

---

## What You Should Know About Protective Covenants on Real Estate



### DWELLING ON DWELLINGS:

By **Brad Boisvert**

“Live Free or Die.” As New Hampshireites -- or wannabe New Hampshireites -- we pride ourselves on our stubborn independence. But our state motto doesn’t always apply to our real estate purchases.

If you think you can simply buy a piece of land and do with it whatever you want, think again. Regardless how many times you shout “Live free or die,” you better pay close attention to the limitations placed on your property, such as zoning codes, protective covenants, and deed restrictions.

Most of us can understand the value of zoning. Zoning codes keep urban sprawl in check, protect farmland and the environment, and regulate where individuals and corporations can and cannot do business. But covenants and restrictive deeds can be persnickety and vexing arrangements, prone to raising the ire of independent-minded or just plain cantankerous property owners.

For example, how would you react if someone in your neighborhood homeowners association told you that you couldn’t display your American flag? That sounds like it flies in the face of a “Live Free or Die” mentality. Yet, many protective covenants placed on property prohibit installing flagpoles, basketball hoops, or clotheslines.

Protective covenants are private restrictions that limit the use of real property. They are often created by deed and can bind all subsequent purchasers of the land, or they may be binding only between the original seller and buyer. Other restrictions may be enforced through covenants and bylaws established by homeowners associations or condominium associations.

For the most part, protective covenants are intended to preserve environmental assets and property values. To protect the environment, for example, covenants may restrict the use of wetlands, ground water, timber, minerals, and other natural resources located on site. They may preserve easements between residential property and wildlife areas. Or they may place exacting restrictions on drainage, waste control, foundation placement, and setbacks from waterlines or shorelines.

Covenants that are intended to protect property value may govern architectural style ... and to some degree, lifestyles. For example, a condominium association may prohibit smoking; a neighborhood may restrict pet ownership; and a subdivision may restrict the number of vehicles you can park in your driveway.

What's more, protective covenants can be more restrictive than local zoning ordinances, especially those established by homeowners associations. For example, one local homeowners association dictates that dogs and cats must be on a leash when outside the owner's lot. That makes sense for dogs. But how many cats have you seen on a leash?

The same association prohibits dog houses, TV or radio antennas, swing sets, basketball backstops, exercise equipment, clotheslines, outbuildings, and home businesses of any kind. The association also prohibits repair or mechanical work on automobiles parked in driveways.

Undoubtedly, this is exactly how the property owners who live there like it. In their eyes, such rules maintain harmony, peace, and property values. But if you're the type of person who likes to change your own oil and relax to the giggles and squeals of kids playing on a swing set, this neighborhood is definitely not for you.

And you may be harder pressed to find a neighborhood that is.

In 1970, there were approximately 70,000 homeowner associations nationwide. Today, there are more than 230,000. And they all have rules.

Common deed restrictions include architectural and landscaping control, minimum setback requirements, restrictions on paint color and exterior lightening, and regulations on land use and pet ownership. They may dictate the size of a fence or whether you can or cannot hold a garage sale.

As a homebuyer, pay careful attention to all protective covenants. Before you agree to buy, you should be presented with a declaration of all applicable rules. You will find it far easier to find a neighborhood that shares your values than to fight a neighborhood that doesn't. If you choose to fight local covenants, your battle will come at the cost of legal fees, stress, and the alienation of most of your neighbors.

On the other hand, some restrictions may not be legal at all. Neighborhood associations should not, for example, discriminate based on color, religion, national origin, sex, age, disability, or familial status. Or it's possible that a subdivision's covenants may violate the state's right-to-farm policy.

If you think that a restrictive covenant violates fair housing laws or principles, contact your lawyer. Or you can call the New Hampshire Fair Housing Project hotline at 1-800-921-1115.

If, however, you think the covenants are simply unreasonable, maybe you should look at a different neighborhood.

Brad Boisvert is a real estate professional with RE/MAX Coast to Coast Properties in Portsmouth. Call him at 431-1111 ext. 3812 or e-mail [bradb@worldpath.com](mailto:bradb@worldpath.com).

