



# RESTRICTIVE COVENANTS

## What Is a Restrictive Covenant?

A restrictive covenant is a legal agreement that prevents landowners from taking a specific action. When a restrictive covenant is registered it typically determines how a property may be used or developed.

Common items that restrictive covenants address:

- Architectural designs
  - Exterior colour
  - Fence type
  - Material type
- Development type
  - Only single family residential
  - Home businesses

## How Does This Impact Me?

### Why Are Restrictive Covenants Created?

Developers of subdivisions use restrictive covenants to enforce a particular building scheme or architectural appearance of their project. For example, a developer may wish to have all future homes in an area to have a minimum size and architectural theme.

### Who Creates the Restrictive Covenant?

The landowner(s), usually a developer, must register a restrictive covenant through Alberta Land Titles. Typically, the developer owns all the parcels created at the time of subdivision and can establish the content of the agreement for all parcels of land.

### Can Restrictive Covenants Supersede the Land Use Bylaw?

Often restrictive covenants provide greater restrictions on a property than what the Land Use Bylaw requires. In most cases this is allowed as long as it meets the

Land Use Bylaw requirements. What a restrictive covenant may not do is reduce the requirements of the Land Use Bylaw allowing development that would otherwise violate or infringe upon the regulations.

## Who Enforces a Restrictive Covenant?

A restrictive covenant is only enforceable by the parties entitled to do so through the agreement. While the decision to pursue enforcement can be done by one or more of the eligible parties, actual enforcement is done in court. The party who seeks to enforce must obtain a court order (injunction) to stop a use or development that goes against the restrictive covenant.

### Do Restrictive Covenants Expire?

A restrictive covenant may only expire if an expiry date is contained within the agreement. Otherwise, they will remain in effect until removed or modified.

### Can Restrictive Covenants Be Removed?

Once a restrictive covenant is registered against a title, it is difficult to remove. It requires all of the owners of every lot affected to agree, in writing, to remove it, or it requires a court order. In order to obtain a court order to discharge a restrictive covenant, a judge would need to be satisfied:

- That the removal will be beneficial to the people interested in the covenant;
- That the covenant conflicts with the Land Use Bylaw or other statutory plan; or
- The removal or modification in the public interest.

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Please note: This information sheet has no legal status and cannot be used as an official interpretation of the various bylaws, codes and regulations currently in effect. The Town of Ponoka accepts no responsibility for persons relying solely on this information.