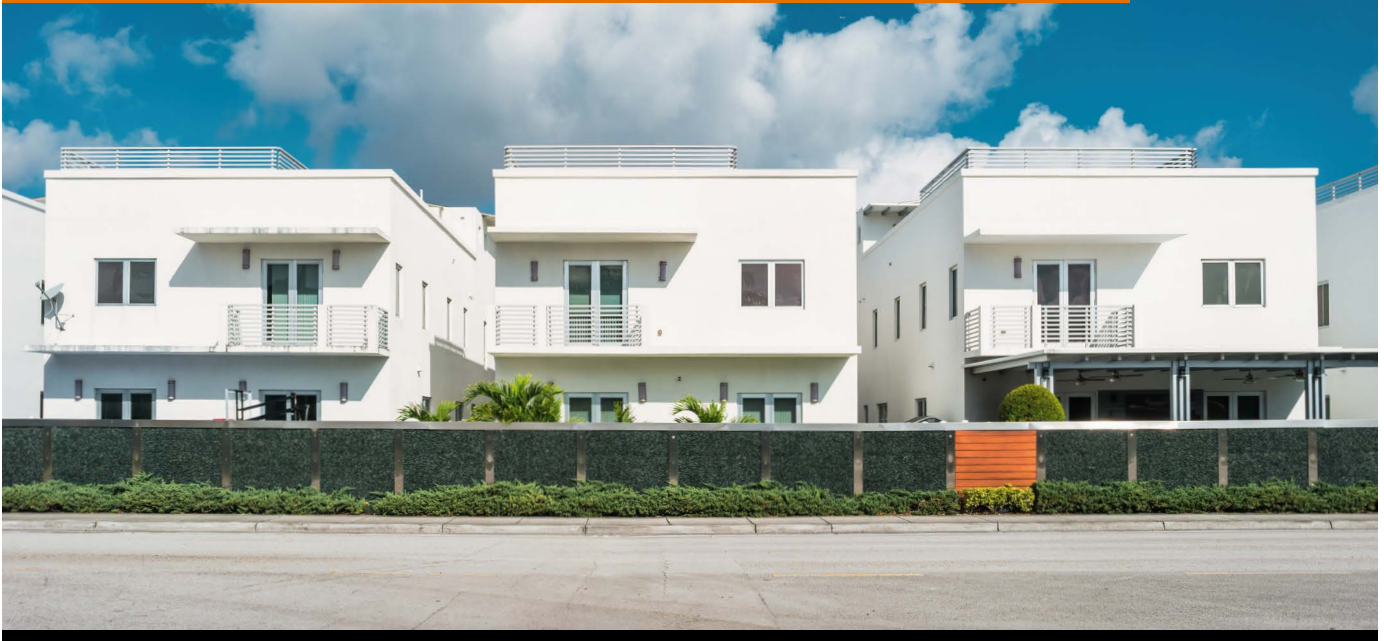


ZONING PRACTICE

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Hidden Controls: Private Covenants and Zoning



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Hidden Controls: Private Covenants and Zoning

By Chris Quattro, PHD, AICP

Private land use restrictions are specific clauses included in a property's deed that limit or regulate how the property can be used, developed, or maintained. These restrictions may control the type of structures that can be built, their height and placement, permissible uses or activities, or even aesthetic features, like paint colors and fencing materials.

By setting rules for development and use, contracted restrictions help ensure a uniform appearance and prevent activities or structures that could negatively impact neighbors or the overall desirability of the area. However, private land use restrictions—such as covenants, conditions, and deed restrictions—may conflict with public planning goals. These restrictions can impact development feasibility, housing affordability, and the implementation of zoning reforms.

This issue of *Zoning Practice* provides some general information on private land

use restrictions, particularly deed restrictions. While it cannot encompass the nuances found across state and local jurisdictions, it discusses typical limits or requirements and explores how these privately established and enforced rules may intersect with broader planning objectives.

A Primer on Private Restrictions

The purpose of private land use restrictions is to create predictable, orderly development within a neighborhood or subdivision, which then generates

A deed-restricted city within a city in Lee County, Florida (Credit: krblokhin/iStock Editorial/Getty Images Plus)



predictable property values and character. Consistency in development can reduce nuisances, minimize conflicts between neighbors, and contribute to a stable sense of community identity. For homeowners, these rules provide a level of assurance that neighboring properties will be maintained in a way that supports or even increases the value of their own investment. In this way, private restrictions are often viewed as a tool for protecting long-term financial and aesthetic interests within a neighborhood. While these restrictions have been selectively used throughout the history of the U.S., they rose in popularity in the decades following World War II and are now commonplace in new subdivisions and condominium developments across the nation.

