

Restrictive Covenant

Restrictive covenant is a solemn agreement between a Vendor and Purchaser where the purchaser covenants with the vendor of land that he will not do certain acts in respect of the land and which enure for the benefit of the vendor.

The covenant must recite that it is made between the Vendor and Purchaser to the intent it is given by the purchaser to bind the owner from time to time of the land purchased and to enure for the benefit of the remaining land of the vendor and every part thereof.

Restrictive Covenants are usually required in subdivision of land in a development scheme and tend to create and preserve the character of the neighbourhood. Restrictive Covenants arise initially in the Sale Agreement. In completion of the sale, the Restrictive Covenants and the recital must be included as part of the transfer if the parties desire the covenants to be noted in the Certificate of Title.

These covenants must be negative in their nature and must be capable of running with the land. Restrictive Covenants must: -

1. directly control the use of the land of the covenantor;
2. benefit the land of the covenantee;
3. be negative in their content and,
4. be expressed by the parties creating them to run with the land.

Restrictive Covenants may be created by document for consideration other than a transfer.

- a. The parties to the document must be properly described;
- b. Parties must be owners of two pieces of land in close proximity;
- c. Lands to be burdened and land receiving the benefit are to be accurately defined and,
- d. The covenant must be negative in its nature.

If the land is subject to a mortgage or a charge consent of the mortgagee would be required.

Variation or Modification of Restrictive Covenants

Restrictive Covenants may be removed and/or modified from the Register Book of Titles by:

- an agreement between the parties having an interest in the covenant, or,
- an order of a court of competent jurisdiction.

The agreement or order of the court must state:

- the reference to the Certificate of Title;
- the number of the restrictive covenant to be modified or discharged and,
- the nature of the modification, if applicable.

The owners of a Strata Corporation may by unanimous resolution remove or modify a restrictive covenant affecting the common area of the strata development. The Strata Corporation executes the required documents as a representative of the registered proprietors of the strata lots and common property. It is to be noted that the strata corporation does not own any land and the ownership of the common area is held by the lot owners as tenants-in-common according to their unit entitlement.