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# MONTHLY NEWSLETTER

## SEPTEMBER 2019



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# Scope of the Association's Architectural Review Authority Might Be Muddier Than You Think

FRANK A. RUGGIERI

SO, IF YOUR DECLARATION SAYS YOUR ASSOCIATION HAS THE RIGHT TO APPROVE EXTERIOR MODIFICATIONS, THAT INCLUDES LANDSCAPING MODIFICATIONS, RIGHT?

As with most legal issues, the answer is “it depends”. Florida’s 5th District Court of Appeals addressed the scope of architectural review in *Bendo v Silver Woods Community Association, Inc.* 159 So.3d 179 (Fla. App. 5thDCA 2015). The case involved a dispute over an application for architectural review and the Association’s denial of the owner’s requested landscaping modifications. The owner challenged the scope of the Association’s authority to review and approve exterior modifications based upon the language in the Declaration:

**“Section 1. Approval of ARC. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made, unless it is** in compliance with the zoning code of Orange County, Florida, and other applicable regulations and until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and **approved in writing as to harmony of external design and location** in relation to surrounding structures and topography by the Board of Directors of the Association, or by the Architectural Review Committee (ARC).”

The first sentence in the above provision was key to the Court’s ruling. Notice that it does not specifically mention “landscaping”. Yes, it does say “nor shall any exterior addition to or change or alteration be made”, but the Court focused on the fact that the sentence only mentions “building, fence, wall or other structure” in the beginning of the sentence. Because it does not specifically mention landscaping, the Court ruled that the Association’s right of architectural review is limited to “hardscape” modifications, or changes to “structures” built on the lot.

This opinion is significant because it was issued by our 5th District Court of Appeals, the Appellate Court that has jurisdiction over appeals from trial courts in Central Florida including Orange,

Seminole, Osceola, Brevard and Volusia Counties. However, it is really an interpretation of the language in this particular Declaration. Most Declarations are written broadly and specifically enough to include landscaping and other “soft” modifications, but you should carefully review the language of your Declaration with legal counsel to determine the true scope of your Association’s right of architectural review and approval. Consider pursuing an amendment if the scope of review is unclear or not broad enough to include any exterior modification. ■





# New Address Verification Requirements Applicable to Meetings of the Members

ANTHONY T. PARIS, III

ANNUAL MEETINGS, ELECTIONS, AND SPECIAL MEETINGS OF THE MEMBERS ARE GENERALLY A BIG DEAL FOR COMMUNITY ASSOCIATIONS.

In an active community such meetings are the time and place during which the proverbial rubber meets the road and the membership is able to shape its community. Most associations and their managers know that in order to have a membership meeting, they must first properly notice the meeting. This involves mailing, or as of fairly recently emailing, the meeting notices to the owners. Seems simple enough, but are the notices actually being delivered to the correct addresses?

While many communities maintain rosters of the members' preferred mailing addresses, or simply mail their notices to the physical address of the home in the community, Section 720.306(1)(g), [Florida Statutes](#), was amended in 2018, and now appears to require that the Association rely upon the property appraiser's records in the case of membership meetings (as opposed to Board meetings).

According to this section, the notice must be mailed or delivered to the address *identified as the parcel owner's mailing address*

*on the property appraiser's website* for the county in which the parcel is located, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission. In other words, the statute allows two types of delivery destinations for membership meeting notices: (1) the mailing address listed on the property appraiser's website; or (2) the email address of those owners who have consented to receive notices by email in advance. The statute states nothing further in terms of alternative mailing arrangements. Also note that 720.303 pertaining to Board meetings was not amended and this requirement arguably does not apply to Board meeting notices that are mailed.

Therefore, while it may still be a good idea to mail a notice to an owner's preferred mailing address or the physical address of the home in the community, be sure to obtain and use the owner's mailing address as listed on the property appraiser's website for your next membership meeting to ensure compliance with Florida Statutes. ■



# UPCOMING EVENTS

## ORANGE COUNTY

### **Board Member Certification Class**

October 3, 2019

Avalon Park

## BREVARD COUNTY

### **Board Member Certification Class**

October 14, 2019

Viera/Suntree

## OSCEOLA COUNTY

### **Board Member Certification Class**

October 23, 2019

Kissimmee

## BREVARD COUNTY

### **Covenant Enforcement: An Interactive Review of the Process**

November 6, 2019

Viera/Suntree

Final locations and times TBD. Refreshments and light hors d'oeuvres will be served.  
Please RSVP to [erincaccamo@ruggierilawfirm.com](mailto:erincaccamo@ruggierilawfirm.com)

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