

## Use restrictions – How do you find out?

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You've experienced it. A prospective buyer wants to know if they can have horses or other animals on the property; a psychologist wants to know whether she can meet clients in her home; a sales representative wonders aloud if he can work out of a home office. What do you answer?

These questions are all part of the due process that a buyer should undertake before settling on a purchase. Our standard agreement provides a 10-day period to perform this task; frequently longer periods are negotiated. Much of the due diligence process is routinized to the point that we hardly think about it. If the property is serviced by a septic system, we get an inspection. Likewise, for the well. And we always recommend a whole-home inspection. What do you say when it comes to boundaries or use restrictions or some of the more esoteric factors that also impact a property?

When it comes to use restrictions, the first decision is who will undertake the inquiry. Are you, the licensee prepared to do this? I've defended too many Realtors® who made the attempt and failed.

All too often an agent will volunteer to call the borough or township zoning officer or secretary to ask whether a certain activity can occur at the property. Be careful, sometimes even zoning officers get it wrong. But the real problem is that checking with the municipality only does half the job.

There are two broad categories of use restrictions: those imposed by a municipality and those that are privately imposed as the result of some action, possibly taken decades ago. By calling the zoning officer, you have addressed half the inquiry. A zoning officer or borough secretary will tell you what the law allows for a particular property.

Private restrictions sometimes take the form of deed restrictions, restrictive covenants or something else. They are matters of record that can be searched at the courthouse. Do you have the training to do this?

Many licensees are of the opinion that use restrictions or restrictive covenants are part of a homeowners association's rules and regulations. Not always. You cannot determine whether restrictive covenants or the like are applicable in the absence of a title search (reread).

Here is the good news. You don't have to be an expert or even adept at searching for use restrictions. Like so many issues, it is simply enough to recognize that the issue exists. Discuss with your client whether they will make any use of the property beyond having it serve as a residential dwelling. Advise that use restrictions are not necessarily going to be disclosed by the seller and that the only way to assure whether a particular use of the property is permissible is to undertake a due diligence investigation. Refer your client to their attorney or, make recommendations if they do not know someone who can search titles and analyze provisions of restrictive covenants as well as zoning restrictions. You don't have to undertake the search and in all likelihood, you should avoid volunteering to do so.

Another practice to consider is ordering the title search so that it can be completed within the due diligence inspection period. Have the abstractor provide copies of the restrictive covenants so that you can view them with your client and terminate the agreement if they unduly interfere.

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