

BUY

Building, Buying, or Beefing Up a Home? Watch Out for Annoying Deed Restrictions

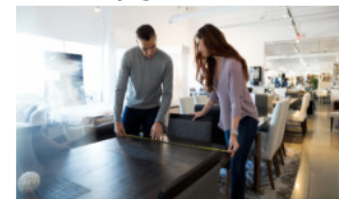
By Lisa Gordon | Mar 1, 2017

Editors' Picks

BUY
The 7 Most Annoying Things About Buying a Home



HOME IMPROVEMENT
Don't Fall Victim to These 7 Common Furniture-Buying Fails



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The day I planned to close on an acre-lot where I hoped to build a brand-new house, my real estate agent turned up a deed restriction that limited the number of garages I could construct. I had intended to build three, but according to the deed, I could have only two.

This seems like the ultimate First World problem, I know. But it was the first deed restriction I, as a new developer, had encountered, and I didn't understand why this rule had come out of nowhere to block my progress on land I was paying good money for.

It turns out, the restriction was more than 50 years old and created by a neighborhood association that long ago ceased to exist—and therefore couldn't enforce it. I ended up closing the deal, but I had to consider all the dreamy-eyed buyers who longed to [build their own home](#) and were thwarted by rules—archaic or not.

And here's the rub: Deed restrictions affect more than would-be home builders. You can be restricted by anything from the number of bedrooms in your house to the types of vehicles in your driveway. It's best to know about deed restrictions before you buy, so let's take a look at what they're all about.

First, find out if your property has any deed restrictions

First, let's back up for a second. Deed restrictions, often called "[restrictive covenants](#)" (especially in the context of [homeowners associations](#)), are restrictions contained in a deed that limit how a property can be used and what can be built on it. Most often, developers include restrictions not covered by local zoning regulations. The property doesn't even have to be part of an HOA to be limited by some rule a developer included in the deed decades ago—as I discovered. Deed restrictions turn up during title searches and a

careful reading of the current deed. They “run with the land,” which means that anyone who buys the property in future is supposed to abide by the restrictions, whether they were attached to the property 20 years ago when the neighborhood was developed, or 100 years ago when the land was a farm.

“When building a new home, or even doing an addition to your current home, it’s vital that you check your deed for any building restrictions,” says **Bill Golden**, an Atlanta-area Realtor®.

Deed restrictions aren’t HOA rules

Don’t confuse deed restrictions with regular HOA rules. An HOA can decide one day that no home in the association can string up Christmas lights. But if all the homeowners object, the HOA board can easily change its mind.

Deed restrictions, on the other hand, are difficult to change. Usually it takes a judicial ruling to invalidate them. In the worst of all worlds, a property’s use can be limited by both deed and HOA restrictions.

Types of deed restrictions run the gamut

And deed restrictions aren’t just about construction. **Zachary D. Schorr**, a Los Angeles real estate attorney, says he’s seen deed restrictions that require exterior paint colors to match colors found in nature, or even restrict rental properties.

“With the rise of VRBO and Airbnb, we are even seeing restrictions on nightly rentals and the minimum rental period for a house,” Schorr says.

Today, HOAs and developers create restrictions that, in theory, provide the greatest good for the greatest number of people. Some common deed restrictions can cover the following:

- Number of bedrooms (an attempt to prevent overwhelming sewer and septic capacities)
- Building height, width, and siting (to prevent obstructing views, especially in scenic and vacation areas)
- Number of vehicles allowed in the driveway or in front of the house, intended to keep the neighborhood from looking cluttered and junky
- Type of vehicles allowed in the driveway, like motor homes, boats, and motorcycles
- Type of fencing allowed (e.g., chain-link fences or very high privacy fences might be restricted)
- Type and number of trees you can remove from the property (Some restrictions protect a percentage of trees on a lot, which may have been put in place years ago by neighboring farmers and still are attached to the land.)
- Style, color, and construction materials used in a renovation (an attempt to limit architectural variations in a neighborhood)
- Pools, sheds, detached workshops, and extra garages can be forbidden or restricted
- Use of your home as a business (to prevent a lot of strangers from coming and going)
- Types of animals allowed on the property (Many deeds restrict livestock like chickens and goats; some also restrict breeds and number of pets.)

Who enforces deed restrictions?

Before World War II, property owners often wrote deed covenants that restricted the race and religion of future owners. However, in 1948, the U.S. Supreme Court ruled that covenants that impose racial or religious restriction cannot be enforced.

Today, some title companies that research deed restrictions don't even include these restrictive covenants in their reports, fearing a potential buyer might misconstrue their existence with their enforceability, leaving the title company open to discrimination charges.

Many covenants, in fact, exist in limbo because no ruling body still exists to enforce them—just like the garage covenant on the deed to my property. Your real estate agent and title company can help you determine if the ruling body still exists or is actively enforcing the rules, an important piece of information to know before you buy.

How to change a deed restriction

Modifying a restrictive covenant isn't easy, but it's not impossible, either.

First, go to your county courthouse and obtain a copy of the covenant, which often contains provisions for changing it or, if you're lucky, an expiration date. Sometimes, you can seek special permission from the governing body, like your HOA. Sometimes you can violate the covenant if you obtain permission from your neighbors.

Some states maintain laws that allow property owners to modify covenants if they follow certain steps. If all else fails, you may be able to persuade a judge to invalidate a covenant if it's vague, impractical, illegal, or has been widely disregarded by neighbors.

What if you can't change the restriction?

This is why we say investigate all restrictions before buying. You may not want the hassle of begging enforcing groups or judges to allow you to build a work shed or park your boat in the driveway.

It's often easier to adjust your expectations or find another property when deed restrictions prevent you from building your dream home.

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