



BEVEN & BROCK NEWS AND VIEWS

for Homeowners Associations

ARCHITECTURAL MODIFICATIONS: TOOLS TO ENSURE COMPLIANCE WITH ARCHITECTURAL RULES AND PROCEDURES TO STRENGTHEN THE FOUNDATION OF YOUR COMMUNITY.

By Matt Ober, Senior Partner; Richardson Harman Ober PC

What attracts many to community association living is a developed system of architectural uniformity and aesthetics designed to preserve if not enhance property values. Owners buy into communities with the expectation that their neighbors will comply with a community's architectural rules, or if they don't, that the association will enforce these rules. Indeed, among an association director's duties is to preserve the value of the asset--the property. Ignoring the standards by which a community was designed and developed is a sure way to negatively impact a community's value and perhaps breach that duty.

Although we casually refer to them as architectural rules, in reality we are referring to any physical modification to property (usually to the exterior) or modifications to the interior of a unit that impact the structural components of the property, or the common area plumbing, electrical or mechanical lines.

This expectation of compliance and enforcement is supported by Civil Code section 4765 (c) which contains the following two-part annual association disclosure requirement:

"An Association shall annually provide its members with notice of any requirements for association approval of physical changes to property. The notice shall describe the **types of**

changes that require association approval and shall include a copy of the **procedure used** to review and approve or disapprove a proposed change."

In essence, associations have a two-prong requirement for approving physical changes to property-- substantive and procedural; both of which are important.

The first of these two disclosure requirements-- the procedure, is contained in Civil Code Section 4765 which requires that every association "provide a fair, reasonable, and expeditious procedure for making its decision [on an architectural modification.] That procedure shall be: 1) made in good faith and not be unreasonable, arbitrary or capricious 2) in writing; and 3) provide for a right to appeal to the Board of Directors if, and only if, the Board is not comprised of the same members as the Architectural Review Committee (ARC). This procedure must include the time frame within which applications will be reviewed and approved.

The second prong, the substance, is likely buried deep within the associations CC&Rs. On rare occasions your CC&Rs may contain a separate section dedicated to architectural compliance but that is the exception. More often than not, you have to comb through your Governing Documents to identify the limitations placed on owners

who wish to make physical changes to their property. Unfortunately for a community's Board of Directors and their community managers, understanding and applying these often vague and nondescript provisions is of utmost importance in carrying out their fiduciary duty to their association's and each owner.

The importance of adhering to architectural standards cannot be overstated. This is not to say that a Board or ARC must be rigid in its application of community architectural standards. But an association must adhere to a set of standards by which all applications are reviewed and evaluated, not just today but years from now. And this standard must be communicated to the owners, and often, so that all are reminded of their obligation to obtain approval before making physical modifications to their property.

How to ensure your community will remain architecturally compliant.

In order to increase the likelihood that your community maintains its architectural standards, the following steps should be employed:

- **Locate The Physical Modification Provisions In Your Association's CC&RS.** Look for language prohibiting any

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“addition, alterations, repairs to the exterior or structural portions of any unit until approved by the Architectural Committee.”

• **Determine The Types Of Items For Which Approval Must Be Sought.** Many of the community disputes center around a lack of understanding about what types of items need architectural approval. Your CC&Rs may specify some of the items but not others, or it may not be clear. It may specify flooring but does that include carpet? Does it include plumbing and electrical? Perhaps, if common area lines are impacted. And are there items that do not require approval, particularly if they are within a certain size, style or color? So one of the essential first steps for any association (likely with legal counsel) is to define the items that must be submitted to the association for approval. If your CC&Rs are unclear, a board resolution can fill in the blanks with specific items requiring approval (as long as it is not inconsistent with the CC&Rs).

• **Determine What Documentation Must Be Submitted For Approval.** Look for language describing the type of documents to be submitted for approval and what must be contained within the documents submitted, such as “until plans and

specifications showing the nature, kind, shape, height materials, color, location have been submitted and approved.”

• **Determine What Standards Are To Be Applied, If Any, In Approving An Application.** Look for language such as “approved as to conformity and harmony of external color, design and location with existing structures.”

• **Determine Any Application Review Deadlines.** Look for language requiring the board or committee to approve an application within a given number of days. Failure to approve an application in a timely manner may mean it is “deemed” approved.

• **Develop Set Standards For Certain Modifications.**

For standard or re-occurring items such as screen doors, patio covers, and similar exterior modifications, determine in advance the type, design, color or styles that the board will approve and notify the owners, often. This will speed up the application and review process and prevent frustration by telling owners in advance what they will need to get their particular modification approved.

• **Be Specific In Your Disapprovals.** The Civil Code requires that a disapproval specify the reason for the disapproval. But all too often an association is unnecessarily vague or ambiguous. To

encourage compliance specify the reason a modification was denied and what the owner can do to obtain approval.

