

Covenants In Montana

Covenants

Basic covenants long recognized at law include:

Deed covenants (quiet enjoyment, warranty, further assurances), pay rent or improve land, supply water, insure against loss, pay taxes and assessments, forego certain trade or activities on the land, and make improvements according to certain specifications.

Montana Statute on Covenants Running With the Land

General Requirements

Horizontal and Vertical Privity
Benefit on Transferred Land and Common Scheme or Plan
Burden must touch and concern the land
Notice
Covenants in Gross

Recording

Issue of termination of covenants by foreclosure

Covenant Interpretation and Enforcement

Interpretation rules and maxims, follow contract interpretation, sort of

- Look to the language of covenant
- Read and understand covenant in its ordinary and popular sense
- Restrictive covenants strictly construed
- Ambiguity a question of law
- Ambiguities resolved to allow free use of land
- Free use to be balanced against rights of other purchasers
- Court's interpretation of covenant a conclusion of law
- Court not to insert what has been omitted or omit what has been inserted

Problem: parol evidence and ambiguities, intent of parties

Vagueness and Architectural Control Committee standards

Declaratory and Injunctive relief theoretically possible, damages

Waiver, Latches, Estoppel, Abandonment

Acquiescence in the violation can give rise to estoppel argument

- Requires reliance
- Problematic when other 'benefitted' owners exist

Latches as an equitable doctrine

No absolute rule as to what constitutes latches, each case determined according to its particular circumstances

Waiver

An intentional relinquishment of a known right, claim or privilege
Waiver communicated through express declarations or course of conduct which manifests intention to forego the benefit;
alternatively, course of acts that induce belief that intention and purpose was to waive.

- Unilateral behavior of person waiving
- Problem of acquiescence upon moving into the problem
- Changed conditions requires significant change, to extent purpose and intent of covenant defeated

Compare other Waiver standards

Re: Notice – Montana courts less likely to bind servient land owner to covenant when notice is at issue

- Separate recorded instrument
- Title insurance
- Problem with deed restrictions and subsequent conveyances

Waiver of Objection as Covenant running with land

Implied Covenants

Possible in Montana

Negative Easements and Equitable Servitudes

Arguably differing standards, differing application
Some confusion and interchange in use of terms

Covenant drafting for particular properties

- Standardized documents can be trouble; one size does not fit all
- Urban versus rural subdivisions, condominiums, townhomes
- Interaction with recorded plats
- Details and questions: Declarant liability, enforcement provisions, disenfranchisement, private waiver of objections, etc.

Covenants as requirement to Subdivision

County drafted/required covenants
Enforcement issues
The “Z” word