

5-11-05

## **Decoder Ring to the Kensington Courts Community Deed Restrictions**

**Introduction:** Research of court Records by Law Firms specializing in Land use, has given us the understanding as described below.

In total, TEN different Covenant & Deed Restriction Documents have been filed in court (from January 2, 1990 through August 30, 2004) which affect the Kensington Courts Community. The majority of these amendments existed only as part of the process of adding new homes to the development and homeowners association.

The Developers, acting through the Kensington Courts Limited Liability Corporation, included a provision within the Governing Documents of the Kensington Courts Community Association (when they executed them), which preserved their right to fold new properties into the Association (including bylaws and deed restrictions) over time.

The First Covenants Document, filed in 1990, served to set up the Marshlands to the north of our development as a wildlife habitat for our general benefit, and established our rights in relationship to the land. It did not address specific "deed restrictions" as we think of them.

The next Covenant Document filing (in 1994) established the original and full set of deed restrictions that apply to all lots within the development. However, in its original form it only applies to the section of lots refers to in court documents as "Block 11", as it only addressed those lots, when it was filed.

With each new section of lots that were developed, a NEW Covenants Document was created and filed in court, which "directly" affected ONLY that new section of land. These New Documents were described as "Amendments" to the original Deed Restrictions, but in a "Technically Legal" sense they were not amendments at all, but were in fact, "New Originals"...affecting only the new sections of land that they specifically addressed within their pages.

HOWEVER, the "text" of these New Originals stated, that the Deed Restrictions to be "In Effect" for the section of lots being currently addressed, shall (in effect) duplicate those Deed Restrictions that were in effect for the immediately preceding section. The consequence of this is that the same rules were carried forward from one section to the next.

EXCEPT that with some of the New Originals, revisions were made to the deed restrictions. The Consequence of this is that the Bottom Line for each block is: The Legally Binding Deed Restrictions for that Block are the SAME AS the "total

set” for the previous block... except to the extent that they are modified by any Revisions within that New Original. “Changes” to the Deed Restrictions become effective with the block that they are introduced to and are carried forward to subsequent blocks, but no revisions carry backwards to previous blocks.

The “differences” in the deed restrictions from the block to block may seem odd, but they were properly filed by the developers, and unless they are legally changed (involving a 2/3 vote of the community) the Association has no choice but to accept that they will continue to be what they are.

In order to know which Deeds Restrictions apply to which Lot, the Lot must be located within the official “Plat Blocks” that were actually filed in court, and then find that block number in the Deed Restriction Document Guide, below.

**Land Identification:** The overall community was surveyed and laid out into 11 discrete “Plat Blocks” well before construction actually began. Those plats are attached to this document.

**Original/Full Set of Deed Restrictions:** On October 18, 1994 the original and full set of deed Restrictions was filed in court. This version only addressed **Block 11** (*consisting primarily of Heather Court*) and therefore, only had legal effect upon that block. It remains the only valid set of deed restrictions, pertaining to that block, even today.

The key differences in this version (as compared with the versions in effect for other blocks) is that this block is permitted to have up to 2 Dogs AND 2 cats (maximum total of four) of any breed or size; no “dog runs” are permitted; and fences (of a permissible type) are limited to 48” in height. Antennae and Satellite Dishes are prohibited.

**[Link to Actual Document.](#)**

**Supplemental Covenants:** On November 6, 1996, an Amendment to the original document was filed, which in essence, defined the covenants and deed restrictions, which apply to **Block 1** and **Block 2**. This amendment simply defined those restrictions to be the same as those, defined within the original document, with a few minor changes.

The rules for these blocks are the same as Block 11, above, except the residents are limited to 2 Dogs, OR 2 Cats, OR a combination of 2, thereof (maximum total of 2); Pit Bulls are prohibited; and “Dog Runs” of up to 10’ x 10’ are permitted. Satellite dishes of up to 2’ in diameter are permitted ‘within’ a dwelling.

**[Link to Actual Document.](#)**

**First Amendment:** On April 22, 1998, an additional amendment was filed, which defined the covenants and deed restrictions, which apply to **Block 3** and **Block 6**. Apparently, because of some incompleteness in the land description, the first

Amendment was re-filed (on July 22, 1999) in an updated version (superceding the previous version for Block 3 and Block 6). Both versions simply defined the applicable restrictions to be the same as those, defined within the previous Block 1 & Block 2 version, which equates to the “original” rule set, including the revisions add within the “Supplemental Document” of November 6, 1996. No new revisions were added to this version.

**[Link to Actual Document](#)**

**Second Amendment:** On February 15, 2001, an additional amendment was filed, which defined the covenants and restrictions that apply to **Block 9** and **Block 10**. This amendment defined those restrictions to be the same as those defined within the First Amendment (the Original, as revised by the Supplemental of 1996), except that this version introduced a couple of additional revisions.

