

Land covenants

Rules on how you can use your land

A covenant is an instrument registered against land that governs how an owner or occupier can use their land. The land bound by the terms of the covenant is referred to as the 'burdened land' as that has the burden (although not all covenants are negative) of complying with the terms of the covenant. There can be either positive covenants which compel the owner or occupier to do something, or restrictive covenants that prevent the owner or occupier from carrying out a particular activity.

Common covenants

Generally, people encounter covenants when their lawyer reviews the Record of Title of a property and advises that it is subject to a land covenant. Often the covenant will dictate that certain activities or uses are restricted or prohibited on the property. Examples include the maximum height of buildings allowed to be built on a property or a prohibition on keeping certain animals.

Covenants are commonly seen in subdivisions where the developer intends to sell multiple sections for the construction of new homes. Often a developer will register extensive land covenants that prescribe various design features of the houses to be built in the subdivision. This helps the developer dictate the look and feel of the subdivision; it will generally include covenants such as a minimum build cost, the type of cladding permitted for the exterior of new builds and maximum heights of fences and plants, along with prohibitions on collecting rubbish on properties, the visibility of clotheslines and many other visual features which are all designed to help the developer preserve the aesthetic appeal of the subdivision.

Another type of land covenant is a *reverse sensitivity covenant* (sometimes called a *no-complaints covenant*). These are used where a party in a rural or industrial setting may wish to subdivide or develop part of their land for residential use. A no-complaints covenant would be used in this instance to protect the existing property use of the farm or the factory from complaints made by the new residential neighbours who might object to certain smells or noises generated by that existing use which will continue on the retained land. This ensures that farms and factories can continue their normal business despite the development of purely residential property next door without fear of those neighbours complaining and interfering in how those businesses operate.

If you are looking to purchase a property, particularly if it is bare land, it is important to check that it isn't subject to covenants. If there are any covenants registered against the Record of Title, you should ensure they won't restrict your intended use of the land or leave you bound to put up with offensive noise or smell from neighbouring properties without any right to complain.

Enforceability of covenants

In a similar way that the owner or occupier of 'burdened land' bears the obligation of complying with the terms of a land covenant, the owner of 'benefitted land' has the right to enforce covenants affecting the burdened land.

The covenant will often contain penalty provisions that state the burdened landowner will be penalised a punitive amount for non-compliance with a covenant registered against their land.

If the burdened landowner fails to comply, the owner of the benefitted land may have the right to have the work required to comply with the covenant completed and to recover those costs from the burdened landowner.

Covenants can also benefit a party *in gross* meaning that the party with the right to enforce the terms of the covenant isn't necessarily an adjoining landowner but often the development company responsible for a subdivision, or a local or territorial authority. Covenants in gross can give the developer the control over the design of buildings in their subdivision to ensure they can maximise the profitability and marketability of their sections without having to rely on individuals to enforce covenants themselves.

As land covenants can vary so broadly depending on their purpose or the way they are drafted, it is important to talk with us early on if land you own, or are looking to buy, is affected by a covenant. It is particularly important if you have a unique plan for a build or slightly unusual use for your land in mind that might be precluded by a restrictive covenant. A quick check by us can alleviate any doubt and ensure you won't be caught once it is too late.