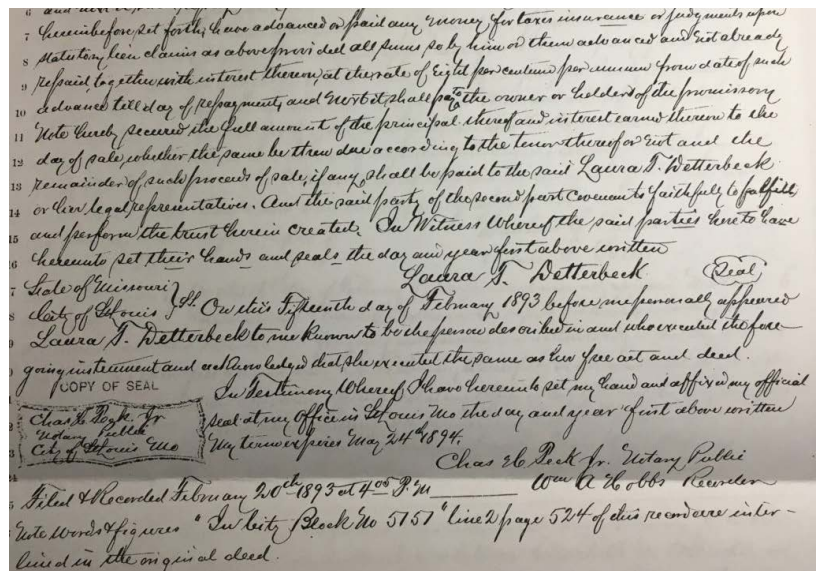
How Do They Work?

Private land use restrictions are typically recorded legal agreements that govern how property can be used, developed, or maintained. They are most often filed with the county clerk's office and may appear in plats, deeds, private contracts, or homeowners association (HOA) bylaws. These documents, often established by developers or HOAs, outline rules that are legally binding and publicly accessible. Reviewing these restrictions is essential for prospective buyers or developers, as they can impose limitations beyond local zoning and significantly influence what can be built or modified on a property.

These restrictions are said to “run with the land,” meaning they are tied to the property itself, not just to a specific owner. When a property changes hands, the restrictions remain in effect and apply to the new owner as well. In many cases, they can last indefinitely; this concept is sometimes referred to as perpetuity. Buyers are expected to abide by these rules as part of their ownership responsibilities.

Deed restrictions and other private land use restrictions are often adopted when a property is first subdivided or developed. This means that the older the development, the older the restrictions on the property are likely to be. Restrictions were also often drafted with current property owners in mind, rather than anticipating the needs or desires of future owners, which means they may even

outline agreements determined among family members or friends. Combining these realities with the legal rhetoric used to describe regulations and the changing vocabulary across land development professions over time makes many restrictions difficult to find or interpret. It is not uncommon to find hand-written documents, particularly in older areas, and restrictions with grammatical errors or vague language.



Private land use restrictions are enforced like a contract. Typically, HOAs, which are governing bodies established within a community to oversee compliance and maintain common areas, take the lead on enforcement. However, enforcement can also be carried out by other interested parties, such as neighboring landowners who are affected by violations. Enforcement may involve legal action, fines, or other remedies outlined in the governing documents.

Local governments do not enforce private land use restrictions, as these are private legal agreements rather than public regulations. While a property may comply fully with local zoning ordinances and building codes, it can still be in violation of private restrictions—and vice versa. This separation of authority means that local planners and officials must be aware of private covenants but have no direct role in enforcing them. Instead, disputes or

A deed restriction from an individual parcel sale in St. Louis in 1893 (Credit: St. Louis Deed Book)

violations related to these restrictions are resolved through civil legal action, often initiated by HOAs or affected parties. Exceptions to this include the rare occasions when the jurisdiction is a party to the restrictions, such as an easement or community benefits agreement (CBA) contract.

Today these restrictions are often used for legitimate planning and community-welfare purposes, such as maintaining community utilities, preventing environmental externalities, or upholding community character. However, for much of U.S. history, deed restrictions were used as tools of racial and economic exclusion. Many early 20th-century housing developments included racially restrictive covenants that explicitly barred certain groups from owning or occupying property. While such discriminatory covenants are now unenforceable under U.S. law, their legacy continues to influence patterns of housing segregation and inequality, and the language can still be seen in many properties' deeds.

