

RESIDENTIAL REAL ESTATE PURCHASES AND NEIGHBORHOOD RESTRICTIONS



Lisa H. Emmons, Attorney at Law
Denton Law Firm
Paducah, Kentucky

555 Jefferson Street, Suite 301
Paducah, Kentucky 42001
(270) 450-8253
www.dentonfirm.com

When people look for real estate to purchase, they often have a mental checklist they use to make sure they get the perfect home. They consider a property's proximity to schools or work. They may look for suitability for building their dream home, or may look for the right house to modify to their taste. However, these careful shoppers may forget to check for legally enforceable restrictions that may affect what they can do with the property. There are two main types of restrictions, zoning and planning restrictions, that are usually imposed by a local government through ordinances and private restrictions imposed by developers through deeds and other documents.

GOVERNMENT RESTRICTIONS VERSUS PRIVATE RESTRICTIONS

The most common form of government restriction is zoning. Cities and counties have planners that create zoning maps that determine what types of buildings and land uses are appropriate. Local governments create ordinances to enforce these plans. Over the years zoning plans have become more precise and easier to follow, as states have required local planners to do a better job developing the plans before ordinances are enacted. Zoning maps and their related ordinances are easily made available through your local, county or city government.

Most people have a rudimentary understanding of zoning restrictions, but private restrictions for a subdivision are less understood and far less uniform. When a government imposes a restriction, it is usually meant to make sure that minimum standards are met and that citizens do not make alterations to property that will cause excess cost to the government. Restrictions that prevent damage to sidewalks are an example. However, private restrictions are often designed to keep a certain aesthetic uniformity or to maintain property values. The theory goes that each homeowner has certain responsibilities to his neighbors to help maintain the particular character of a neighborhood. These restrictions can cause problems for unsuspecting newcomers who do not fully understand all the rules because many private restrictions are not always obvious or even logical to many people. I once knew an organic cook who insisted on raising his own vegetables and herbs outside his

picturesque home in a rural suburb. What he failed to realize was that a restriction existed which only allowed purely decorative gardens and not vegetable gardens near homes. The restriction was placed to prevent people from growing vast tracts of corn or potatoes near the golf course, not restrict the use of a few patches of oregano and mint, but the restrictions barred them anyway.

Restrictions can prevent the building of manufactured homes, prefabricated homes, mobile homes and even duplex homes, no matter how well made or charming. Common provisions are minimum square footage for homes, requirements for building materials, and landscaping. They may also restrict the amount of land taken up by a home in order to maintain large picturesque lawns, at the expense of those who have dreamed of a large sprawling ranch style home. Another common restriction is a prohibition against parking boats or trucks in the driveway. An avid fisherman may want to know this ahead of time. Therefore, you should obtain a copy of the restrictions affecting the property from the seller of the property you want to buy and read them carefully before you sign a purchase contract so that you are not unpleasantly surprised after purchasing the property.

HOW PRIVATE RESTRICTIONS WORK

In legalese, private restrictions are referred to as "real covenants" or "equitable servitudes." These are covenants, often contained in a deed or similar instrument upon the establishment of a subdivision, before the parcels are sold off. These covenants are said to "run with the land" in the sense that they bind not only the original purchaser, but all subsequent purchasers of the property.

THE IMPORTANCE OF NOTICE

Notice is required for a covenant to restrict an owner. You may be asking how private restrictions can possibly sneak up on an owner if notice of the restriction is required for it to take effect. The reason is that the law recognizes two kinds of notice, actual and constructive. Actual notice is when the purchaser has actual knowledge of a covenant. Constructive notice occurs when a restriction appears in the chain of title documents for a piece of property. The purchaser is presumed then to know of the restrictions even if they never noticed the covenant. Tangential references to covenants may not be effective, but covenants in the direct line of title documents will operate to restrict the property.

ENFORCEMENT

Private restrictions are treated as contractual in nature. Therefore, they are usually enforced in local courts through actions brought by affected individuals, usually your neighbors. These actions differ from zoning laws which are initiated through local government agencies, such as zoning boards. A private individual who is upset by a neighbor who is violating a zoning law will usually take up the issue with local government agencies in attempt to seek enforcement.

If you are planning to buy or build a home in a subdivision, you should read the restrictions affecting the property before signing a contract to purchase. While most people do not have a problem with their subdivision restrictions, you may have.

OTHER SMART CONSIDERATIONS WHEN BUILDING OR BUYING A HOME

Don't overbuild for the neighborhood. Having the biggest and most expensive house in the area may be wonderful for your ego, but it will be a disaster when it comes time to sell.

Build for resale. No matter how long you intend to stay in the house you build, it will have to be sold at some point (which is often sooner rather than later).

Utility status. What is the status of the utilities? Are the utilities stubbed into the property? What is the status of the electricity, gas, water and sewer lines? If you have to pay to have the utilities brought to your property, the cost may be prohibitive. Often times a property is listed at an unrealistically low price because there are no utilities. Natural gas supply and sewer lines will probably not be present in many rural locations. The MLS printout should tell the status of all of the utilities.

There are many factors that should be considered before building or purchasing a home. It is a good idea to always get a second opinion from building professionals, engineers and building officials, and real estate professionals.

*This article is designed to provide general information prepared by the professionals at **Denton Law Firm** in regard to the subject matter covered. It is provided with the understanding that the author is not engaged in rendering legal, accounting, or other professional service. Although prepared by professionals, these materials should not be utilized as a substitute for professional service in specific situations. If legal advice or other expert assistance is required, the service of a professional should be sought.*