

# "You **CAN'T** Do That!"

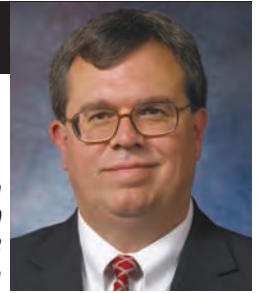
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What is a deed restriction? Is a deed restriction the same as a restrictive covenant, covenant, or plat restriction? In general, all of those words and phrases involve the same concept. I will refer to all of those restrictions in this article collectively as "deed restrictions."

Deed restrictions are rules and regulations that govern one or more lots or parcels of land. Deed restrictions "bind" land. Typically, a deed restriction is created in a document that is recorded with the county register of deeds records where the property is located. Most deed restrictions are permanent and "run with the land;" that is, they generally bind all current and future owners of the lot or parcels involved.

Deed restrictions can only be created with the written consent of the owner of the lot or parcels involved at the time the deed restrictions are created. In most cases, deed restrictions constitute a comprehensive set of regulations imposed by a land developer when creating a plat (sometimes called a subdivision), condominium development, multi-parcel land division, or other development. However, any property owner can impose deed restrictions on one lot or numerous parcels of land owned by that individual before the lot or parcels of land are sold to third parties.

In most cases, deed restrictions are negative or restraints on the use of

land ("Thou shalt not...."). Typical deed restriction regulations include prohibitions on mobile homes, junk, commercial or business activities in a residential area, dwellings under a certain size, further dividing the lot involved, multi-family use, nuisances, farm animals, or large pole barns. Other deed restrictions can be "positive;" for example, deed restrictions that indicate that a property can be used for horses, home occupations, or farming. Still other deed restrictions are relatively "neutral;" for example, the setting up of a mandatory property owners association and the imposition of annual dues or assessments.

The overwhelming majority of properties in Michigan are not subject to any deed restrictions. Deed restrictions are private contractual matters that bind real estate. If none of the prior owners of the lot or properties involved imposed any deed restrictions, they do not exist. Prior to buying any property, a prospective purchaser should obtain either a title search or title insurance commitment by a reputable title insurance company in order to determine whether the property at issue is subject to deed restrictions, and if so, the nature of the deed restrictions involved.

In general, deed restrictions are enforceable in Michigan. See *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206 (2007); Furthermore, the

penalty for violating deed restrictions can be quite severe. On occasion, the Michigan courts have ordered that dwellings or buildings be torn down that do not comply with mandatory setbacks or other deed restrictions. See *Webb v Smith (After Second Remand)*, 224 Mich App 203 (2007); *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206 (2007); *Thom v Palushaj (unpublished decision by the Michigan Court of Appeals dated February 12, 2012—Case No. 301568)*.

In general, deed restrictions protect property owners and property values. If you are purchasing property in a deed restricted development or community, the deed restrictions represent somewhat of a guarantee that certain matters will not occur. As with any contract, however, deed restrictions are not infallible.

Even a non-developer property owner who is splitting a parcel into several lots for sale or is selling a lot next to the landowner's dwelling may want to consider imposing deed restrictions on any lots or properties sold (particularly if the landowner intends to keep one or more of the adjoining lots or lots in the area). For example, if you are going to sell the parcel next to the lot with your dwelling (which you will keep), you may want to consider imposing certain deed restrictions on the lot to be sold (for example, that the lot to be sold cannot have a mobile

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home located thereon, there can be no barking dogs, and no commercial or business uses will be allowed to occur thereon). Anyone seeking to impose deed restrictions on any property should retain the services of an experienced real estate attorney.

## Common deed restrictions can regulate the following areas:

- Types of housing
- Single-family residential dwellings only
- Proper usage of the waterfront
- Setbacks
- Minimum house size
- Maximum accessory building size
- Prohibition on selling or transferring property to governmental units or for public use
- Easements and usage for easements
- Property owners association
- Dues or annual assessments

- No nuisances
- Limits on pets
- Architectural rules (and mandatory review and approval of all structures by a committee)
- No livestock
- No further splits or land divisions
- No outdoor storage of junk, RV’s, trailers, etc.
- Required building exterior materials
- Mandatory compliance with local government zoning regulations and building codes

A common misperception among laypeople is that if a deed restriction is not stated or referenced in the deed to land that you purchase, even if there was an earlier deed restriction binding the land, it will no longer be applicable to you. That is incorrect. Once a deed restriction is properly recorded, it remains in the “chain of title” for the property involved forever (or until the time limit specified in the deed restriction, if any), regardless of whether or not later deeds to

the property mention or reference the deed restriction. In some cases, deed restrictions can lie dormant and unknown for years regarding one or more properties, but could potentially still be enforceable.

Deed restrictions are a serious matter. They can either help protect one’s real estate or prove to be a nightmare when they prevent another person from using their land the way they desire.



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