

Municipal vs. Private Violations

Following are the steps necessary to prosecute an ordinance violation versus a violation of covenants and restrictions. It is important to remember that an ordinance violation is a municipal violation and a violation of covenants and restrictions is a private endeavor.

Municipal code enforcement

Most violations are civil infractions or misdemeanors. In Canton, violations of the township's codes are misdemeanors (criminal infractions).

- ◆ The code enforcement officer first contacts the alleged violator (usually the property owner) to start the investigation of a specific complaint.
- ◆ If the violation is verified, the officer will prepare a notice of violation informing the property owner of the infraction and establishing a time frame to correct the problem.
- ◆ If the violation is not corrected, the officer will write an appearance ticket, at which time the prosecuting attorney will start the court action in District Court.
- ◆ There are three stages in the court action, an arraignment (plead guilty or not guilty), a pre-trial (settlement conference with the prosecuting attorney) and a trial (before the judge).
- ◆ If the property owner is found guilty, penalties are assessed.
- ◆ In some instances a matter may be deferred to Circuit Court to gain compliance.

Other helpful publications

Canton's Municipal Services Department offers other free publications to help answer common questions for members of homeowners' associations, as well as a subdivision guide that is available for review. The *"Homeowners Guide to Subdivision Transition"* outlines the procedures that a development goes through as it is turned over to an association. The *"Homeowners' Association Maintenance Manual"* provides information on the responsibilities of homeowners' associations, as well as maintenance tips, helpful definitions and suggestions.

Who To Call

For more information or to request a copy of the video, "So Now You Are a Member of a Homeowners' Association," please call 734/397-5483.



Understanding and Enforcing

Covenants and Restrictions



Information about covenants and restrictions for home buyers, as well as information on the enforcement of municipal ordinances and covenants and restrictions.

Buying a house can be a very stressful endeavor. Added to the already complicated process is the often confusing issue of covenants and restrictions. This booklet is meant to help clarify the disclosure of covenants and restrictions, as well as provide information on enforcing both covenants and restrictions, and municipal ordinances.

Obtaining copies of covenants and restrictions. If you are buying a *new* home...

- ◆ Most builders and/or their sales offices provide copies of covenants and restrictions and all other riders (maintenance agreements, etc.) with the purchase agreement.
- ◆ Some builders review these again at preconstruction meetings.
- ◆ Some builders also require the home buyer to sign a letter acknowledging receipt of covenants and restrictions and existence of a homeowners' association.

If you are working with a realtor...

- ◆ Realtors will provide covenants and restrictions *if requested*.
- ◆ The disclosure form does not include and does not require notification of covenants.
- ◆ Buyer's agents use different forms which may include more items, including covenants and restrictions.
- ◆ Some purchase agreements include a contingency or requirement to provide covenants and restrictions.
- ◆ Some realtors amend the purchase agreements to include review of covenants, but most realtors *do not* provide this if it is not specifically requested by the buyer.
- ◆ By-laws of condominiums are generally disclosed due to the nature of condominium associations and the higher amount of maintenance fees required up front.



Title companies and the closing process

- ◆ Title companies disclose the existence of covenants by listing the recorded documents (Liber and page) on the title commitment.
- ◆ The title company will often only provide a complete copy of the covenants and restrictions ahead of time if it was a condition of the purchase agreement.
- ◆ If the buyer or legal representative requests a copy at closing, the title company will forward a copy with the title insurance after closing.
- ◆ Covenants are requested in about one out of five closings.
- ◆ Title companies will disclose association dues, if known, at the time of closing. This is the most common with condominium associations.
- ◆ *It is important that you consult with someone experienced in the law and in real estate transactions to discuss your specific situation.*

Enforcement of Deed Restrictions

Subdivision restrictions are private, contractual agreements and violations of the covenants and restrictions are civil actions between the homeowners' association or an individual property owner making a complaint and the property owner who is allegedly in violation of the by-laws or covenants and restrictions.

- ◆ The complaining party (association) would normally send a letter to the owner and inform them of the specific violation and provide a time frame for resolution.
- ◆ If the violation is not remedied, a civil action (lawsuit) would be filed in Circuit Court.
- ◆ The action which would normally be requested is for injunctive relief, or causing the violation to stop and be remedied.
- ◆ A trial judge could issue an order which could be a restraint order, a temporary injunction (if immediate risk of injury is present or a dangerous nuisance is found) after a pre-trial, and a permanent injunction and/or after the final hearing.

