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 Lexington 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 to find out if you have 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 Lexington 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 Lexington County zoning permits and Lexington County building permits.
How Restrictive Covenants Affect Land Use

Home Buying Essentials

When you're buying a home, it's important to understand the restrictive covenants and other deed restrictions that are in place for the real estate you want to buy, because they dictate how you can and cannot use the property.

Restrictive covenants are deed restrictions that apply to a group of homes or lots, property that's part of a specific development or subdivision. They are normally put in place by the original developer, and are different for every area of homes.

What's the Purpose of Restrictive Covenants?

Restrictions give a development a more standard appearance, and control some of the activities that take place within its boundaries. When enforced, covenants protect property values.

What You'll Always See in Covenants

Restrictive covenants nearly always stipulate the minimum size residence allowed, how many homes may be built on one lot, and what type of construction the homes must (or must not) be.

More Topics You'll See in Restrictive Covenants

- Set backs (how far homes must be from streets and interior lot lines).
- Easements (such as a pathway for power lines or roads).
- Fees for road maintenance or amenities.
- Rules regarding changing or voiding the covenants.
- Rules about pets and other animals (for instance: no breeding for profit, no livestock, no unchained pets).
- Regulations dealing with in-home businesses and home rentals.
- Rules that limit tree-cutting
- Clauses that dictate what type of fencing can be used, or that forbid all types of fencing.
- Clauses to reduce clutter on lots, such as prohibiting owners from storing a vehicle that doesn't run within view of others, or parking a recreational vehicle on the property.

Some restrictions limit the paint colors that can be used on a home's exterior. Some might require that all homes have a certain type of siding. In areas where wildfires are a problem, covenants might require you to use only fire retardant building materials.
Covenant Disclosure

Your real estate agent or the for sale by owner seller should give you a copy of a development's restrictive covenants before you make an offer on the property. If restrictions are not offered, ask for them. If no one has a copy, go to the county courthouse and ask staff to find them for you--they should be included in public records.

Don't be surprised after the sale, get the facts about a property early on so that you can eliminate it from your possible choices if the covenants include more restrictions than you can live with.

More Deed Restrictions

Don't assume that a property is restriction-free just because it isn't in a development. There may be deed restrictions, rules and prior agreements to use that are recorded on an individual deed. Go to your local courthouse and read the current deed before you make an offer.

- Watch for wording that limits property use, such as "no mobile homes," or "no commercial use."

- Look for any statements that give others the right to use the property, such as easement rights\(^{12}\).

If statements reference a prior deed, look it up and read it.

Interpreting Restrictions

A real estate attorney can answer any questions you might have about confusing clauses in deeds and restrictive covenants.

Zoning Issues

Restrictive covenants have nothing to do with zoning or governmental regulations. Those are separate issues that could affect the way you use the property.

If Documents Are Not Available

Insert a contingency clause\(^{13}\) in your offer to protect your interests if you must make the offer before you have an opportunity to read the deed restrictions. The clause should be worded to give you time to read and approve the restrictions, and to allow you to back out of the contract with no penalties if you do not approve of them.