• **Establish Standards For Approval To Ensure Consistency And Uniformity.** Perhaps among the most important tools for the board or architectural committee are standards for reviewing and approving architectural modifications. The more unfettered discretion a board or committee has the more likely there will be inconsistent application of architectural rules leading to claims of unfair treatment or selective enforcement. And with the passage of time memories fade leading to inconsistent application of architectural rules. To combat these tendencies, boards should develop standards to be applied for certain types of architecture modifications. Each standard should be adopted by formal board resolution containing the parameters for review and approval of a particular type of application including 1) style 2) color 3) location 4) height etc. These standards should be communicated to the owners as well so that they understand what the board or architectural committee looks at when reviewing a particular type of application.

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SELECTING A RESERVE STUDY EXPERT: SOME IMPORTANT CONSIDERATIONS

By Robert Nordlund, PE, RS

It's that time! Time to get your Reserve Study done for your upcoming fiscal year, and you've been appointed to get bids for the Board of Directors to review. As willing as you may or may not be, you're probably wondering where and how you should start your search for qualified Reserve Study providers.

Since Reserve projects are the largest expenditures your association will have, it's important to know who is helping you determine how well-prepared the association is now and what it will need to do to be well-prepared for the future. It's worth doing a little homework.

Finding a Provider

So where do you start and what do you look for in choosing a Reserve Study firm? Let's start at the beginning. You'll be able to find Reserve Study providers as a referral from your management company or through your local Community Associations Institute (CAI) chapter. They will either be listed on the chapter's website, newsmagazine, or membership directory under the Reserve Study category.

Once you have a list of providers, visit their websites to see what experience they have. How many years have they been doing Reserve Studies, and have they produced a report for an association like yours before? Do they prepare all three Reserve Study "Levels of Service" (Full,

Update With-Site-Visit, Update No-Site-Visit)?

Take note if at least one of their staff members holds the Reserve Specialist (RS) designation from CAI, or the Professional Reserve Analyst (PRA) designation from the Association of Professional Reserve Analysts. The prerequisites for both designations are similar:

- a body of experience spread over at least three years,
- an appropriate college degree, and
- adherence to a set of National Reserve Study Standard terminology, disclosures, and computations.

With this initial background check you have a better feel of who's who, and which three firms you would like to include on your bid list.

Interviewing the Prospects

Ask each of the finalists for a proposal so you have a chance to interview them. See if you can reach them easily. Is the staff easy to talk to? How quickly can you get an answer to a simple question?

Some Important Questions to Ask:

- 1) Is preparation of California's annually-required Assessment & Reserve Disclosure Form (per Civil Code section 5570) included in the cost?
- 2) Are revisions included?
- 3) Are you able to test alternate expense or funding scenarios?
- 4) Can you get an emailed version of your report, or access

it online?

- 5) Can they complete your report by the time you need it?
- 6) Is the office fully staffed in case a question comes up later in the year?

- 7) Are they set up to automatically send you an annual bid to save you time and eliminate having to repeat this process next year?

Although with answers to the above questions you are almost on expert on who they are and what they offer, it is wise to request a few more very important things along with your proposal:

- 1) A list of references. It is always helpful to talk to boards or managers who have worked with the company.
- 2) A sample Reserve Study.

Comparing the Sample Reserve Studies

Look to see which is the easiest to read and understand. Is it formatted in a way that is comfortable to you? Can you find the information you need?

For your information, the three key results from a Reserve Study are:

- 1) What to Reserve for... the Reserve Component List (projects, their Useful Life, Remaining Useful Life, and current repair/replacement cost)
- 2) Percent Funded rating - the answer to the question "How does our Reserve balance compare to the needs of the association?"
- 3) How much should the association be contributing?

Selecting a Reserve Study Expert: continued on page 4.

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Disclose, disclose, disclose.

Underlying each and all of these steps toward architectural compliance is transparency. Knowing in advance what modifications require approval, the standard for determining approval, and the procedures for obtaining approval ensures consistency among applications approved over the long term and eliminates frustration among owners in the short term. Perhaps most importantly, adherence to a system that identifies the method of approval and shares that information with its owners is the best way to maintain the aesthetic quality of your community and the value of your most treasured asset.

Matt D. Ober has over two decades of extensive experience in common interest development law and is a member of the prestigious

College of Community Association Lawyers. Mr. Ober can be reached at (877) 446-2529 or by email at: mober@rhopc.com

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Can you find the...

- Executive Summary (the portion of the document suitable for distribution to the homeowners)
- Component descriptions and quantities. Don't settle for a component named "Fence". Look for a clear description of "Fence-Replace" or "Fence-Repaint" so you know what is being recommended. And look for quantities - how many water heaters? How many elevators? How much asphalt, carpet, or roofing material?

Making an Informed Decision

Now you have bids, references, and sample reports for your Board

of Directors to review. With the research that you have done, you can probably even answer a few questions about each company. Your Board can now select a Reserve Study provider with confidence that can cost-effectively prepare a quality, accurate Reserve Study that will help prepare your association for a secure future.

Reserve projects are the largest types of expenditures your association will face. It's worth doing your homework!

Robert Nordlund is Founder and CEO of Association Reserves, Inc. which he started in 1986. As a registered professional engineer and Reserve Study pioneer, Robert was involved in creating the 1998 National Reserve Study Standards and has greatly influenced the community association industry. Robert can be reached at (800) 733-1365

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