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HOA COVENANTS **SEPTEMBER 30, 2008** **WeCAN**

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Three Basic Characteristics of Homeowners Associations vs. “Neighborhood Associations”

1. All owners are automatically members
2. Governing documents bind all owners to a governing association and require mutual obligations
3. Mandatory fees (assessments) are levied against owners

DID YOU KNOW . . . *the Community Associations Institute (“CAI”) estimates that one out of every six Americans (42 million) live in a community association? Per the CAI, the number of community associations in the U.S. has grown from 10,000 in 1970 to 274,000 in 2005, providing 22.1 million housing units. Each year, 6,000 to 8,000 new community associations are formed. You are one of 1.25 MILLION Americans serving on a community association Board of Directors! Another 300,000 people serve on committees!*

For more information generally, go to www.caionline.org

Remember that this discussion is for general information only. It is not intended as specific legal advice. If you have further questions, you should contact your attorney.

WHAT IS A “COVENANT” IN INDIANA?

A restrictive covenant is a contract between the grantor and grantee which restricts the use and occupancy of the real estate.

Generally, the main purpose behind restrictive covenants is to preserve or enhance the value of lands which are adjacent to one another by controlling the nature and use of surrounding lands.

As a contract, a covenant creates a property right in each grantee and subsequent grantee of a lot.

The contractual nature of restrictive covenants compels courts to enforce equitably the covenants' provisions so long as they are unambiguous and do not violate public policy.

TYPICAL COVENANTS

Some of the most common use restrictions set forth in Covenants (either in the form of limitations or complete prohibitions) encompass the following:

- Pets
- Mini barns
- Swimming pools
- Fences
- Noise or odors
- Vehicles
- Parking
- Signs
- Additions or alterations

Within each of these typical categories of restrictions, it is common to find great variation in the amount of specificity. Thus, it is impossible to make a generalized conclusion about a suspected covenant violation without closely examining the actual language of the use restriction.

ARCHITECTURAL CONTROLS

Many Covenants require the owner to submit a written application prior to doing anything which would change the exterior of the property. Often, the Covenants will establish an Architectural Control Committee. (Sometimes, this group is called the Development Control Committee or the Architectural Review Board.)

Once an owner has submitted an application, the Covenants often state that the Architectural Control Committee has 30 days in which to approve or disapprove the owner's request, and submit that decision to the owner in writing. Normally, the Covenants state that if the 30-day period has lapsed, approval will be deemed given and the owner can begin the work.

In order to maintain a large degree of uniformity and pleasing aesthetics within the community and to uphold property values, the architectural control provisions are a powerful aid. Even though some owners may believe that the association's power to disapprove their plans is unfair, that process can help to ensure that one owner does not make any improvements which are totally out of character with the other homes or properties.

COVENANTS ENFORCEMENT

The Covenants typically state that any owner has the right to enforce the covenants through an action at law or in equity. For communities that have mandatory-membership Homeowners Associations, the Covenants normally will give that same right to the Association.

An injunction is a common remedy sought against violating homeowners. An injunction can be in the form of an order prohibiting an activity or ordering the removal of a violation. Many Covenants provide for the recovery of attorney fees against a violating owner in a successful covenant enforcement action.

UNDERSTANDING THE DOCUMENTS

1. What are the important legal documents where covenants can be found?
 - Declaration of Covenants, Conditions & Restrictions
 - Plats and Plat Covenants
 - By-Laws
 - Rules and Regulations
 - Architectural Guidelines or Standards
2. What Are The Use Restrictions?
 - Change in colors?
 - Pets?
 - Mini-barns?
 - Fences?
 - Swimming Pools?
 - Satellite dishes?
3. Architectural Control?
 - What must be approved in advance?
 - By the Board of Directors or a Committee?
4. Enforcement Provisions?
 - Right to sue for injunctive relief?
 - Who has the right to sue?
 - Right to recover attorneys fees?
5. Typical Defenses in a Covenants Enforcement Action
 - Abandonment of the Covenants
 - Laches (Waiting Too Long) and/or Waiver
 - Selective Enforcement/Discrimination