

RESTRICTIVE COVENANTS

Grindal Legal

WHY THEY EXIST

Restrictive covenants aim to 'burden' one piece of land, in order to benefit another (by protecting its value or enjoyment at the current time).

Restrictive covenants **run with the land**, meaning that when the 'burdened' land is sold, the new owner(s) are still bound by the covenant. Restrictive covenants are only **recorded on the Certificate of Title and Plan** of burdened land, not benefited land.

COMMON EXAMPLES

- Limiting development to only 1 dwelling (house) per lot
- Limiting the use of land for quarrying operations
- Limiting the types of building materials which can be used for dwellings and fences
- Limiting the number of animals on the property
- Limiting the colour scheme of any dwelling on the land

DEFINITION

A property right relating to a private agreement between landowners that determines the way land can be used and developed.

HOW TO REMOVE THEM

There are **3 ways** to remove a restrictive covenant in Victoria:

Apply to the Supreme Court of Victoria, contending the restrictive covenant:

- is obsolete due to changes in the nature of the property or neighborhood; or
- is obsolete as it impedes the reasonable user of the land without benefitting anyone; or
- has been agreed to be discharged/modified by whoever benefits from the restriction (either by conduct or express agreement); or
- will not substantially injure whoever benefits from the restriction.

Apply for a planning permit to remove or modify the restrictive covenant to the Council or Minister for Planning. This decision can be appealed at the Victorian Civil and Administrative Tribunal (VCAT).

Request for authorities to amend the planning scheme; however, the Council is not obliged to prepare this amendment if requested. If prepared, the decision cannot be appealed to VCAT.