

Private Deed Restrictions

Deed Restrictions

By Brian Madigan LL.B.

From time to time the question of private deed restrictions comes up. What do they mean? Where are they registered? Who enforces them?

An owner of a parcel of property can register certain “deed restrictions”, “restrictive covenants”, “registered restrictions” or “a building scheme” against the title to his own property.

The intent of the restrictive covenants is that they “run with the land”, that is they effect every subsequent purchaser of that property. The covenants have both a dominant and servient parcel.

This property can then be subdivided and turned into 100 different lots. Typically, the original owner will make all 100 lots servient properties. That simply means they must obey the rules. The original owner will also specify that the same 100 lots are also dominant properties.

In essence, this simply means that any one owner is obligated to follow the rules, and the rules can be enforced by the 99 other owners.

Some quick points:

- They are registered in Registry or Land Titles
- No one checks in Registry as to suitability for registration
- The Land Registrar has authority to register documents in Land Titles
- If the form appears appropriate, then it is likely that they will be registered in Land Titles
- Any other owner, subject to the same covenants can enforce them as against another owner
- The local zoning by-laws are additional laws, and an owner will have to comply with them as well
- The local building code will also have to be complied with
- An owner who wishes to enforce the rules may make application to the Superior Court of Justice (Ontario)
- Covenants are enforceable for a period of 40 years (or less, if so specified)
- The Court will determine if the covenant is: a) clear and precise, and b) negative in nature (in other words, it has to say what you can't do), and c) they have a dominant and a servient parcel
- Certain covenants that are contrary to public policy will not be enforced

The restrictive covenants are designed to increase the value of the area by restricting certain uses that “might bring down the neighbourhood”. Generally, they add value to a neighbourhood.

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