



Real Estate Bulletin

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Be aware of restrictive covenants

There is an old adage that says the owner of property is the master of his own domain.

Of course that is not entirely accurate these days. For instance, when we live in the city we are subject to by-laws affecting zoning and noise or provincial statutes like the *Planning Act* which effects how land can be subdivided.

On a more local level, most subdivisions now have Restrictive Covenants registered against the title to the properties restricting what homeowners can do with their land.

The intent is to preserve the character of a neighbourhood; if someone goes offside, the document can be used by neighbours to bring the matter before the courts.

Common restrictive covenants include restrictions against altering the drainage plans, planting trees that can cause damage, installing clotheslines or other common-sense matters like not hiding a fire hydrant or using the property as a dumping ground.

These generally do not become a problem for the average purchaser.

However, some subdivisions can have restrictions against the installation of a pool or fence, changing the colour of the dwelling or preventing homeowners from parking their trailer in the yard.

The trouble is one of timing. As soon as the Buyer signs the OREA form, they unknowingly agree to take title subject to restrictive covenants that run with the land provided they are being complied with by the Seller. (See paragraph 10 – TITLE).

By the time a lawyer performs the title search and tells them what the restrictions are, it's too late: They have already agreed to take title subject to the very restrictions that might now be a concern.

What can be done? Not much. Other than striking that part out of the form, it is important for Realtors to find out whether the Buyer might have any intended uses that could be restricted.

Consider also restrictions that could apply to particular properties like heritage homes or near conservation lands.

If there is a concern, it might be wise to consider including a condition for the Buyer to have the agreement reviewed and approved by their lawyer so the restrictions can be reviewed and considered by the Buyer before it's too late.

Doing so is not cost prohibitive; the typical disbursement cost for a search limited to obtaining the Restrictive Covenants document is about \$50.

Which leads to another adage: An ounce of prevention is better than a pound of cure.

Best regards,
Robert M. Riopelle

Our Lawyers

ROBERT M. RIOPELLE

PIERRE LAMBERT-BÉLANGER

GORDON CONLEY

JOSHUA BOND

ELEANOR BACCEGA

MATHIEU LAMBERT-BÉLANGER

PAUL GUEVREMONT

MÉLANIE M. NYLUND

DOMINIQUE LAMBERT

2888 St. Joseph Blvd.
Ottawa, ON
K1C 1G7

Tel: 613-834-4800

Fax: 613-834-4828

TF: 877-834-4855

202-85 Pine St. S.
Timmins, ON
P4N 2K1

Tel: 705-264-9591

Fax: 705-264-1393

TF: 866-624-1614

Albert J. Ristimaki Building
4299 Harold Ave.
South Porcupine, ON
PON 1H0

Tel: 705-235-2211

Fax: 705-235-3084

TF: 855-235-2211

www.rglaw.ca

