

POSITION PAPER
Internal Deed Restrictions
May 11, 2018

To: VCDD 2 Board of Supervisors

From: Bryan Lifsey, VCDD 2 Supervisor

PURPOSE: Some Open Q & A Sessions hosted by our and other district Supervisors have shown some resident misunderstandings over Internal Deed Restrictions. Hopefully, this position paper will bring clarity and bring uniformity to this subject so that we, as VCDD2 Supervisors, respond to resident question and/or comments on these areas in a consistent, legal, informative and helpful manner.

BACKGROUND: In reviewing published notes of various District Open Q & A Sessions and in reviewing resident comments on this subject in various social media, I have seen that some of our residents don't understand this subject very well and some supervisors (me included) have been challenged in formulating a response to their questions. In general, the comments and concerns fall into three distinct areas:

- What are the Internal Deed Restrictions?
- How are Internal Deed Restriction violations reported and handled?
- How many of them has there been and what happened?

In researching this subject, I used Google extensively. I went into to the Districtgov.org web site to look at Deed Restrictions. Yes, they change from district to district and unit to unit. There is no one pat answer to "What are the Internal Deed Restrictions?" The district web site was extremely helpful and easy to use. For comparison purposes, I used Unit 31 in District 2 and Unit 233 in District 10. That allowed me to compare 'older' and 'newer' deed restrictions in general. Everyone should research their own unit and district for specific restrictions. I also met with and discussed Internal Deed Restrictions with District staff and gathered some statistical data. Details of the restriction comparison are attached to this Position Paper.

DISCUSSION: This paper addresses each of the bullets above as a separate item.

Deed Restrictions:

External Deed Restrictions are not an issue – if you can see a violation from the street, it is an External Deed Restriction violation.

Some Internal Deed Restrictions are not an issue either. For example, the requirement that all homes be occupied by at least one person who is at least fifty-five (55) years of age is clearly internal. The requirement that no one under nineteen (19) years of age may be a permanent resident of a home is also clearly an internal deed restriction. There may be others in this category.

Of particular concern are those deed restrictions that could fall into either category. Who makes that determination of internal or external? Who handles those and how?

For example, the restriction on a home business may be totally internal (a Consultant of any type, for example) but it may be external when excessive client visits are reported or outdoor work on vehicles or golf carts is being performed. The noise deed restrictions are usually noise coming from within a home but heard outside the home. Are these violations internal or external? The pet restrictions that limit birds, fish, small dogs and cats to a maximum of two (2) pets per lot could be internal but if it is often noted that someone walks the same three or four dogs every day and reports that, is that an external violation or not?

I'd like to provide some clarity and have answers to these questions.

Reporting:

I think we agree that any and all suspected deed restriction violations **CAN** be reported to Community Standards – internal and external.

The problem is that some residents have reported they called with a complaint about an underage resident only to be told “We don’t handle that, it is a Developer issue” or similar.

That response shouldn't happen but I'm afraid it does, at least once in awhile.

Getting the proper response from Community Standards, and then taking the report of an internal deed restriction violation, should not be much of a problem for District management and staff to implement and/or monitor.

My question, and I'm looking for real answers here, is "Is there any thing else residents can do to report Internal Deed Restriction violations?"

My research shows that a resident always has the right to sue a violating homeowner directly to enforce external or external deed restrictions.

The Declarant (in this case, the Developer) may seek to enforce internal or external deed restrictions. The District, through an adopted rule, may enforce certain external deed restrictions that have been adopted by our Board as authorized under Chapter 190 of Florida Statutes.

As a separate matter – not an enforcement of specific deed restrictions – any resident may sue the Developer for failing to enforce deed restrictions. My research also shows that finding a lawyer to handle this type of case is near impossible, would be enormously expensive, and there are only three chances of a successful lawsuit – fat, slim, and none. This is not a good answer to give residents.

Are there any viable answers other than "Report it to Community Standards?"

Historical Data:

I know Ms. Dennis and her staff keep very detailed records on External Deed Restriction violation reports. Is there anything kept on Internal Deed Restriction violation reports?

More importantly, I think, is what happens to internal violations after they are reported to Community Standards?

The short answer is that they go to the Developer for action.

Unfortunately, that is not an acceptable answer to some residents, albeit it may be the only answer District Staff and/or members of this Board have to give out.

The real answer is to explain what action the Developer took. That could be explained on a per case basis when the complainant is not anonymous or in summary format (much as District Staff does today with external complaints) for all internal complaints.

I had presumed that Community Standards has historical data on how many internal complaints were reported and sent to the Developer. As it turns out (see Attachment 2) they do not keep any sort of records nor produce any type of reports on Internal Deed Restrictions Violations. The one report I thought I had found from April of 2015 turned out to be something entirely different and unrelated.

Enforcement by the Developer becomes important. My research has shown that deed restriction violations that are not enforced may, over time, cause those restrictions to become invalid and/or unenforceable. Without debating what are “good” or “bad” deed restrictions, invalidating any of them due to “lack of enforcement” does not seem to be the appropriate way to change them. Conversely, a total lack of data on enforcement of internal deed restrictions means that District Supervisors have no clue whether internal deed restrictions are being enforced or not.

