



## Detailed Architectural Guidelines Favored

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Today's column continues our look at legislation applicable to Homeowners' Associations which became effective July 1, 2007. In the first installment (see "Most New HOA Laws An Adaptation of Condo Regulations", August 2, 2007), we explored the provisions of the new law which require homeowners' associations to provide for the funding of reserves, as has always been the case for condominiums, if the owners in the community "opt in" to the new law, or if reserves were collected during the developer's control of the association.

Today, we will explore the "architectural control" provisions of S.B. 902.

Section 720.3035 has been added to the Homeowners' Association Act. The new law provides that the authority of an association, or an architectural control committee (ACC) 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 improvements located on a parcel, shall be permitted only to the extent that the authority is specifically stated or "reasonably 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.

The term "reasonably inferred" seems to mean that the scope of the association's authority and ability to regulate the exterior appearance of homes and lots can be fairly broad, but the application of such authority must be "reasonably inferable" from the expressed language of the declaration. For example, if a declaration provides that owners are responsible for painting the exterior of their homes, and the association or ACC has the authority to regulate exterior color, it would seem that one could "reasonably infer" that the association has the ability to choose a selection of colors from which an owner must pick for the exterior change.

The new law, as is the case of many new laws, is subject to interpretation and will likely be interpreted by the courts in years to come. While the new law does not specifically require written architectural guidelines as a condition for the approval or disapproval of requested changes (otherwise, the "reasonably inferred" standard would have no meaning), it is clear that the intent of the Legislature in adopting this law is to favor the existence of written standards.

It would appear that the key to success for associations is to have the specific review/approval authority contained in the declaration of covenants, and to also have the declaration of covenants contain basic, fundamental building controls (such as minimum square footage requirements, setbacks, etc.). The declaration should also authorize the

board of directors and/or the ACC to adopt further detailed architectural guidelines.

The new law appears to be an invitation, although perhaps not a strict legal requirement, for every HOA to carefully look at their existing architectural control procedures. In my view, while no set of architectural guidelines could possibly contemplate every type of request that an association may face, an association with a reasonably detailed set of architectural guidelines will stand a much better

chance of prevailing in a dispute than an association whose argument is “that is how we have always done it here.”

In the next installment of this column, we will conclude our review of S.B. 902, and its application to condominium associations, specifically provisions regarding mortgage holder approval of proposed amendments to condominium documents.

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