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## **Architectural Review Committees Do Not Have Unlimited Authority**

Architectural Review Committees (ARC) support homeowner associations (HOA) in their efforts to retain value and aesthetic charm by enforcing community restrictions. While Florida Statutes and many HOA Declarations of Covenants and Restrictions (Declaration) provide for architectural review prior to homeowner property modifications, the ARC is only as effective as its Declaration and any published guidelines. Costly legal battles occur when HOAs exceed their regulative authority by denying homeowner modification requests without sufficient justification.

HOAs derive their architectural review authority from Florida Statute 720.3035. The statute was amended in 2007 and now authorizes “any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel . . . *only to the extent that the authority is specifically stated or reasonable inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.*” [Emphasis added]. In other words, the ARC only has authority to approve or deny architectural modification requests based upon objective standards detailed in either the HOA’s Declaration or published guidelines as authorized by the Declaration.

Without objective standards, ARCs risk arbitrarily approving and denying modification requests based upon subjective whims. A lack of clear standards detailing the location, size, type, and appearance of architectural requests will lead to approval and disapproval that varies from one request to the next. Arbitrary denials will subject the HOA to claims of “selective enforcement” and “waiver.”

Selective enforcement occurs when an HOA enforces a standard against one owner but fails or neglects to enforce the same standard against other owners. Waiver occurs when an HOA has failed to enforce to its standards and is subsequently estopped from enforcing those standards. Without objective standards, owners cannot be placed on sufficient notice as to what is permitted, and ARCs cannot enforce based upon their subjective beliefs.

Often times, an HOA's governing documents will fail to provide sufficient notice to owners because the documents are silent as to what specifically is and is not permitted. A similar problem arises when governing documents limit modifications only to those that are "harmonious" or "beautiful." When governing documents are silent as to restrictions and do not put owners on notice, "architecture boards do not have power or discretion to impose only one style over another, based purely on aesthetic concepts." See Young v. Tortoise Island Homeowners Association, Inc., 511 So. 2d 381 (Fla. 5th DCA 1987).

In Young, owners sought to build a flat roof when the houses around them had sloped roofs and the documents were silent as to what was permitted. Id. Their flat roof request was denied because the board determined it was not harmonious with other residences in the community. Id. The Court held that the ARC application for the flat roof could not be denied where the documents were silent, and where the denial was based upon "aesthetics, harmony and balance – admittedly very personal, and vague concepts." Id. at 384.

To ensure your HOA does not arbitrarily deny an ARC modification request, your HOA's governing documents should be review to ensure there are objective standards by which to base approval or denial. Tankel Law Group will review your governing documents to ensure your HOA does not exceed its authority and subject itself to undue liability. If your HOA's documents do not contain standards, our office can assist your ARC and Board of Directors to establish proper restrictions.



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