I did coordinate my research by email with Ms. Diane Tucker, Administrative Operations Manager for District government. My email to her and her very prompt response to me are shown at Attachment 2.

SUMMARY:

It is interesting to note that no District answer was provided to the classification on ‘internal’ or ‘external’ in several specific hypothetical instances. Instead all were addressed as ‘suspected’ internal complaints in the email response with no information on how that differentiation was made or by whom.

Residents attempting to report an internal complaint and getting an incorrect answer (“Not our job!”) was not addressed at all in the email.

From the email it appears that the only other thing residents can do about internal deed restriction violations is to file a lawsuit against the offending homeowner. The only viable response we, as District Supervisors, can give residents is to have them report the violation to Community Standards.

I garner, from the email response, that the District washes its' hands of internal deed restriction violation reports once it has forwarded them to the Developer. No information is available on how many have been sent to the Developer. If the Developer decided to exercise their right to enforce and sends a copy of their letter to the property owner, the Developer also sends a copy to the District. Apparently that copy is filed and forgotten – no one is notified and no data is kept on the number of these occurrences.

As the Developer is under no legal obligation to tell anyone what it does with/about internal deed restriction violation reports, there is no alternative for Supervisors to obtain this data. We just have to grin and bear it. Our residents are in the same situation. If absolutely nothing comes back to the District from the Developer on a 'suspected' internal deed restriction violation, then the District does nothing else and the matter dies a natural death.

RECOMMENDATIONS:

I find myself in the unenviable position of not having what I feel are "good" recommendations for our residents. As far as this Board, and the entire Villages goes, we are completely in the hands of the Developer for enforcement of internal deed restrictions. There is nothing we, nor the District, can do to alter this situation.

That being said, my only viable recommendation is that we encourage residents with internal deed restriction concerns to report those concerns to Community Standards. They can be reached at 352-751-3912.

I know that is not much and not very encouraging. Unfortunately, it is all we can do.

Attachment 1 to POSITION PAPER on Internal Deed Restrictions
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These are **extracts** of what I presume are Internal Deed Restrictions. They are taken from the District 2, Unit 31, Declaration of Restrictions filed with the Sumter County Circuit Court on June 15, 1998 at 02:14, Section 2 – USE OF PROPERTY:

2.8 No vehicle incapable of operation shall be stored on any Lot nor shall any junk vehicles or equipment be kept on any lot. (This item was included as “internal” because it covers vehicles or equipment stored in a garage or home)

2.9 No commercial, professional or similar activity requiring either maintaining an inventory, or customer/client visits may be conducted in a Home or on a Lot.

2.20 Each owner shall use his property in such a manner as to allow his neighbors to enjoy the use of their property. Radios, record players, televisions, voices and other sounds are to be kept on a moderate level from 10:00 PM to one (1) hour before daylight.

2.23 Birds, fish, small dogs and cats under 40 pounds shall be permitted, with a maximum of two (2) pets per Lot.

2.25 All homes that are occupied must be occupied by at least one person who is at least fifty-five (55) years of age. No person under nineteen (19) years of age may be a permanent resident of a house, except that persons the age of nineteen (19) years may be permitted to visit and temporarily reside for periods not exceeding thirty (30) days in total in any calendar year period.

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These are **extracts** of what I presume are Internal Deed Restrictions. They are taken from the District 10, Unit 233, Declaration of Restrictions filed with the Sumter County Circuit Court on July 15, 2013 at 01:45 PM, Section 2 – COVENANTS, CONDITIONS AND RESTRICTIONS:

2.9 Identical to District 2, Unit 31, Section 2.8 except the word “Homesite” is used instead of the word “Lot”.

2.10 Identical to District 2, Unit 31, Section 2.9 except the word “Homesite” is used instead of the word “Lot” and the word “equipment” was added as in “...maintaining an inventory, **equipment** or customer/client visits...”.

2.21 Identical to District 2, Unit 31, Section 2.20.

2.23 Identical to District 2, Unit 31, Section 2.238 except the words “under 40 pounds” has been removed.

2.24 Identical to District 2, Unit 31, Section 2.25.

Attachment 2 to POSITION PAPER on Internal Deed Restrictions
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From: Tucker, Diane
Sent: Wednesday, April 25, 2018 08:43
To: Lifsey, Bryan
Cc: Tutt, Janet; Fuchs, Valerie; Dennis, Candice; Tucker, Diane
Subject: FW: Internal Deed Restrictions

Good Morning Mr. Lifsey

First let me say that I'm always happy to meet with anyone to help them understand the process or answer questions regarding Community Standards. We have previously met with you on some of the same concerns you listed below (we met with Valerie and Candy in my previous office a year or so back) however I believe I can answer most of your questions very briefly as my response should cover most of your concerns. If you still need additional answers I would suggest that possibly bringing them up in a board meeting under supervisor comments as then all of the supervisors are aware. If you prefer meeting please let me know and I will review my calendar to find a date that me, Candy and Valerie can meet but understand that Valerie's time will need to be billed to District 2.

