



Top 10 Architectural Review Mishaps

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Attorneys' fees incurred in prosecuting or defending these claims often exceed \$100,000, because emotions can run high. Good organization, careful consideration of procedural requirements, and an active review body can make all the difference in avoiding legal disputes over architectural applications.

After decades of seeing the same mistakes made repeatedly, I have come up with this list of the most common issues that lead to litigation:

1

Failing to read and strictly follow the CC&R provisions of the governing documents that govern architectural review timelines.

Assumptions may be made that a generic 30-day or 60-day deadline applies without confirming what the governing documents or California law actually require. The CC&Rs may require that a decision be "sent" or "delivered" within 30 or 60 days. The difference in these tiny words may indicate that a denial was not provided on time, resulting in the application being automatically approved. Some applications, like solar panel installation, may have a shorter response deadline by law than what is set forth in the governing documents. Every Association should maintain a list of all deadlines related to the community's architectural review process.

2

Failure to review applications for completeness immediately upon receipt.

When an application is missing application fees, required plans, color chips, neighbor awareness forms, or other information, the association should promptly notify the owner that the submission is incomplete and that the application will not be reviewed until the missing materials are provided. Delaying this notice can result in missed deadlines and unintended approvals under the governing documents.

3

Denying an application without providing a clear and appropriate explanation of the reasons for the denial.

California law requires the association to explain why an application was denied and to describe the appeal procedure (if an appeal is permitted by law).

4

Failure to base the decision on the criteria set forth in the CC&Rs or architectural guidelines.

Governing documents for planned developments almost always include specific architectural review criteria in the CC&Rs. A common criterion is whether the proposed change is in harmony with the surrounding topography or structures. Failure to use the specific criteria required when reviewing the application can be grounds for a successful lawsuit by the applicant or an aggrieved neighbor.

5**Neighbor awareness forms.**

Neighbor awareness signatures are designed to alert a neighbor to an application so they can provide input to the reviewing body. Rarely is a neighbor given veto power, and the neighbor awareness form should not suggest that neighbors are signing for any reason other than to acknowledge that they have seen the complete application. The rules may also lack detail as to which neighbors are entitled to notice. Finally, more than once, I have seen a neighbor file a lawsuit alleging they signed a neighbor awareness form after being provided with an application or plans that differed from those submitted for architectural review. Without the form referencing the date stamp on the architectural plans, you may never know what the neighbor was given to review.

6**Allowing changes without a new submission.**

The reviewing body needs to know what it is being asked to approve. Allowing changes without a new submission makes the response deadline unclear. It also increases the risk of accidental approval because not everyone understands the changes made to the original submission.

7**Allowing non-owners to rely on approval.**

Allowing a “future” owner to submit plans or a “future” owner to build something approved in a previous owner’s application invites a different kind of claim related to a sale not going through because of the denial or approval of a plan. There is no reason to expose the association to this kind of liability when the application process can be limited to members only, and the rules provide that the approval does not carry over to future owners of the property.

8**Not considering expiration dates for approvals.**

If an approval lacks an expiration date, an owner can theoretically apply for 20 different changes, retain the approvals for decades, and then build whatever they like from those dated approvals, which may have been granted by volunteers who long since left the community. Designs and styles change. The architectural review process was designed to allow one thing to be considered fashionable and approved today, but the same thing may be denied a decade from now.

9**Not adopting construction rules.**

What is to stop someone from taking 5 years to install their landscaping, one shrub at a time? Your rules. You can require an owner to begin construction within a set period and complete it within a set period after commencement. You can also include a procedure for seeking a hardship extension.

10**Failure to document the architectural review process.**

I can’t tell you how many times we have been asked to write a stern letter to an owner to stop unapproved construction, only to receive a smug response from the owner explaining that they did, in fact, receive approval. Sometimes they have the paperwork; sometimes they don’t. When associations do not keep records of approvals, and most importantly, conditional approvals, it is pretty hard to enforce the governing documents.

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