Private land use restrictions control elements such as building size, architectural style, landscaping, and land use.

What Do They Control?

Private land use restrictions control elements such as building size, architectural style, landscaping, and land use. There are several common types of limitations found in contemporary deed restrictions. These reflect areas where land developers, property owners or other parties drafted stricter regulations than the zoning and land development codes in cities. However, as property ownership and municipal goals change over time, it is important for planners to be aware of typical standards that certain properties in their jurisdictions may have adopted.

Use Restrictions

Private use restrictions limit the types of activities or businesses that can operate on a property (e.g., prohibiting commercial use in a residential area). Here is an example from a commercial property in Bryan, Ohio:

"Land shall only be used for purposes

of the kind typically found in shopping centers, including but not limited to offices, restaurants, financial institutions, and retail shops and for no other purpose without the written consent of grantor or its successors.

Land shall not be used for a bar, Tavern, dance hall, adult bookstore, cafeteria, movie theater, bowling alley, health spa, fitness center, billiard parlor, non-brand shoe store, automotive maintenance facility engaged in quick lube, pharmacy, drugs, or discount department store whose overall retail concept is based on a discounting price structure, a wholesale membership club or warehouse or similar store, or grocery or supermarket or similar store or any other business whose principal revenues are from the sale of alcoholic beverages, amusement, or entertainment."

Development Standards

Private development standards regulate the style, height, and size of structures to ensure architectural consistency within a neighborhood. Here is an example from a residential subdivision in Boone, North Carolina, adding additional controls beyond what is required by the town's zoning ordinance:

"No structure shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling, not to exceed two stories in height above the basement and one small one story accessory building which may include a detached private garage, provided the use of such dwelling or accessory building does not include any activity normally conducted as a business. In addition, a guest suite or a guest house may also be included as part of the main dwelling or accessory building. If a guest house is included as an accessory building, said guesthouse may be no larger than one-third of the size of the main dwelling and said guest house or accessory building may not be constructed prior to the construction of the main dwelling. All single-family dwellings shall consist of a minimum of 2,000 square feet of finished heated living area with a minimum of 1,400 square feet on the main floor not including unfinished basements and garages. The area designated as lots 14 through lots 24 require a minimum of 1,400 square feet



with a minimum of 1,000 square feet on the main level.”

Lot Dimension Requirements

Private lot dimension requirements dictate minimum lot sizes or frontage lengths to control density and layout. Here is an example from a subdivision in Raleigh, North Carolina:

“No dwelling shall be erected on any lot nearer to the front lot line than 40 feet, nor nearer to the side lot than 10 feet: provided however that on the corner lots the dwelling may face either street and may be located no nearer than 20 feet to one street if the same is at least 40 feet from the other street. For the purpose of this covenant, eaves, steps, and open porches shall not be considered a part of the dwelling provided, however, that this shall not be construed to permit any portion of a dwelling on the lot to encroach upon another lot.

No dwelling shall be erected or placed on any lot having a width less than 75 feet at the minimum building set back line: nor shall any dwelling be erected or placed on any lot having an area of less than 4,040 square feet, except that a dwelling may be erected or placed on all lots as shown on said recorded plat regardless of width at the minimum building setback line or area in square feet.”

Building Materials

Private building materials restrictions specify approved materials for structures or landscaping to maintain visual harmony. Here is an example from a residential neighborhood in Bell County, Texas:

“As a minimum, living units must have at least 100% of the exterior walls shall be of cement board or masonry products unless specifically approved by ARC [HOA]. Windows and doors and exterior masonry walls may be counted as masonry veneer when computing masonry coverage. Masonry includes brick, brick veneer, stucco, stucco veneer, stone, stone veneer, and rock but does not include Hardi-plank or similar siding material.

To ensure the general uniformity of appearance of those roofs of living units in the subdivision, the roofing material of all living units, shall be a minimum 30 year dimensional or higher grade. At least 90% of the improvements on the lot will have a roof pitch design of 6 twelfths or greater unless otherwise approved by the ARC [HOA]. Wood shake or wood shingle roofing are not permitted. Roofing material of all accessory buildings must be in accordance with these guidelines. Alternate roofing materials must be approved in advance by the ARC [HOA].”

