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THE BASICS OF RESTRICTIVE COVENANTS IN TEXAS

Generally

Restrictive covenants (also sometimes called “deed restrictions,” “covenants, conditions and restrictions,” or simply “CCR’s”) are contractual limits imposed on the use or occupancy of real property. Restrictions may affect a single tract of land or an entire subdivision. Because they can substantially limit the use and development of property, buyers should carefully investigate any applicable restrictions before committing to purchase land.

Common Provisions

Typical restrictions may limit lot sizes, building sizes and materials, architectural styles, allowable uses (prohibiting commercial activities in a residential subdivision, for example), and the number or type of animals that may be kept on the property. Restrictions may also require a particular standard of maintenance, prohibit on-street parking, and restrict the posting of signs. Courts will liberally construe restrictions to give effect to their original intent. However, restrictions that are against public policy (such as restrictions based on race, color, religion, or national origin) are not enforceable.

Restrictions Distinguished from Laws

Landowners often fail to grasp the distinction between restrictive covenants and governmental regulations. With some limited exceptions (notably in the city of Houston, which has no zoning laws) restrictive covenants and governmental regulations operate independently of each other. Restrictions are private covenants undertaken by landowners; zoning laws and subdivision regulations are legislated by local government. The stricter provision generally controls when restrictions and laws conflict. So, although a city may zone a tract of land for commercial use, commercial activity is impermissible if deed restrictions limit the property to residential purposes. Likewise, restrictions may permit a ten-foot setback, but if the city’s ordinances require a twenty-five foot setback, the ordinance prevails. The prudent landowner must fully investigate the impact of both local laws and any applicable restrictive covenants.

Modification

Because restrictions are a form of contractual agreement, they are subject to modification. Often the restrictions themselves will provide a mechanism for modification with the consent of a specified percentage of the affected landowners. If the restrictions themselves do not provide a process for modification, however, any change will usually require the unanimous approval of all the affected landowners.

Waiver and Abandonment

Restrictions may become unenforceable over time due to waiver or abandonment. Waiver requires an intentional act. Abandonment means that the restrictions have been disregarded to

such a degree that as a practical matter it is no longer possible for a court to provide the benefits that the restrictions originally intended. In court, minor violations and violations that do not materially affect the complaining party's own property will not impair the enforceability of the restrictions. However, widespread or long-standing violations may make enforcement problematical.

Remedies for Violations

The usual remedy for violations of restrictive covenants is an injunction from a court commanding the violator to comply with the applicable provisions. The party who successfully sues to enforce the restrictions may also be entitled to recover attorney's fees and court costs, as well as civil damages of up to \$200 per day for each day of the violation.

Finding the Restrictions

Restrictions may appear in deeds, leases, plats, or standalone documents called "declarations." If a buyer obtains title insurance when buying property, the title company should note any applicable restrictions on Schedule B of the title commitment.

Closing Thoughts

Buyers are often not particularly concerned about restrictions, apparently thinking they are "standard" and focusing instead on property condition or other issues. However, as with any contract one should carefully read any applicable restrictions before binding oneself to the transaction. The applicable restrictions may not be "standard" at all. In addition, restrictions may contain specialized terms or legal jargon, so it may be prudent to obtain the advice of an experienced real estate lawyer to before committing to the transaction.

About the Author

Located in Killeen, Texas, the law firm of [Roberts & Roberts](#) provides legal services in the fields of real estate, probate, estate planning, and business law. This article provides general information about Texas law only, and is not a substitute for legal advice. Because the outcome of each case depends on the specific facts involved, we encourage you to consult with a licensed attorney before taking any action that may affect your legal rights. If we can be of assistance to you, please contact our friendly staff at your convenience.

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