

INFORMATION SHEET - RESTRICTIVE COVENANTS AND ENFORCEMENT

What is a restrictive covenant and how is it enforceable?

- A restrictive covenant is a document that a developer, landowner or a municipality may register against a land title under the encumbrances, liens and interests.
- A restrictive covenant serves as a notice to future landowners, and generally outlines an interest in land to control use, development or to indicate concerns or issues or to ensure consistency related to a parcel.
- A restrictive covenant can operate outside of and in some cases in addition to municipal policies and land use planning documents (i.e. a municipalities Land Use Bylaw).
- A registered restrictive covenant runs with the land and is binding on future buyers/owners of a property.
- A restrictive covenant must have four aspects written into the document to be enforceable:
 1. **Dominant and Servient Tenement** must be identified (in other words there must be a parcel of land which is subject to a restriction and a parcel of land which benefits from the restriction).
 2. **Negative obligation** must be present (in other words it must be an item that is prohibiting something as opposed to a positive act).
 3. **Touch and Concern Land** The restrictive covenant must identify concern or benefit to the land, that is it must be a restriction that enhances the use or value of the land. (ie building schemes, no mobile homes or manufactured homes allowed or a minimum square footage allowed, etc.)
 4. **Annexed to Lands** means that the restrictive covenant binds the land and all subsequent owners by implication of an agreement or by express words.
- A restrictive covenant is only enforceable by the parties to the restrictive covenant, namely the owners of the land affected by obtaining a court order to stop a use or development that goes against the restrictive covenant.
- A restrictive covenant and the outlined obligation and/or benefit cannot be enforced by persons that do not have a registered interest in the land subject to the covenant.
- For a municipality to have authority to enforce a restrictive covenant they need to be identified in the covenant and need to be an owner of lands identified within the covenant or be the party that has registered the covenant and benefits by the restriction.
- Potential purchasers should be aware that in some instances restrictive covenants are more restrictive than a municipality's bylaws. It should be noted that if a covenant conflicts with a municipalities land use bylaw or statutory plan, that the Courts could set aside a requirement of the restrictive covenant.

Note: When purchasing a property review and verify any encumbrances, liens and interests on a property with your solicitor to ensure your intended use of the property won't have unpleasant complications.

References

Environmental Planning: Are Indemnities and Other Contractual Planning Tools a Help or Hindrance? By Lorne Randa, Brownlee LLP
Applied Land Use Planning (ALUP) Program – Module 8 Environmentally Sensitive Lands – Brownlee LLP
Alberta Land Titles – Procedures Manual – Subject Restrictive Covenants
Calgary Real Estate Review by Mike Fotiou, Associate Broker with First Place Realty – What are Restrictive Covenants?