Community Spaces

Private restrictions on community spaces govern the shared use and maintenance of parks, trails, or recreational facilities. Here is an example from a community in Willow Wood, Texas:

“Lot 41, designated by the developer as beach and boating launching areas, are to be used solely for recreational purposes. No overnight parking of buses, campers, or other temporary structures on the on the lots to be designated shall be allowed. This area is for use only by all property owners and their guests and must be properly maintained by the Property Owners’ Association. No guest shall be permitted to use the common area unless accompanying a property owner.”

Easements

Private easements are legal rights granted to others—such as utility companies or neighbors—to access or use a portion of the property. Here is an example from an industrial property in Bexar County, Texas:

“SAWS [owner] further agrees that no building or structure of any kind will hereafter be erected or placed by SAWS, its successors or assignees on the CPS [utility] energy easement property without CPS energy written approval so long as this transfer of jurisdiction and use remains in effect. SAWS reserves the full and complete enjoyment of the property including without limitation the right to use the surface of the property except that SAWS use of the CPS energy easement shall not unreasonably interfere with the rights specifically allowed herein to CPS energy. SAWS shall have the right to grant other easements and to use the property so long as such use of the CPS energy easement does not unreasonably and materially impair CPS energy’s use of the CPS easement property.”

Morals Restrictions

Private morals restrictions prohibit certain behaviors or businesses (e.g., adult entertainment venues or excessive noise) to preserve the community’s character and values. Here is an example from a property sold by the Catholic Church to a private owner in Chicago:

“Any activity not listed above which is inconsistent with or contrary to the tenants



A utility worker marking an access easement (Credit: UtiliSource)

of the Roman Catholic Church, including canon law, doctrine, moral law or customs, in the sole discretion of the then sitting Bishop or Archbishop with jurisdiction over the property.

Prohibitions:

- Any facility in which tattoos are provided
- Any amusement or video arcade pool or billiard hall
- Any gambling facility or operations including but not limited to off track or sports betting table games slot machines, video poker, or similar devices provided, however, this prohibition shall not apply to a facility in which the total gross revenues for the aforementioned uses together with total gross revenues from the sale of alcoholic beverages are less than a majority of the gross revenues generated from such facility.”

Where Can They Be Found?

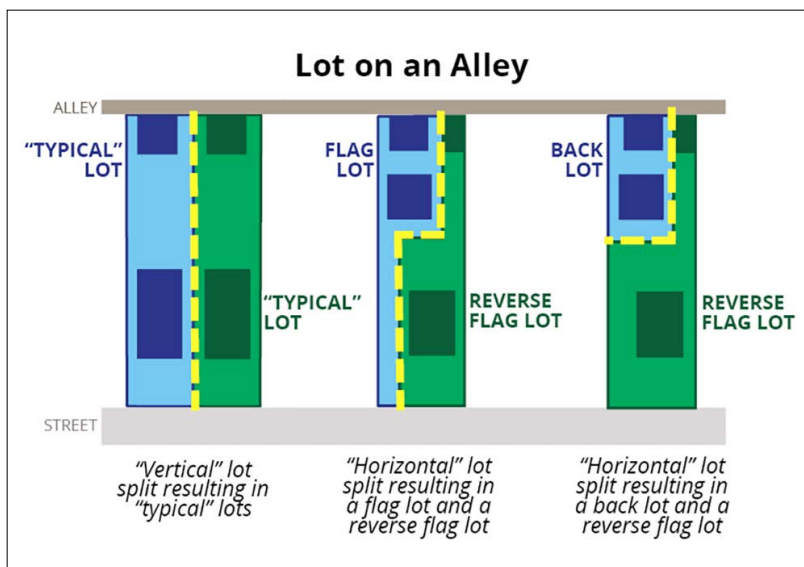
Private land use restrictions are typically recorded alongside other legal documents related to property ownership or development and are most often filed with the county clerk’s office for the relevant jurisdiction. These may appear in plats—detailed maps outlining subdivision layouts and associated restrictions—or in property deeds, which can include specific covenants or limitations. They may also be found in private contracts between property owners and developers that establish land use conditions.

Additionally, restrictions are often embedded in homeowners association (HOA) bylaws, which define the rules and responsibilities of residents within a community. Whether established by the initial developer or a successor HOA, these documents are generally recorded with the county and are publicly accessible, either through online databases or by request. Anyone considering property purchase or development should review these materials in advance to fully understand the constraints that may apply.

