



## Deed Restrictions

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### Enforcement of Deed Restrictions

Deed restrictions are private contracts. The County is not a party to these private restrictions and the covenants exist only among the community homeowners. For the reasons stated below, New Castle County can not enforce private contracts and therefore, cannot enforce deed restrictions. Generally, deed restrictions are written in such a way that any affected party, which would be any homeowner, can enforce a deed restriction. However, enforcing deed restrictions against your neighbor is not only time consuming and costly, but often uncomfortable. Commonly, a committee is created by provisions contained in the restrictions that have the specific responsibility of enforcing the deed restrictions. Generally, any resident or the committee may file a suit to enforce the deed restrictions in Chancery Court and obtain a temporary or permanent injunction.

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### Why the County Cannot Enforce Deed Restrictions

Generally, the County is not a party to any private deed restrictions, which are contracts among the residents of the community. State law clearly provides that the County does not have the power to enact private or civil law concerning civil relationships.

The issue of the County's involvement with private deed restrictions has been percolating in the County for several years, prior to the passage of Ordinance No. 97-011 in June of 1997. Prior to the passage of this, the Board of Adjustment was prohibited, by County Code § 2-259 (9), from considering a variance application where it was brought to the attention of the Board that the variance the applicant was seeking involved constructing a structure or otherwise engaging in activity that was prohibited by the deed restrictions governing the development where the applicant's property was located. If the deed restrictions were presented to the Board, it would automatically refuse to consider the application, regardless of the continued viability of the deed restrictions.

This practice had been of concern to the County for a number of years. Particularly, there was a concern that automatically refusing to consider such applications did not permit the applicant to demonstrate that the deed restrictions were being honored only in the breach, or that the presentation of the deed restrictions was motivated by a personal conflict between neighbors (particularly in the case of deed restrictions of dubious viability).

Additionally, there were constitutional concerns with prohibiting access to the Board by residents seeking variance from the County's zoning laws on the basis of a private, unrelated contract with his fellow homeowners. Moreover, there was a realization on the part of the County that amending deed restrictions (at least old ones) was virtually impossible because of high super-majority provisions (sometimes 100%) or significant time restraints on seeking amendments (once every ten years). Lastly, there was a concern that this limitation on the Board's jurisdiction was in violation of the State Code's grant of jurisdiction to the Board of Adjustment.

Ordinance No. 97-011 rectified this situation by prohibiting the consideration of deed restrictions. Instead, neighborhood residents opposed to the applicant's position must assert arguments based on the "character of the neighborhood." Additionally, as has traditionally been the case, the residents may still sue to enforce the deed restrictions in Chancery Court by obtaining a temporary or permanent injunction.