

## COMMON SENSE AND BEING REASONABLE

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One of the top Ten Directors and Officers Insurance Claims in the common interest community industry surrounds Board of Directors and their Architectural Committee's when the don't follow their own rules.

When the Developer created each association, they had a vision and that vision was approved by whatever public entity had to approve their plans for development of a bare piece of dirt. Quite a bit of money, in fact, was paid to come up with the architectural scheme for each individual property.

Lenders, when loaning money to each homeowner, looked at the amenities, quality of the "product" and made loaning decisions based on the value of the individual asset and the community. Their decision to take the risk in making the loan weighed heavily on property values and this individual community's ability to maintain those values.

All of those decisions have been turned upside down with the current state of our economy, but the "vision" remains the same in each community.

Each new buyer in purchasing their home, initially, wants to make some changes to make it fit into "their" home. The homes color may be off slightly, the yard may need some changes, or they got it at such a good price that they overlooked the fact that they actually hate everything and want to change it all.

Sending Welcome Letters to each new owner with an Architectural Application letting them know when the Architectural Committee will meet helps to bring to the new owners attention that, oops, they need to get approval first. Giving them the phone number or address of any public entities that may need to be consulted with as well will help them see that it is not only the Association who needs to approve any changes, but the City and/or County as well.

Many Developers create and leave the Association with Architectural Guidelines which are put in place to help homeowners know what may be acceptable and may not be acceptable in "this" community. Pointing owners to this document, which they should have received in escrow, in the welcome letter will help direct them in making decisions in those changes they are planning.

At times, Directors think that they are special and need to have special attention. What is good for the owners is not good enough for them. They dedicate so much time to the Association that they should receive special treatment and should be allowed to do things that the other owners are not. Or they got on the Board to influence decisions for their specific issue only and are pushing their "agenda." This is one of the areas where the D & O insurance claims come in.

If you have rules, you need to enforce them. If they are unreasonable, change them. If they are not good enough for the Directors, who are looking for special treatment, they most likely are not good enough for the owners either. The documents normally state what is required to change all of the documents.

Architectural Guidelines are just that, guidelines to help a Committee make a determination if some proposed change is compatible with the vision that was created by the Developer.

Neighbor awareness forms are recommended to be completed by the neighbors, but this must be clear that it is not an *approval* of the neighbors. Neighbors when made aware of a change that may affect them next door will then know what is being proposed and can approach the Association to suggest slight changes before a final decision is made by the Committee. Making it mandatory for a neighbor to get his neighbors "approval" is unreasonable. They just need to sign a form that they have seen the plans and the form should clearly state that they are not approving what they have seen, but rather they are acknowledging that they saw them.

The Architectural process should also allow for appeals to the Board if the owner disagrees with the determination of the Architectural Committee. This is considered a reasonable process. In some communities, the Board must record a documents against the properly if any variance is granted with deviations from the Architectural Guidelines. This puts the world on notice that any deviation from what is "normal" has been approved by the Board.

Remember that another owner who wants the same thing under the same conditions would have to be approved as well. Let me give you an example: A homeowner who lives at the end of a cul-de-sac and whose back yard faces the open space common areas where there are no neighboring privacy issues, may be allowed to build something in his back yard. Someone who lives next to two homes and has connecting backyard neighbors would not be allowed to build where the first one would. Everyone with the same circumstance would need to be treated equally so that any letter of approval needs to be *really* specific as to why this was allowed in this particular case.

As our homes are the biggest investment that most of us will ever make and we take pride in our homes. Communication and cooperation go a long way in working with owners to enjoy their homes while still preserving the integrity of the vision that was created. Try the welcome letter for new owners and newsletter reminders for long time residents letting them know when the Architectural Committee meets and how quickly you try to get back to them with a decision. Proactive steps in this area will work and hopefully keep you out of litigation by working with the owners and following the same procedures for everyone, including the Board.