“If Only I Knew!”

The Value of Promoting Restrictive Covenant Awareness

Presented by John McGauley
Allen County Recorder
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 Allen County

• 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?
Yes, A Civil War (Can You Spell “Secede”?)

• 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”?)

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Section 3. MEMBERSHIP AND VOTING RIGHTS.
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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.cohoa1aw.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.”
• 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.
• 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.
Contact the Allen County Recorder’s Office

• **Address:**
  1 East Main Street, Room 100
  Fort Wayne, IN 46802

• **Phone:**
  (260) 449-7165

• **E-Mail:**
  recorder@allencounty.us

• **On the Web:**
  www.allencountyrecorder.us
Allen County’s Neighborhood Resource Center:

Welcome to the Allen County Recorder’s Office Neighborhood Resource Center!

This site is designed to provide you with a variety of tools designed to help promote understanding and a higher quality of life in Allen County neighborhoods. Below you will find links, contact information and other information relating to most Allen County subdivisions. This site is also the gateway to a FREE online tool for finding and viewing covenants and restrictions for hundreds of subdivisions and condominium developments in our community.

We hope that this site proves to be a powerful tool for preventing and resolving conflicts between neighbors and community associations.
Allen County’s Neighborhood Resource Center:

Search Restrictive Covenants Online
Keyword search over 7,500 documents for information about your subdivision

NOTE: These documents are very large and may take several minutes to download.

Presentation on Neighborhood Covenants and the Importance of Awareness
(PDF document; 1.25 MB)

Need to find the name of your subdivision?
Downloadable maps (by quadrant) of Allen County subdivisions

City of Fort Wayne Neighborhood Information
Links to maps, association contact information and a community resource guide

2012 Regional Neighborhood Network Conference
In September 2012, Fort Wayne will host a 5-state conference designed to strengthen leadership at the grassroots level.

Allen County Neighborhood Information
Links to meeting schedules, presentations and association contact information

New Haven Neighborhood Information
Links to newsletters, ordinances and contact information
Allen County’s Neighborhood Resource Center:

Neighborhood Covenants Search

Important Tips for Making Your Search Successful:

- The Neighborhood Resource Center should be used for informational purposes only. Your association is still the best source of information regarding covenants, restrictions and other rules that may apply to you.

- At this time, covenants and restrictions can only be searched by name. You must know at least a portion of the name of your development in order to search for its covenants and restrictions.

- The Neighborhood Resource Center only provides access to documents that traditionally contain covenants and restrictions. In some cases covenants may be contained in other documents. Your neighborhood or development also MAY NOT have covenants and restrictions in place.
Allen County’s Neighborhood Resource Center:

Need Help Finding Your Subdivision Name?
Download Allen County subdivision maps by quadrant

In order to use this site’s online search tool for restrictive covenants, you must know a little bit about the name of your subdivision.

Subdivision names and neighborhood association names are NOT always the same. Allen County iMap has provided the following high-resolution maps to help you find your subdivision name and (in many cases) the section you live in.

If you have trouble finding your subdivision, we recommend contacting the Allen County Auditor’s Office for the legal description to your property. The Auditor’s Office can be reached by telephone at 419-724-1.

These maps are provided at 200 DPI resolution to make your search easier. As a result, they are large files and make take a moment to display.

Click below to download quadrant maps of Allen County subdivisions
(Maps Updated August 2011)

(These maps are provided in Adobe Acrobat PDF format)

Northeast Quadrant (9.9 MB)
Northwest Quadrant (12.1 MB)
Southeast Quadrant (8.6 MB)
Southwest Quadrant (12.7 MB)
Allen County’s Neighborhood Resource Center:
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Neighborhood Resource Center