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## Amending Architectural Standards and Guidelines

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As the winter seasons heads our way, many community associations begin to experience a brief hiatus from architectural improvement and modification applications, as well as many of the common enforcement issues related to architectural standards and guidelines. We recommend that during this break, community association boards and committees take this time to review their community's existing Architectural Design Standards and Guidelines for any areas in need of improvement or updating.

The process that must be followed to amend Architectural Standards and Guidelines ("Guidelines") may be set forth expressly in the Guidelines, or it may be found in the association's other governing documents. You should carefully review all the relevant documents to confirm the precise procedure that must be followed to amend the Guidelines, because failure to follow that procedure may result in potential legal challenges.

Frequently, Guidelines are enacted and amended by the board of directors pursuant to the board's general rule making authority, with no requirement that the proposed amendments be approved by the

membership. However, it is not uncommon to find that existing Guidelines set forth a detailed amendment process that requires involvement by a committee, the board of directors and the membership.

Even if membership approval is not necessary to amend the Guidelines, we often recommend that you solicit comments from the membership on any amendments that may have a significant impact (e.g., changing paint color schemes) for a large number of members. Not only can community-wide discourse be helpful to pinpoint gaps in the existing Guidelines, giving the association's board or committee a different perspective on the existing Guidelines, such discourse can also assist the board in enforcing Guidelines that were adopted with member feedback.

State law, in addition to the community's own governing documents, may also dictate how Guideline revisions are handled. For instance, under the Maryland Condominium Act, rules must be sent out to the membership for review at least 15 days before the meeting at which the amendments are going to be voted upon by the Board. In Virginia, publication of rules is required for

both homeowners and condominium associations.

Concerning the substance of any amendment, it is important to ensure consistency with the terms used in the association's declaration, master deed, articles of incorporation and bylaws, because these documents would control if they conflict with the Guidelines. It is also important that Guidelines are consistent with applicable laws since the certain law will control in the case of a conflict. For example, state and federal law regulate certain aspects of the display of the American flag and the placement of satellite dishes and antennae. Associations should consult with legal counsel about proposed amendments to Guidelines to confirm compliance with the law.

Amendments to the Guidelines should provide sufficient detail in order to avoid confusion, but should not be overly burdensome or complicated in a manner that presents unnecessary administrative hurdles. Therefore, it is often a good idea to list the various improvements that have historically been approved under certain circumstances and for particular lot styles. It is important to allow the association sufficient flexibility to evaluate requests on a case-by-case basis. By focusing more on what is approved, rather than what is not approved, and then leaving the association with the discretion to review all other requests for modifications and improvements, you can accomplish this objective.

We suggest that review of Guidelines be *critical* in the sense of trying to anticipate challenges or weaknesses. In some cases, owners have already pointed out ambiguities or unclear provisions. Maybe the Board has been advised to back off on an issue because the Guidelines were not specific. Try and put yourself in the shoes of an irritated owner who does not believe that the Guidelines speak to his or her particular situation (e.g., does "commercial vehicle" apply to the owner's Chevy Suburban simply because it has commercial logos?) and try and ensure that the terms of the restrictions or guidelines are clear.

We also recommend that the association communicate with the membership after formal adoption of any Guideline amendments. Whether such communication includes publication of the entire text of the amendment or simply summarizing the amendment and informing the members that a copy of the full body of the amendment is available on the association's website or at the association's management offices, is within your discretion, provided that your association's legal documents do not require otherwise.

Under the Maryland Homeowners' Association Act, the amendments to Guidelines may not be enforceable if they have not also been filed with the homeowners' association depository in the county where the property is located. Accordingly, this should be done immediately after adoption, before the amendments are provided to the owners.

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It is also important to ensure that once adopted, your amendments must be kept on file with all of your association's records, and included in your resale documents, so as to alert prospective purchasers to the terms and conditions of your Guidelines.

Overall, the process of amending Architectural Standards and Guidelines is a fairly straightforward process that can provide the association with flexibility to quickly and easily respond to the needs of your community and any changes in the law. If you would like more guidance regarding this process, please do not hesitate to contact us.