Internal Deed Restrictions

Florida Statutes states as I have provided below and bolded that the District can only enforce "external deed restrictions". As a benefit to our residents who contact us regarding "internal" deed restrictions we inform them that by law the District can't enforce the internal deed restrictions. We inform the complainant that we take the information and pass it on to the Developer Representative and they can follow up with the District later to find out if we have received any information from the Developer Representative. If the complaint has been going on for some time the resident can contact the representative directly. Please understand that the Developer has the "Right" but not the obligation to enforce any deed restriction...internal or external. Any property owner has the same "Right" but not the obligation to enforce the Deed Restrictions. Upon receiving an internal complaint we take the address, type of "suspected" violation that may include the following; business in home, too many pets, child in the home, noise etc. We email the information to the developer representative. If the Developer exercises his right to enforce and sends a letter to the property owner, the representative sends a copy to us for our file.

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Staff does not recall preparing an internal complaint log and would question why we would spend District funds researching items we have no authority over. On our complaint log the internal complaints are highlighted in green however it would require preparing a spread sheet of the complaints and manually looking through the entire log. You stated the “real answer is to explain what action the Developer took” but again the District has no purview over what action the Developer does nor does not take in response to internal complaints.

I have provided the section from Chapter 190 regarding enforcement of deed restrictions.

Florida Statutes 190. 4.(a) To adopt rules necessary for the district to enforce certain deed restrictions pertaining to the use and operation of real property within the district and outside the district pursuant to an interlocal agreement under chapter 163 if within another district or, if not within another district, with the consent of the county or municipality in which the deed restriction enforcement is proposed to occur. For the purpose of this subsection, the term “deed restrictions” means those covenants, conditions, restrictions, compliance mechanisms, and enforcement remedies contained in any applicable declarations of covenants and restrictions that govern the use and operation of real property and, for which covenants, conditions, and restrictions, there is no homeowners’ association or property owner’s association having respective enforcement powers unless, with respect to a homeowners’ association whose board is under member control, the association and the district agree in writing to enforcement by the district. The district may adopt by rule all or certain portions of the deed restrictions that:

1. Relate to limitations, prohibitions, compliance mechanisms, or enforcement remedies that apply only to **external appearances** or uses

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Thanks

Diane



Diane Tucker, Administrative Operations Manager

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Note: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: Lifsey, Bryan

Sent: Sunday, April 22, 2018 9:31 AM

To: Tucker, Diane

Subject: Internal Deed Restrictions

Diane:

I would like to meet with you and whomever else you desire to discuss Internal Deed Restrictions and their enforcement. For me, the best times to meet are right after lunch almost any day of the week – say noon or 1 PM. Please give me a call or drop me an email if/when you want to meet.

There are a few areas of particular interest to me. First would be what Internal Deed Restrictions are. The second would be how residents can handle/report internal deed restrictions. The third would be some historical data on the number of Internal Deed Restriction violations reported and what happened to them.

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I'll explain each of these three areas in more detail.

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I'd like to provide some clarity to our residents on what are internal deed restriction violations.

Reporting:

I think we agree that any and all suspected deed restriction violations can be reported to Community Standards – internal and external.

The problem is that some residents have reported they called with a complaint about an underage resident only to be told "We don't handle that, it is a Developer issue" or similar.

That response shouldn't happen but I'm afraid it does, at least once in awhile.

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Getting the proper response from Community Standards, and then taking the report of an internal deed restriction violation, should not be much of a problem for you and your staff to implement and/or monitor.

My question, and I'm looking for real answers here, is "Is there any thing else residents can do to report Internal Deed Restriction violations?"

My research shows that a resident always have the right to sue to a violating homeowner directly or to sue the Developer for failing to enforce the deed restrictions. My research also shows that finding a lawyer to handle this type of case is near impossible, would be enormously expensive, and there are only three chances of a successful lawsuit – fat, slim, and none. This is not a good answer to give residents.

Are there any good answers other than "Report it to Deed Compliance?"

Historical Data:

I know Candy and her staff keep very detailed records on External Deed Restriction violation reports. Is there anything kept on Internal Deed Restriction violation reports? In my research, I noticed that at one time (April, 2015 - I believe) you provided some district (not mine) with an Internal Complaint Log. I'd like to know about what that is and can we (District 2) get one if we want it.

More importantly, I think, is what happens to internal violations after they are reported to Deed Compliance?

The short answer is that they go to the Developer for action.

Unfortunately, that is not an acceptable answer to most residents, albeit it may be the only answer you have to give out.

The real answer is to explain what action the Developer took. That could be explained on a per case basis when the complainant is not anonymous or in summary format (much as your staff does today with external complaints) for all internal complaints.

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I presume you and your staff have all the data on how many internal complaints were reported and sent to the Developer. I have no idea what feedback you get on those complaints.

Enforcement by the Developer becomes important as my research has shown that deed restriction violations that are not enforced may, over time, cause those restrictions to become invalid and/or unenforceable. Without debating what are “good” and “bad” deed restrictions, invalidating any of them due to “lack of enforcement” does not seem to be the appropriate way to change them.

Bryan Lifsey