

Subdivision Covenants and Deed Restrictions

WHAT ARE DEED RESTRICTIONS AND SUBDIVISION COVENANTS?

Deed restrictions and subdivision covenants are written agreements that restrict, or limit, the use or activity that may take place on a specified property. Restrictions/covenants can be found in the property records as recorded in the Register of Deeds Office of the county in which the property is located. Such deed restrictions/covenants are private agreements and are legally binding upon the property owner(s). All future owners (heirs and assigns) become a party to these agreements when they purchase property in a deed restricted area. Restrictions travel with the deed, and cannot generally be removed by new owners. Also, deed restrictions/covenants may have specified expiration dates or they may never expire, depending on how the document is written.

Deed restrictions and subdivision covenants can allow/disallow any activity (such as a home based business, commercial activities, mobile homes, RVs, etc.); regulate various aspects of construction and fencing; and may even regulate the condition that a home must be kept.

WHO ENFORCES DEED RESTRICTIONS AND SUBDIVISION COVENANTS?

Deed restrictions and subdivision covenants are not enforced by Lancaster County. The County cannot enforce deed restrictions or covenants because they are private agreements or contracts between the seller and buyer (grantor and grantee). Because the County is not a party to such covenants, it has no legal jurisdiction to enforce them. Enforcement action is normally taken by an active homeowners association, or an individual property owner who is also a part of the same restrictions/covenants may take the issue before a court of law for judgment and enforcement of the restricted issue.

HOW DO YOU FIND OUT IF YOUR PROPERTY HAS DEED RESTRICTIONS OR SUBDIVISION COVENANTS?

Deed restrictions may sometimes be found written in the property deed itself, but can usually be found as a separate document recorded by a previous owner who had interest in the property, such as the developer of a subdivision. Subdivision covenants can be written in a deed, on a subdivision plat, or provided as an addendum to a subdivision plat. Recorded documents such as these can be located in the Register of Deeds Office in the county where the property in question is located. The Lancaster County Register of Deeds staff is not certified as property title searchers and therefore cannot conduct a search of the recorded documents for you. If you are unsure if there are deed restrictions on a property, it is recommended that you hire either a certified title searcher or an attorney to make this determination.

WHY DO WE NEED TO KNOW IF YOU HAVE DEED RESTRICTIONS?

SC Code Section 6-29-1145 was amended July 1, 2007 and currently requires all local planning agencies to inquire in an application for a permit if the parcel of land is restricted by a recorded covenant that prohibits the proposed activity. If the local planning agency has notice of a restriction or covenant on a parcel of land, then the local planning agency must not issue a permit for the activity that is prohibited by the covenant or restriction. If the covenant or restriction has been lifted, then the applicant must show proof that it has been lifted. This applies to all Lancaster County planning/zoning permits and Lancaster County building permits.