

SUBDIVISION RESTRICTIONS IN FLORIDA

Nowadays it's common for homes to be built by developers in subdivisions which are subjected to uniform restrictions and governed by homeowners' associations for the benefit of all residents. This concept is designed to preserve the quality of neighborhoods and allow the sharing of maintenance costs of common areas.

When a subdivision is created the developer frequently constructs amenities serving the entire development, such as drainage ponds, entrance signs, landscaping and recreational areas. These enhance the neighborhood and allow the developer to increase sales prices for homes. However, since the amenities are separate from the lots, a mechanism must exist for all residents to share in the benefits they provide, as well as the cost of maintaining them. The developer will therefore record at the County Courthouse a Declaration of Covenants, Conditions and Restrictions along with the subdivision plat in order to specify the common areas and the rights and obligations of the residents. At the same time, the developer will create a non-profit homeowners' association (to which all residents will belong) which will own the common areas and have authority to assess maintenance costs uniformly among the residents.

Declarations vary widely depending on the size and type of subdivision, as well as the anticipated needs of the buyers to whom the developer will market lots. Some Declarations include provisions for security gates, private roads and other upscale amenities, but of course the more amenities there are the higher the lot prices and common area maintenance costs will be. At a minimum, the Declaration should identify the common areas (usually by reference to the subdivision plat), grant easements for all owners to use the common areas for their stated purposes, and establish the formula by which maintenance assessments are determined.

Declarations usually impose other restrictions which are binding on each resident in order to prohibit objectionable activities and preserve the quality of the neighborhood. These can include anything the developer feels will enhance the value of lots and make the neighborhood more attractive to potential buyers. Some are very comprehensive and prohibit such things as home offices, clotheslines, TV antennae, satellite dishes, certain kinds of pets, and the parking of boats, RV's and commercial vehicles in driveways. Some give the association the right to impose other rules and regulations in the future. Many require that all construction and landscaping conform to standards specified in the Declaration or established by an architectural control committee.

Subdivisions are no longer reviewed by HUD, but the FHA requires builders to use a "Builder Certification" procedure in order to obtain mortgage insurance on individual properties built in any new subdivision. In order to receive certification, the builder must become certified under HUD requirements, the plans and specifications must meet HUD requirements prior to construction, and the builder must provide a HUD accepted ten year warranty plan.

Every seller of a home subject to assessment by a homeowners' association is required by Florida law to disclose to the buyer certain information regarding the association, subdivision restrictions and assessments at the time the Contract is signed; otherwise, the Buyer can void the Contract at any time prior to closing. If you're thinking about buying a subdivision home, you should also ask the seller, developer or association for copies of the subdivision documents before you sign a purchase contract, since the contract will almost certainly provide that you won't be able to object to them later. These should include the subdivision plat, the Declaration, the Articles of Incorporation and Bylaws for the association, any rules and regulations established by the association and the most recent budget for maintenance assessments. Although they won't be light reading, you should take the trouble to read and understand them before you sign your contract, since you'll have to live with them for as long as you own your home.