

Serving on Your Community Association's ARC, ACC, or ARB? Take Note to Whom Your Fiduciary Duties Are Owed

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Residents of planned communities often must obtain approval prior to making any modifications to their homes and lots.

Through their declaration of covenants, conditions, and restrictions - commonly referred to as the "declaration" for short - homeowners' associations commonly specify an approval procedure for homeowners to follow and complete prior to making such modifications. This process is often described in declarations as "architectural review." Examples of modifications often subject to architectural review include constructing an addition, altering permanent landscaping, building a shed, adding a fence, or building a deck/patio to name a few.

While homeowners' associations are governed by a board of directors, the board itself is rarely charged with administering the architectural review process. Rather, most declarations provide for the establishment of a separate group, typically a committee of the Association, often made up of volunteers or appointees from the community membership, whose express and sole purpose is to oversee the community's architectural review process. The declaration in your community may refer to this group as the architectural review committee ("ARC"), the architectural control committee ("ACC"), or the architectural review board ("ARB"). Whether dubbed an ARC, ACC, or an ARB, these committees are the body politic whom receive, consider, and render decisions on lot modification requests made pursuant to the community's architectural review process.

These committees play an important role in maintaining a community's character and aesthetic community-wide-standards. In fulfilling this role, they act as gatekeepers to aesthetic changes to homesites in the community, and they, again in theory, are bound by the requirements of the declaration. By way of example, if the declaration says all houses have to be a similar exterior color and the color scheme in the neighborhood is neutral colors, it follows then that the committee/board should reject a resident's application to paint the exterior of a house neon green.

What legal duty do these committee members owe? And to whom or what? We have written on fiduciary duties in the Community Association context in the past. Must these committee members exercise fiduciary duties? While the state-level appellate courts have not yet ruled on the issue, the North Carolina Business Court was recently asked to tackle this question, and in answering it, the Court held that such committees ***do not*** owe a fiduciary duty to individual homeowners when reviewing architectural applications. Instead, the

Court found that such committees/boards **do**—and only—owe the homeowners association (the corporate entity) itself a duty, specifically, to act reasonably and in good faith in evaluating applications under the requirements specified in the community's declaration. See *Pittenger v. Gleneagles Homes Association*, No. 18 CVS 11280, 2020 WL 7059356 (N.C. Super. Ct. Dec. 1, 2020).

In *Pittenger*, Mr. and Mrs. Pittenger took issue with various changes that the ARC approved to be made to their neighbors' lot. The Pittengers' complaints included that the ARC approved the construction of a five-car garage (in lieu of a four-car garage) and did not enforce the height limitation set in the declaration for structures. When their concerns were not resolved, the Pittengers sued the association, the members of the ARC, and their neighbors claiming that the approved changes violated the declaration and constituted a nuisance. They also contended that the ARC members owed them individually fiduciary duties, which they had breached.

In considering the Pittengers' claims, the Court noted that the declaration vested authority in the ARC to approve design plans for the community, and it concluded that it must defer to the ARC's decision in the absence of evidence that the ARC had acted arbitrarily and capriciously in exercising its authority. That is, if the ARC's decision was made reasonably and in good faith, it would not be disturbed by the court. As the Pittengers failed to come forward with evidence demonstrating that the ARC's decisions were arbitrary and capricious, the court declined to set its decisions aside.

On the issue of whether the ARC members owed a fiduciary duty to the Pittengers, the Pittengers maintained that the ARC members owed them a fiduciary duty because the ARC had "total domination and control" over property owners' rights concerning design and construction matters per the declaration and because homeowners were mandatory members of the association whose property was subject to foreclosure if assessments were unpaid. *Pittenger*, No. 18 CVS 11280, 2020 WL 7059356 *9-10 (N.C. Super. Ct. Dec. 1, 2020). The Court rejected the Pittengers' argument, finding instead that members of the ARC owed no fiduciary duties directly to individual homeowners, but rather owed a duty to the association to implement the declarations' requirements in good faith and reasonably. In reaching its conclusion, the Court cited well-established North Carolina law confirming that the fiduciary duties of directors and officers of a homeowner's association are owed to the association they represent. The Court also noted that because the ARC members had been delegated the authority to act on behalf of the association's board of directors, their duty was to adhere to the requirements of N.C. Gen. Stat. § 55A-8-30, which requires directors to discharge their duties "in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interests of the corporation."

The Court's ruling is an important first step in defining the fiduciary duties owed by architectural review committees in North Carolina. It stands for the proposition that members of architectural review committees do not owe greater duties than the board of directors themselves owe – duties to the association and not to individual homeowners. And as case law on the issue is not yet well-developed, other North Carolina courts may look to and follow the Court's ruling when faced with the questions of what duties do architectural review committees/boards owe and to whom.

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