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Subject: Homeowners Association Tip of the Week - Architectural Approval Involving Adjoining Property Owners

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The declaration of many associations requires the prior approval of the board of directors or an architectural committee before an owner can make improvements or alterations that change the exterior appearance of their property. These declarations also generally empower the board of directors or an architectural committee to enact design guidelines to provide guidance for this review and approval process. One issue that arises in drafting these design guidelines is whether approval of an alteration should be conditioned on obtaining the approval of the adjoining property owners. Despite the bright line rule that such an approval requirement establishes, we advise against such a provision.

Requiring the approval of adjoining property owners opens a Pandora's Box of potential litigation. Such a requirement can effectively hold a proposed alteration hostage to the whims of adjoining property owners. A neighbor may refuse to approve a proposed alteration for reasons the owner (or the association) sees as unreasonable. The owner may then demand that the association approve the alteration despite the neighbor's refusal, threatening legal action. Similarly, if the association takes steps to approve an alteration without the neighbor's approval, then the neighbor is likely to threaten legal action. At this point, even amending the design guidelines to remove the neighbor approval requirement may not resolve the issue. The dispute between neighbors over consent to the alteration can quickly become heated litigation involving both owners and the association.

Furthermore, requiring adjoining owner approval limits an association's flexibility in reviewing architectural requests. Often, design guidelines are drafted to review proposed alterations with respect to both specific requirements and more general aesthetic or community harmony concerns. If issues arise, an association prefers the ability to negotiate with an owner to arrive at a result that best serves the entire community. Requiring neighbor approval adds additional parties to the negotiation and can make a beneficial resolution more difficult.

Associations are also required by state and federal fair housing statutes to permit certain accommodations and modifications and to refrain from any discrimination in decision making. A neighbor approval requirement could result in an association being sued under the fair housing laws for not approving a particular alteration or permitting discriminatory behavior of a neighbor to affect an owner's request.

Ultimately, an association is legally obligated to exercise its architectural review authority in a reasonable manner that treats its members fairly. The best manner to meet this legal duty is not to condition architectural approval on receiving the approval of neighbors. That said, design guidelines can require that the adjoining property owners be notified of the proposed alteration and given a chance to voice their opinion on the proposed alteration to the board or architectural committee. Such input can then be considered by the board or architectural committee without tying their hands in decision making.

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