“If Only I Knew!”

The Value of Promoting Restrictive Covenant Awareness

Presented By John McGauley
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Why We Need to Understand Covenants?

- Designed to preserve an area’s safety, appearance, integrity, quality of life and property value.
- Govern such issues as decks, fences, swing sets, swimming pools, association dues, signage and activities.
- Perhaps the single largest source of conflict between neighbors and homeowners’ associations.
- A contractual agreement between you and your association.
- Enforced by civil courts.
The Problem With Restrictive Covenants:

- Covenants are obscure, few people know where to find them, mystery even to real estate professionals.

- Homeowners are busy and they don’t have the time, the inclination or the know-how to track them down.

- Or they discount the power of restrictive covenants: “I am the King of My Castle!”

- Neighborhoods and property owners are left vulnerable to expensive, frustrating mistakes that result in conflict.
Whose Problem Is It (Technically Speaking)?

- In 2011, 25.1 million households/62.3 million people living in HOA governed communities.

- 20% percent of all U.S. homeowners - 80% of those in newly built homes – are subject to association rules.

- In Indiana, covenants are a civil agreement between the homeowner and the HOA.

- Restrictive covenants are not law, but they are enforceable via a civil court action.

- Homeowners must comply.
Reality Check: It’s Your Problem, Too!

- Fights over covenants violations get contentious.
- Neighbors fight neighbors.
- Courts get involved.
- **EVERYONE LOSES:** Property owners lose money; neighborhood associations lose goodwill of their constituents.
- Average cost of a legal fight over covenants can be $10,000-$25,000.
A Case In Point: Right Here In Fort Wayne

• In a quiet, established neighborhood, a property owner built a detached shed on his property.

• Assumed he could do what he pleased with his property.

• He Was Wrong: The shed violated association covenants.

Section 5. ARCHITECTURAL CONTROL.

5.1 No building, fence, wall, in-ground swimming pool, or other structure shall be commenced, erected, or maintained on a Lot, nor shall any exterior addition, change, or alteration be made to a structure until the plans and specifications showing the structure’s nature, kind, shape, height, materials, and location are submitted to, and approved by, the Committee in writing as to the structure’s harmony of external design and location in relation to surrounding structures and topography in the Subdivision. Approval of such plans and specifications may not be unreasonably withheld.
A Case In Point: Right Here In Fort Wayne

- The association challenged construction of the shed.
- Homeowner claimed he wasn’t aware of the rules, challenged the covenants.
- Result? Years of mediation and an 8-month court case that drained association resources and started a civil war between neighbors.
- A “Civil War”? Seriously?
• In 2008, after the court case was over, the homeowner fought back.

• He went door-to-door, gathering signatures to AMEND the covenants.

• Needed 60% of his neighbors to sign a petition agreeing to a change.

• He got it.

What Was The Change He Wanted To Make?
Yes, A Civil War (Can You Spell “Secede”?)
It Can Get Worse (Believe It Or Not)

Violence Over Association Business HOAs Is Rare, But Increasing

- **Sept. 6, 2012 (Louisville)** – Two people shot and killed. Dispute over a driveway and fence height.

- **2004 (Chicago)** – One HOA board member killed, one wounded. Fight over building rules.

- **2000 (Arizona)** – Condo association board member killed by man upset over problems with air-conditioning units and an awning.

Anything You Can Do To Avoid Contentious Disputes Is Worth the Effort
Communication Is The Key

From www.cohoalaw.com:

“Without communication, most assuredly common ground will not be reached, both parties become entrenched in their positions, lawyers get involved, and the stakes increase.”

“...The association and the homeowners should make every effort to understand each other’s position before moving in an irreversible direction. Legal action rarely achieves harmony within a community.
So What Can Community Leaders Do About It?

- Ignorance of the law is not a defense.

- It in fact IS the homeowner’s responsibility to comply with the requirements of their covenants.

  However...

- Promoting **BROAD** awareness of covenants pays big dividends by removing obstacles to the success, harmony and quality of life in neighborhoods.

- That’s where **YOU** come in.
What Did WE Do About It?

• County Recorder’s Office is the only complete database of neighborhood covenants.

• Covenants and amendments must be recorded in order to be enforceable.

• Electronically available and searchable in the County Recorder’s Office.

• Over 8,000 documents in all.
Allen County’s Neighborhood Resource Center:

- Available online via our Neighborhood Resource Center:
  www.allencountyrecorder.us/neighborhoods
- Downloadable as PDFs.
- Subdivision maps, association contact information and more.
- Service is free.
- Recognized as an innovative idea by Harvard University and Association of Indiana Counties.
What Can You Do Back Home?

• Access is the key.

• If you haven’t handed your homeowners their covenants, assume they don’t have them.

• Push your counties to do something similar: It’s not that expensive.

• If local government won’t make this information available online, do it yourself. It’s not that hard.

• It’s worth it. People will use it.
What Can You Do Back Home?

• The proof is in the traffic.

• 13,700 unique users a year (almost tripled since 2009).

• This resource has opened channels of communication that have never been open before.

• We are preventing mistakes. We are preventing conflict. We are achieving the goals we set.

• The problem is simple. So is the solution.
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