Potential Conflicts With Planning Objectives

Private land use restrictions can significantly impact how cities grow and evolve by imposing limitations that go beyond public zoning regulations and building codes. While zoning sets the legal framework for land use across a municipality, private restrictions often add another layer of control. These additional constraints can limit what types of buildings can be constructed, how land can be used, or how properties must be maintained. Private land use regulations like deed restrictions can include many elements beyond what is allowed in a zoning or building code. As a result, even if a city updates its zoning to allow for more flexible or dense development, private restrictions can still prevent those changes from being realized on the ground.

Potential lot splits authorized by zoning in Saint Paul, Minnesota, which could be blocked by restrictive covenants (Credit: City of Saint Paul)



Private land use restrictions can create exclusive enclaves that are resistant to change and difficult to integrate into broader local planning efforts. These protected areas may block infrastructure upgrades, mixed-use developments, or increased density, effectively limiting a city's ability to implement comprehensive plans aimed at sustainability, equity, or economic growth. In this way, private restrictions can become a barrier to inclusive and adaptable urban development.

One major consequence is the restriction of opportunities for affordable housing. It is common for these restrictions to limit multifamily developments, set minimum lot sizes, prohibit rentals or manufactured homes, and enforce uniform building standards. Thus, private covenants can make it difficult to introduce lower-cost housing options in certain neighborhoods. This can reinforce socioeconomic disparities across a jurisdiction and make it harder for cities to meet housing demand at differing income levels.

These restrictions often increase the overall cost of construction and land development. Developers may face higher costs due to requirements for specific building materials, design standards, accessory structures, lot sizes, landscaping, or even paving specifications. This can discourage investment and make new housing projects financially unfeasible, especially in high-demand areas where affordability is already a concern.

Recommendations for Planners

Planners' proactive engagement with the legal and practical dimensions of private land use restrictions can better align local development with broader policy goals, ensure regulatory clarity, and promote more equitable and sustainable communities.

Identify Potential Conflicts

Start by researching private restrictions that affect land use in your jurisdiction. This is especially important during comprehensive or land use planning processes. Like other factors influencing development in a jurisdiction, it is important to be aware of the terms dictating how your community's neighborhoods develop.

This can prevent unachievable assumptions and better inform discussions about future land use. Evaluate whether restrictions conflict with zoning or policy goals, especially in areas targeted for growth or housing expansion.

Individual parcel restrictions may be cumbersome for comprehensive plan review, but review of subdivision restrictions is manageable and important as these restrictions shape several acres of land within a jurisdiction. Restrictive covenants for developed communities like residential subdivisions are often published online, but these can also be found in the deed records or even on the plat records in some states. Additional proactive review can take place during the platting and permitting process for larger communities, and while municipalities typically cannot regulate this language, planners should be aware of additional layers of restrictions placed on land use and urban design in their communities.

Reviewing private land use restrictions during the development review process for larger projects can also help identify potential conflicts that may delay or block a project that is in the public interest. Planners should assess how these restrictions interact with current zoning, affordability goals, and infrastructure plans. This can be achieved by requiring applicants or property owners to include existing private restrictions as part of their application packet for certain types of development approvals.

Verify Actual Conflicts

The ability to regulate or disregard private land use restrictions largely depends on state law. In some jurisdictions, local zoning may preempt private restrictions, while in others, deed restrictions may continue to apply even when zoning changes occur.

There is growing legal debate over the extent to which governments—particularly those with home rule authority—can override covenants that conflict with policy objectives, such as affordable housing or rental inclusion. Courts have challenged the legality of restrictive covenants that prohibit short-term rentals or limit access to affordable housing. Additionally, some states have introduced legislation curbing HOA powers or restricting discriminatory

deed provisions. Planners should consult legal counsel or state statutes to determine the limits of local regulatory authority and bodies enforcing restrictive covenants.



Formulate a Conflict-Management Strategy

When private land use restrictions perpetuate development patterns that conflict with local planning goals—such as limiting affordable housing, preventing mixed-use development, or reinforcing exclusionary practices—planners and local officials should not remain passive. One important step is to engage in proactive dialogue with state legislators to raise awareness of these challenges and advocate for legal reforms that support equitable and flexible development. This is particularly important in states where private restrictions have stronger legal standing than zoning ordinances. Bringing forth specific recommendations for targeted legislation can be more effective to incorporate into proposal language for bills. Collective action by planners within a particular region or state that brings forth a unified voice on particular challenges (such as the APA North Carolina Chapter [Housing Choice Task Force](#)) can also be more effective.

Planners should not assume that local zoning automatically overrides private covenants; instead, they must carefully review state-specific statutes and relevant court

A common activity limited by private covenants in many residential subdivisions (Credit: Ajax9/iStock/Getty Images Plus)

rulings to understand the legal hierarchy in their jurisdiction. Coordination with municipal legal departments is essential when proposing zoning changes in areas where private restrictions are known to exist to assess potential legal conflicts and liabilities. Additionally, planners should stay informed about legal trends, including legislative efforts to limit the authority of HOAs and the scope of deed restrictions, especially those that may obstruct broader policy goals. Monitoring case law is also critical, particularly decisions that challenge the enforceability of restrictions on rentals, short-term occupancy, or exclusionary land use conditions which are current hot topics in this area. Through this legal and legislative awareness, planners can more effectively advocate for policy-aligned development and reduce friction between public goals and private governance.

Coordination with municipal legal departments is essential when proposing zoning changes in areas where private restrictions are known to exist to assess potential legal conflicts and liabilities.

Address Outdated or Discriminatory Restrictions

Many properties still carry deed restrictions that are discriminatory or no longer relevant—such as racial covenants or outdated building limitations. In [*Shelley v. Kraemer*](#), 334 U.S. 1 (1948), the U.S. Supreme Court held that courts could not enforce racially restrictive covenants on real estate. The court unanimously ruled that although private parties may choose to abide by such covenants, state enforcement of them constituted state action and thus violated the Equal Protection Clause of the 14th Amendment. The decision did not make the covenants themselves illegal, but it made them unenforceable in court, which effectively nullified their power. Decided the same day as *Shelley*

v. Kraemer, [*Hurd v. Hodge*](#), 334 U.S. 24 (1948), involved a similar racial covenant in Washington, D.C. The U.S. Supreme Court applied the same reasoning, ruling that enforcement of racially restrictive covenants in the District of Columbia violated the Civil Rights Act of 1866, which guarantees all citizens the same rights to buy and sell property. Later, in [*Barrows v. Jackson*](#), 346 U.S. 249 (1953), the U.S. Supreme Court ruled that damages could not be awarded for violating a racially restrictive covenant, as that would amount to indirect judicial enforcement.

While *Shelley* and its companion cases made racial covenants unenforceable, language against certain racial groups remained written in deeds and plats. The Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968) prohibited discrimination in the sale, rental, and financing of housing based on race, color, national origin, religion, sex, familial status, or disability. This legislation strengthened protections by outlawing discriminatory housing practices, including steering, redlining, and other forms of institutional exclusion. In 2000, the American Law Institute issued the [*Restatement of the Law Third, Property \(Servitudes\)*](#), a document clarifying legal rights and doctrine, that reiterates racially restrictive covenants are invalid as a matter of public policy. California requires county recorders to identify and redact unlawful restrictive covenants and allows homeowners to formally request their removal ([AB 1466](#), 2021). Other states—such as Minnesota, Washington, Colorado, Virginia—require disclosures or offer simplified procedures to redact racially restrictive language. Planners and local officials can encourage new legislation in other areas to create legal pathways for residents to repudiate or amend these outdated and offensive restrictions.

While unenforceable under federal law, these covenants may persist in legal records and symbolically affect planning perceptions. Furthermore, some of these restrictions could function similarly to state-level trigger laws in the future. For example, if federal protections under the Fair Housing Act were ever weakened or overturned, previously unenforceable covenants—such as those excluding renters

or nontraditional families—could be revived in states lacking strong anti-discrimination statutes, potentially reintroducing exclusionary practices through private enforcement mechanisms. If *Shelley v Kramer* were overturned, it would remove the primary constitutional barrier to court enforcement of such covenants. Property owners could sue to enforce discriminatory clauses in deeds, and courts could be compelled to honor those suits in the absence of other legal protections.

In summary, planners confronting these issues in their communities could

- **encourage legislative reforms** that allow or require the removal of discriminatory language;
- **educate the public and stakeholders** on the non-enforceability of these covenants; or
- **consider symbolic or procedural steps** to support communities in removing or disavowing outdated provisions.

