

HOA Design Restrictions Must be Authorized by Governing Documents and Must Be Reasonable to be Enforceable

by [Lawrence Szabo, Esq.](#) | Apr 8, 2022 | [Case Decisions, Governing Documents, Use and Maintenance](#)

This case involved a dispute between a homeowner (“Owner”) and his homeowners association (“Association”) over Association’s power to adopt rules restricting the use and design of individually owned properties within the common interest community. In his action for injunctive and declaratory relief, Owner sought an order from the court forcing the adoption of two sections of the Nevada “Restatement (Third) of Property: Servitudes” (“Restatement”). Section 6.7 of the Restatement pertains to use restrictions, and 6.9 pertains to design restrictions. The two sections of the Restatement provide that a homeowners’ association does not have the implied power to impose use or design restrictions on individually owned unless the association’s governing documents expressly authorize the imposition of such restrictions, and if so, the restrictions must be “reasonable.” In his action, Owner sought to invalidate Association’s newly adopted architectural and design rules.

Association’s Bylaws contained a provision that authorized its board to make rules and regulations necessary to carry out its powers, but which are not inconsistent with the laws of the State of Nevada and Association’s Articles of Incorporation and Bylaws. The Bylaws also included a provision that required Association’s preapproval of the planned construction on individually owned lots prior to the commencement of construction.

In 2018, Association established an architectural review committee and Architectural Guidelines that created detailed restrictions on individually owned lots concerning such things as building height and setbacks, along with design control restrictions regarding exterior lighting, building materials, and landscaping. The newly adopted regulations required owners to submit proposed plans to the architectural review committee for review and providing input to Association’s board relative to the approval of the proposed plans for development.

In his action, Owner contended that Association's Architectural Guidelines exceeded the scope of Association's rule making authority. The trial court ruled in favor of Association, finding that it had the authority to adopt rules to control the design of individually owned property. Owner appealed the trial court decision.

The appellate court concluded that public policy favors the adoption of sections 6.7 and 6.9 of the Restatement which, when read in conjunction, provide limits on an association's implied power to act with respect to individually owned property. As such, the court ruled that the provision contained in Association's bylaws that allows it to adopt design restrictions for individually owned property must be found to be reasonable in accordance with sections 6.7 and 6.9 of the Restatement. In determining reasonableness, the court stated the following factors should be considered: (i) Association's rationales for the exercise of its discretionary authority; (ii) the specific nature of the activity proposed by the owner; (iii) the relationship between any legitimate interests of association and its exercise of discretionary authority; (iv) the purposes of the Association and the general plan of development for the common interest community, as reflected in its governing documents; and (v) the extent to which discretionary authority was exercised in good faith or in an arbitrary manner.

Because the issue of the reasonableness of the design control restrictions was not addressed by the trial court, the appellate court reversed the trial court's order which granted summary judgment in favor of Association and remanded the case back to the district court for a determination as to whether Association's Architectural Guidelines are reasonable.

Nevada Supreme Court decision (April 7, 2022)

See case decision: [Moretto v. ELK Point Country Club Homeowners](#)