & O INSURANCE

No matter how diligent a board is, there may come a day when the association and board are sued. Placing the ARC member on the D&O insurance plan is wise because the State of Arizona is a community property state. It is important to note, however that some insurance policies do not allow ARC Members.

COMMUNICATE, EDUCATE

1. Place your architectural design policy on the association's website and explain the review process.
2. List the approved paint colors and brand name with a color board, roofing color/type, fencing materials, etc.
3. Create a color board of approved home colors that can be checked out by an association member.
4. Check to see if the paint supplier will give an association discount and announce such.
5. Explain that by requiring contractor licenses, bonding and insurance and municipal permits (if required), on each request the association is looking out after the homeowner's best interests as well as those of all the other members.
6. Additionally, notify association members of architectural design policy through the newsletter, presentations at board meetings or create handbook and distribute.

TYPICAL QUESTIONS FOR A CHANGE REQUEST

1. Owner's name, address, lot/unit and phone number
2. General description of work to be completed. including such things as sketches, photographs, sales brochure, illustrations.
3. Signature of owner to include a statement such as: "I will assume the responsibility of any work under the proposed improvement that my contractor or I accomplish, which may in the future adversely affect the common area. I will assume responsibility for all future maintenance of this addition or improvement".
4. Signatures and statements of "no objection" from adjacent owner(s).
5. The association may request approved City/Town permits (if necessary) before granting permission to make changes to the lot/unit.
6. The association may require a "complete by" date.
7. Complete instructions regarding the process, for example: time lines, where to submit, acceptance and rejection processes, what is necessary to re-submit, association contact information, etc.
8. Include in the instructions the following: "submittal of completed forms to other than the management company will not be accepted."