The rules for these blocks are the same as Block 3 and Block 6, above, except that dogs are limited to 40 pounds in size, and fences (of an approved type) may be 60” in height.

**[Link to Actual Document.](#)**

**Third Amendment:** On December 19, 2001, an additional amendment was filed, which defined the covenants and restrictions, which apply to **Block 8**. This Amendment defined those restrictions to be the same as defined for Block 9 and Block 10 (via the second amendment).

The rules for these blocks are the same as those defined in the original filing, except as revised in the Supplemental filing of 1996, and as further revised by the second Amended filing of 2001.

**[Link to Actual Document.](#)**

**Fourth Amendment:** On December 19, 2002, an additional amendment was filed, which defined the covenants and restrictions that apply to **Block 7**. This amendment defined those restrictions to be the same as defined for Block 9 and Block 10 (via the second amendment).

The rules for these blocks are the same as those defined in the Original filing, except as revised in the Supplemental filing of 1996, and as further revised by the Second Amendment filing of 2001.

**[Link to Actual Document](#)**

**Fifth Amendment:** On December 10, 2003, an additional amendment was filed, which defined the covenants and restrictions that apply to **Block 4**. This amendment defined those restrictions to be the same as defined for Block 9 and Block 10 (via the second amendment).

The rules for these blocks are the same as those defined in the original filing, except as revised in the supplemental filing of 1996, and as further revised by the Second Amendment filing of 2001.

**[Link to Actual Document](#)**

**Sixth Amendment:** On August 30, 2004, an additional amendment was filed, which defined the covenants and restrictions that apply to **Block 5**. This amendment defined those restrictions to be the same as defined for Block 9 and Block 10 (via the second amendment).

The rules for these blocks are the same as those defined in the Original filing, except as revised in the supplemental filing of 1996, and as further revised by the second Amended filing of 2001.

**[Link to Actual Document](#)**

**Qualifier:** With respect to “Sheds”, Article IX, Section 2(h)(ii), specifies that sheds “be located flush against the dwelling unit situated on the lot”. The board has been advised that this provision has become unenforceable, since there has been a 10-year history of architectural approvals for sheds that do not comply, since there are now dozens of sheds that do not comply, and (to the knowledge of the board) not one case of a request that has been denied for failure to conform to this requirement, nor one case of a shed that was actually installed in conformance to this requirement.

Until the board can have an opportunity for a full review of the myriad of deed restrictions, and develop a strategy for achieving a more enforceable position, the administrative position is that there are insufficient grounds for introducing a new policy of enforcing this particular restriction.

As a consequence, shed approvals will not be withheld based upon failure to meet this requirement, and homeowners will not be told that they must comply with this particular requirement. To date, the Board is not aware of any other restrictions that are unenforceable, although, we have initial indications that the prohibitions against unobtrusive satellite dishes might be.

## **What are Deed Restrictions?**

**Basic Definition...** Deed restrictions are (as the name implies) Restrictions that have been legally attached to a piece of land, and are documented upon the Deed, itself, which legally limit how a piece of land may be used.

**The most important thing to know...** Is that we can't blame the Board of Directors of the Homeowners Association for our Deed Restrictions.

They were PUT IN PLACE BY THE DEVELOPERS and CANNOT BE CHANGED BY THE BOARD.

They CAN be changed by a two-thirds vote of the community, but until then ... they simply are what they are.

**The second most important thing to know...** Is that the Board of Homeowners Association is legally obligated to enforce the deed restrictions (*especially the ones that involve the potential for injury*) as they were written in order to avoid serious consequence for them as individuals... and for the community overall,

...So, **PLEASE** ... if any Homeowner is not happy about the restrictions that apply to them... do not blame the Board, or direct frustrations in their direction. It's not their doing.

The only CONSTRUCTIVE thing that can be done... is to "get active" and work within the community to get a two-thirds consensus to get the changes that a homeowner or group of homeowners... thinks that we need. The Board will provide the information and assistance to anyone that wishes to accomplish this kind of action.

Other than that... all the Board can do... is to communicate clearly to the community... what those restrictions are, and how they apply.

**The Legal Basis for the Restrictions** ... If a homeowner within the community will read their deed (which is the "Title" to their House and Land), they will see that it specifically states that the use of their land is subject to the covenants and deed restrictions, as defined by the Kensington Courts Community Association governing documents. Those restrictions were "attached" to out land by the developers before they sold that land to any homeowners, and was therefore... those restrictions were already "bound" to that land when it was purchased by a homeowner. In effect, when we willing bought into this community we "willing accepted" and "agreed to be bound" by those limitations. It's like a contract that is legally enforceable and cannot be broken, except through the voting mechanism described above.