



Architectural Review Committees

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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ARCHITECTURAL/DESIGN REVIEW COMMITTEE (ARC/DRC)

The function of the architectural or design review committee, usually established in the association's CC&Rs, is to review and approve homeowner requests for additions, renovations and exterior changes to members' homes or landscaping in compliance with the Association's CC&Rs or design review guidelines (CC&Rs and design review guidelines 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 by the ARC or DRC before any changes are made to the exterior appearance of a home or property, including landscaping. Governing documents may provide for the board to assume the responsibility of design review if there is no architectural review committee.

Pursuant to Arizona law, A.R.S. Section 33-1817 in a planned community, a board member must chair the ARC/DRC. Additionally, regularly scheduled meetings of the architectural review committee must be open to attendance by association members.

FORM OR APPLICATION

Most associations have architectural variance or change request forms, 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. Completed requests are then forwarded to the architectural review committee members who review and discuss the proposal at the committee meetings.

A standard form or application is a good way to help association members meet the requirements of the architectural review committee. Additionally, 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.

RESPONSIBILITIES - ACCURATE RECORDS

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

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 Arizona law, governing documents or architectural policies established. Failure to adhere to unbiased application of the policy can result in lawsuits against the association. Ask your legal counsel for advice if you are unsure about an application!

Keep accurate notes and minutes for each decision, rationalization and action taken. 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.

REJECTION LETTER - APPEAL PROCESS - VIOLATIONS

If a project is rejected, a 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. If the documents allow, an association can have a formal appeals process for a rejection, 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 describe 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 if fines will be levied in the future regarding the violation.

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

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 to seek the advice of their Attorney to determine appropriate legal remedies.

Note: The board of directors usually enforces the CC&Rs, not the ARC/DRC committee.

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 REQUEST REQUIREMENTS

1. Owner's contact information;
2. General work description;
3. Owner's signature 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. "No objection" statement from adjacent owner;
5. Possible approved City/Town permits;
6. Possible "complete by" date;
7. Request should contain: instructions regarding the process, i.e.: time lines, where to submit, acceptance and rejection processes, what is necessary to resubmit, association contact information, etc.; and
8. Include in the request the following instructions: "submittal of completed forms to other than the management company will not be accepted."

REQUIREMENTS FOR NEW CONSTRUCTION A.R.S. 33-

Amending A.R.S. Section 33-1817, this law (amended 2013) applies to planned communities only and trumps an association's documents. This law makes a minor technical change and clarifies that the cumbersome design review restrictions (placed on a planned community for new construction of the main residential structure or for rebuilds of the main residential structure on a lot) ONLY apply when a planned community charges a security deposit for the project to secure completion of the member's construction project or compliance with approved plans.

Clarification of Requirements for Architectural/Design Review Process for New Construction or Rebuilds of the Main Residential Structure

If the following two criteria are met, then the following is required:

1. For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot in a planned community that has enacted design guidelines, architectural guidelines or other similar rules; AND
2. If the association documents permit the association to charge the member a security deposit and if the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, all of the following apply:

(a) The deposit shall be placed in a trust account with the following instructions:

1. The cost of the trust account shall be shared equally between the association and the member;
2. If the construction project is abandoned, the board of

REQUIREMENTS FOR NEW CONSTRUCTION A.R.S. 33-

directors may determine the appropriate use of any deposit monies; and

3. Any interest earned on the refundable security deposit shall become part of the security deposit.

(b) New Requirements for Architectural/Design Review Process for New Construction or Rebuilds of the Main

Residential Structure: For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot in a planned community that has enacted design guidelines, architectural guidelines or other similar rules however denominated, the following is required:

1. Final Design Approval Meeting: The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative must provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.

2. Two On-Site Formal Reviews/Written Report: The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent must be provided the opportunity to attend both formal reviews. Within five business days after the formal reviews, the association must cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans as amended that have come to the attention of the association.

3. Written Report After Second Formal Review/Release of Deposit Money: Within thirty business days after the second formal review, the association shall provide to the member, a copy of the written report specifying any deficiencies, violations or unapproved variations from the approved plans as amended that have come to the attention of the association. If the written report does not specify any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies, violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

4. No Representation or Warranty that Plans or Construction Complies with Governmental Requirements or Standards: Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards.