



DEED RESTRICTIONS



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INTRODUCTION TO THE PROBLEM

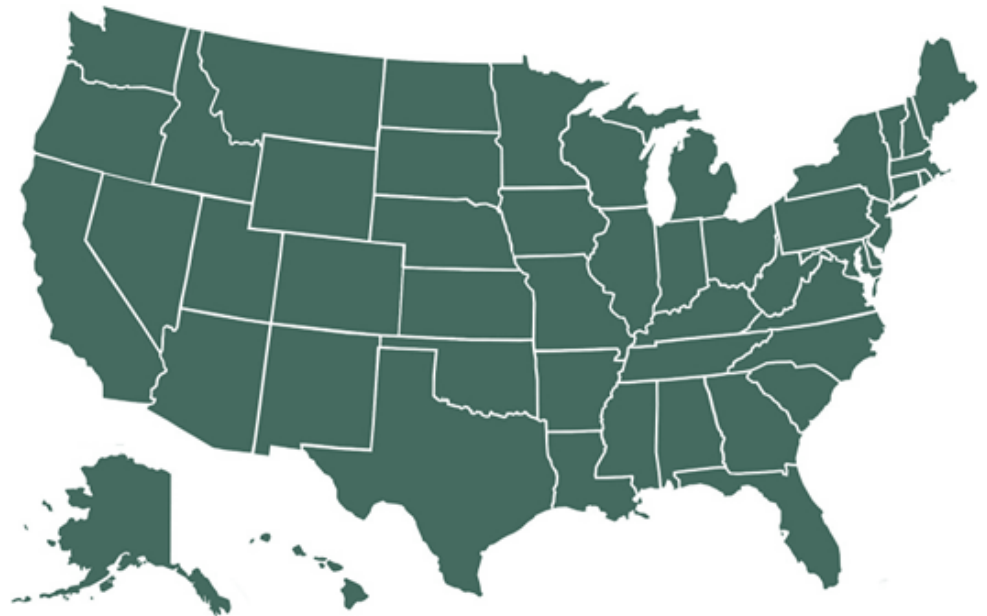
ENVIRONMENTAL INJUSTICE

- The location of industrial and nuisance facilities too close to neighborhood so that they are disproportionately impacted by pollution.

NO ZONING

Largest Cities in US with no zoning:

1. Houston, TX pop. est. 2.2 million
2. Pasadena, TX, pop. est. 150,000



MANCHESTER – SUPER NEIGHBORHOOD 65



WHAT ARE DEED RESTRICTIONS?



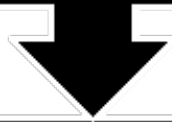
- Written Agreements.
- Filed in Public Records.
- Limit Use or Activities on Real Property in a Subdivision.
- Real Covenants - Private Agreements between Owners of Real Property in a Subdivision that are enforceable against future Owners of Real Property (“runs with the land”).
- Anyone who buys land subject to deed restrictions is bound by those deed restrictions.
- Title II of Texas Property Code (Chapters 201-215).

WHY ARE DEED RESTRICTIONS VALUABLE?

- Deed Restrictions preserve character of a subdivision, absent zoning
 - Density – size and location of buildings on land; Occupancy
 - Aesthetics – character and location of buildings on land
 - Uses – single family, multi-family, commercial, industrial, etc.
- Preservation and stabilization of real property values
- Prevent use of real property in a subdivision that may be harmful to residents (“noxious uses”)
- Prevent real estate speculation
 - Adverse impacts to property values
 - Sense of Community

DEED RESTRICTIONS AS A LONG-TERM COMMUNITY SOLUTION

**To educate and empower communities
with knowledge about deed restrictions.**



**To inspire and motivate communities to protect
their neighborhoods with deed restrictions as an
alternative solution to Houston's lack of zoning.**



**To promote community collaboration to
accomplish group-determined goals.**

LEGAL AID'S COMPLETED WORK

- Houston Gardens Civic Association
 - Houston Gardens Subdivision: 201 Homes
 - Trinity Gardens, Section 2: 112 Homes
 - Homestead Addition: 39 Homes
- Glenwood Forest Community Civic Club
 - Section 1
 - Section 2
 - Section 3
 - Section 4
 - Section 5
 - Section 6

350 HOMES

460 HOMES



LEGAL AID'S NEW WORK



Group Requesting Creation or Amendment	Subdivision	# of Homes
Houston Gardens Civic Association	Homestead Addition Section 2	270 Homes
East Sunnyside Court Civic Club	East Sunnyside Court Sec. 3 & Southland Acres	380 Homes
Clairmont Place Civic Organization	Clairmont Place Sections 1 & 2	870 Homes
Pleasantville Civic League	Pleasantville Manor Sections & Pleasantville Sections	1,318 Homes
The Greater Sugar Valley Civic Club	Bleuridge Sections, Reedwoods, & Sugar Valley	1,214 Homes

CURRENT ENFORCEMENT PROBLEMS FACING COMMUNITIES WITH RESTRICTIONS

- Overburdened communities are being denied City assistance in enforcing valid restrictions and therefore unable to preserve and protect their communities.
- Office of the City Attorney's Deed Restriction Enforcement Team is not enforcing restrictions in most communities.
- City Attorneys have made statements publicly citing to validity questions about filed restrictions and using these validity questions to justify non-enforcement.
- City attorney accepts evidence from violators to justify non-enforcement.
- City attorney withholds reasons for the decision from community groups.
- City momentarily holds permits for violating structures & then releases them so violating structures can be built.
- After filing complaints, community members receive little or no follow-up from the City on their complaints or next steps.

WHAT CAN THE CITY ATTORNEY ENFORCE?

- Pursuant to Chapter 212 of the Texas Local Government Code and Article XV of Chapter 10, Sections 10-551 through 10-555, of the City of Houston Code of Ordinances, the City is authorized to enforce, by suit for injunction, certain restrictions that affect subdivisions within the City. Restrictions mean limitations that:
 - Affect the use to which real property may be put;
 - Fix the distance that a structure must be set back from property lines, street lines, or lot lines;
 - Affect the size of a lot or the size, type and number of structures that may be built on the lot;
 - Regulate orientation of a structure; or
 - Regulate certain fences requiring a building permit.

IS THE CITY REQUIRED TO ENFORCE RESTRICTIONS?

- This court recently held that municipal enforcement of deed restrictions constitutes a proprietary function. *Oldfield v. City of Houston*, 15 S.W.3d 219, 226 (Tex.App.—Houston [14th Dist.] 2000, pet. denied) (explaining City is not enjoined or required to enforce deed restrictions).
- TX Supreme Court identifies two scenarios where enforcement can be refused:
 - (1) where lot owners have acquiesced in such substantial violations within the restricted areas as to amount to abandonment of the covenant or waiver of the right to enforce it; or
 - (2) there has been such a change in conditions in the restricted area or area surrounding it that it is no longer possible to secure, to a substantial degree, the benefits sought to be realized through the covenants.

Cowling v. Colligan, 312 S.W.2d 943, 945 (Tex. 1958).

WHAT MAKES A RESTRICTION VALID?

■ Restrictions are valid if:

- Restrictions are not unlawful. *Wilmoth v. Wilcox*, 734 S.W.2d 656, 657 (Tex. 1987).
- Restrictions are not impossible, or repugnant to and are not contrary to **public policy**, as shown by the law in Texas. *Shelley v. Kraemer*, 334 U.S. 1, (1948).

When **restrictions** are confined to a **lawful** purpose and are within **reasonable** bounds and the language employed is clear, such covenants will be enforced. *Wald v. West MacGregor Protective Ass'n*, 332 S.W.2d 338, 343 (Tex. Civ.App.—Houston 1960, writ refused n.r.e.).

WHO DETERMINES A RESTRICTION'S VALIDITY?

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- A properly recorded instrument gives notice to all persons of the existence of the instrument. Tex. Prop. Code § 13.002.
 - A Court determines validity.

A declaratory judgment action is the appropriate means of seeking a determination of the **validity**, applicability, or enforceability of **restrictions** on use of land.

A declaratory judgment action can be brought by a property owner, homeowner's association, civic association or any other body granted authority to enforce in the Deed Restrictions.

RACIAL COVENANTS IN RESTRICTIONS

<https://www.lonestarlegal.org/news/2022/07/how-to-remove-discriminatory-language-in-real-property-instruments/>



QUESTIONS?



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