

Woodbrook Townhouses Owners' Association

Board Resolution No. 2018-00 _____

RE: Adopting appeal process for Architectural Review Committee decisions to the Board of Directors

1. Issue presented to the Board:

The Covenants do not contain specific language stating how the Association Board should address issues arising from an Architectural Review Committee (ARC) decisions. According to the Covenants, the ARC has broad powers to approve, deny or request modifications of requests from Owners regarding improvements to their property. The ARC decisions must comply with the Covenants. Recently, some Owners believe that the ARC has made decisions that are not consistent to the Covenants. Those Owners have approached the Board for a review of the decision.

2. Authority to adopt a formal appeal process for ARC decisions.

Pursuant to the Covenants, the Board has the power and authority to enforce the Covenants, Bylaws and Rules & Regulations. (Covenants, I, bullet point One.) The Board also has the authority and power to "direct the actives and functions of the Architectural Committee." (Covenants, I, bullet point 8) Furthermore, pursuant to the Covenants, the Board may adopt this type of resolution. (Covenants, XIV, 1) Therefore, as it is clear that the Board has the right to review the architectural decisions, it is appropriate for the Board to adopt a resolution setting for the process of that review.

3. Resolution Presented to the Board:

We, the Board of Directors for Woodbrook Townhouses Owners' Association, do hereby resolve that an Owner may request that the Board or an Arbitrator review a final decision made by the ARC as follows:

1. A request for review (the "Appeal") must be made by an affected Owner (Appealing Party) in writing within ten (10) business days of the ARC's decision and be delivered by certified or registered mail to the Association's office or hand-delivered to the Association's Secretary. The affected Owner must indicate if they wish to have the Appeal heard by the Board, or by an Arbitrator (See separate processes below.) The Appeal must also include a certificate of service at the bottom of the Appeal, showing that the Owner also mailed or hand delivered the Appeal to any other Owner directly affected by the decision. The Certificate should generally conform to the following:

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 20____, a true and correct copy of the above and foregoing document was duly served upon the following named below by depositing in the United States Mail, postage prepaid, addressed as follows:

Name

Address

Owner's Signature

2. There are two forms of review:

- a. Review by the Board; or
- b. Review by an Arbitrator.

3. Review by an Arbitrator.

- a. A Review by an Arbitrator must be agreed upon by all directly affected parties. If one party does not agree to Arbitration, then the Review will be by the Board.
- b. The Appealing Party has fifteen (15) days after mailing the Appeal to secure written the Agreement to Arbitrate from the other directly affected parties.
- c. If the Appealing Party cannot secure the agreement to Arbitrate within fifteen (15) days after mailing the Appeal, then the Appealing party must inform the Board in writing within Twenty (20) days of mailing the Appeal that the Appeal will go through the Review process (Notice of Failure to Agree on Arbitration).
- d. Failure to send the Notice of Failure to Agree on Arbitration within twenty (20) days of mailing the notice of Appeal with the selection of the Arbitration process will result in the loss of the Appeal. No further action will be allowed.
- e. If the parties agree to Arbitrate the appeal, then each party will mutually select an arbitrator within three days after receipt of acceptance to arbitrate the dispute. If the parties cannot agree on an arbitrator, each party will appoint an arbitrator within three days after the acceptance to arbitrate, that the two arbitrators so appointed will select a third arbitrator within three days after notice of their appointment, and that the third arbitrator will hear the dispute and make a decision or award. It is agreed that the parties regardless of the decision or award made shall share any compensation required by the arbitrators equally. The Board will not be held responsible for any costs associated with the arbitration. Any arbitration between the parties shall be held in Gallatin County, Montana.

The laws of Montana shall govern. The Montana Uniform Arbitration Act will apply.

4. Review by the Board.

- a. Upon receipt of Appeal, or receipt of the Notice of Failure to Agree on Arbitration, the Board will consider the Appeal at a regularly scheduled or special meeting, for which there is quorum, within forty-five (45) business days from the date the Appeal or Notice of Failure to Agree of Arbitration was received.
- b. Until the meeting, any interested party may write letters or otherwise submit information regarding the Appeal.
- c. At the meeting, any interested party may present testimony and additional information regarding the Appeal for the Board's consideration. The Board may question the parties in attendance, ask for additional information to be submitted to the Board and otherwise direct the manner of the Appeal portion of the meeting.
- d. The Board will then in writing affirm, modify or reject the ARC decision within twenty (20) business days after the meeting. The Board decision must be agreed upon by a majority of the Board.

NOTE: No work may progress during the appeal process.

MOTION and VOTE: Phyllis Bock moved to pass the Resolution as shown above. Tom Johnson seconded the Motion. The Board voted and the Resolution pass by a majority of the Board members.

Dated this 11 day of December, 2018.

By: 
Its: Secretary