San Antonio's historic landmark Hays Street Bridge, which was protected by a restrictive covenant when transferred to the city (Credit: Chris Quattro)

Use Private Covenants to Advance Planning Objectives

Municipalities often use covenants strategically to achieve planning and public policy goals. Common uses include the following:

- Affordable housing agreements tied to land use approvals
- Conservation and utility easements for infrastructure or environmental purposes
- Community benefits agreements (CBAs), where cities may be signatories to ensure follow-through
- Exactions in development agreements

Planners can strategically use covenants as planning tools to enforce negotiated outcomes for developments, particularly in the context of public-private partnerships, redevelopment agreements, or projects involving public land or funding. These covenants can be powerful mechanisms for ensuring long-term compliance with



public goals, such as affordable housing set-asides, sustainability standards, design guidelines, or public access provisions. By embedding these requirements in recorded covenants, municipalities create enforceable obligations that remain tied to the land, regardless of changes in ownership or administration.

However, to be effective, municipal covenants must be carefully structured with clear terms, measurable obligations, and well-defined enforcement mechanisms. Poorly drafted covenants can lead to legal ambiguity, disputes with developers, or unintended loopholes that weaken public leverage over time. Moreover, because enforcement responsibility typically falls to the jurisdiction as the party that imposed the covenant, planners must ensure that administrative capacity and political will exist to monitor compliance and take action when needed. Failing to enforce municipal covenants can erode trust in public processes, reduce accountability in future negotiations, and potentially expose the jurisdiction to legal or reputational risk—particularly if public benefits like affordable housing or open space are not delivered as promised.

Conclusions

Understanding private land use restrictions is essential for planners working to shape equitable, efficient, and adaptable communities. While tools like covenants, deed restrictions, and easements can help maintain neighborhood character and guide development, they can also pose significant challenges—especially when they conflict with local zoning, hinder affordable housing efforts, or reflect outdated and discriminatory practices.

Planners must be equipped to navigate these legal complexities, assess their implications during the development review process, and work collaboratively with legal experts, policymakers, and communities. By doing so, they can ensure that private restrictions do not undermine broader public goals and that planning decisions remain grounded in fairness, transparency, and long-term sustainability.

Acknowledgements: This article is based on discussion and content created during the NPC25 presentation “Wacky World of Private Land Use Restrictions,” organized and moderated by the author. Special thanks go to the other participants

*Deed-restricted
affordable housing
developed in
partnership with
the Carbondale,
Colorado, Housing
Authority (Credit:
[hmclaird/Flickr](#))*



of that discussion: Brian Connelly; Kim Mickelson, FAICP; and Cory Rutz, AICP.

Glossary of Key Terms

Covenant: An agreement made by lease, deed, or other legal contract that obligates a party to do or refrain from doing something related to property use or ownership.

Restrictive Covenant: A type of covenant that imposes limitations on the use of land with the intent of preserving the value, character, or enjoyment of adjoining or nearby properties.

Deed Restriction: A specific provision written into a property deed that limits how the property may be used by the current and future owners.

Easement: A legal agreement between two parties that grants one party the right to access or use a portion of another party's land for a specific purpose. Common types include utility easements, conservation easements, and access easements.

CC&Rs (Covenants, Conditions, and Restrictions): The set of rules governing property use and responsibilities within a community or development, often enforced by a homeowners association (HOA).

Homeowners Association (HOA): An organization established to manage and govern a residential community, where membership is typically mandatory for property owners. HOAs enforce CC&Rs and oversee shared amenities and standards.

Perpetuities: A legal concept referring to conditions or rights—such as certain covenants or restrictions—that are designed to last indefinitely and bind future property owners unless legally modified or invalidated.

About the Author



Dr. Chris Quattro, AICP, has a PhD in City and Regional Planning from the University of Pennsylvania focusing on Land Use Planning and

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American Planning Association

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ZONING PRACTICE SEPTEMBER 2025 | VOL. 42, NO. 9. Zoning Practice (ISSN 1548-0135) is a monthly publication of the American Planning Association. Joel Albizo, FASAE, CAE, Chief Executive Officer; Petra Hurtado, PhD, Chief Foresight and Knowledge Officer; David Morley, AICP, Editor. Subscriptions are available for \$65 (individuals) and \$120 (organizations). ©2025 by the American Planning Association, 200 E. Randolph St., Suite 6900, Chicago, IL 60601-6909; planning.org. All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means without permission in writing from APA.