

Using a covenant to protect a healthy home against the neighbors

A covenant can prevent a neighbor from doing things that cause problems for someone with multiple chemical sensitivity (MCS) or electrical hypersensitivity (EHS).

Keywords: covenant, deed restriction, covenant conditions and restrictions, MCS, chemical sensitivity, electrical sensitivity, protect, neighbor, neighbour

Introduction

A covenant is a legally binding restriction or obligation placed upon the owner of a piece of real estate. It is also called a “deed restriction” or referred to as “covenants, conditions and restrictions” (often shortened to CC&R).

A covenant is generally used to protect property values, for instance by limiting what sort of buildings can be built, how high they can be or by ensuring they are maintained well. Covenants are also used to ensure a certain neighborhood character by specifying a certain building style and set of colors.

A covenant can also be used to restrict activities that are detrimental to the health of people with environmental illnesses. Such a covenant must be designed well to avoid unintended consequences and to withstand a challenge in court.

Creating a covenant

A covenant is put in place by the owner of the property it covers. That is typically done by a developer who buys a large tract of land and then subdivides it into smaller lots.

In the EI world a covenant is commonly put in place when someone sells off a part of his or her land to allow someone to build a house next door. The covenant then restricts what the new neighbor can do.

Placing a covenant on your own land does not provide you any protections, unless you then sell off some of the land or it is done as part of a mutual agreement where

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your neighbors put covenants on their lands as well (this has never been done that the author is aware of).

The covenant must be officially recorded so any subsequent potential buyer will be made aware of it when a title search is done. This is usually done by whichever authority maintains official documents, such as a county recorder.

Why have a covenant when it only covers sensitive people?

People's sensitivities vary and the situation can change over time. People sometimes die and the heirs just want to cash in quickly by selling the property to anyone, rather than getting a higher price on the slower specialty market for healthy houses.

Some people are more sensitive to certain things, say wireless transmitters, and not so much to chemicals. Or vice versa.

There have been plenty of conflicts between neighbors who are both sensitive to many things, but not all the same things. Most people don't like to have more restrictions on what they can do than seem necessary to them. Just because people get sick doesn't mean they care more about their neighbors than healthy people do.

There have also been cases where both neighbors have reasonable needs that are not compatible with each other. One person may get sick if the house is warmer than, say 70° F (21° C), while the next-door neighbor is greatly bothered by the noise and EMF from an air conditioner.

Avoiding conflicts by good design

People who are new to living with EI neighbors often have an idealistic idea that it will be trouble free. In many cases it is, but often there can be difficult conflicts that a covenant won't resolve well – examples are sprinkled around this document, including in the previous section.

If at all possible, make sure the houses have some distance to each other. At least 75 ft (25 m). This can greatly reduce conflict issues.

A covenant can only be enacted with the consent of the owner

The owners of the land must agree to the covenant. It cannot be placed on the land against the will of the owner (that is what zoning is for).

Once a covenant is in place, it will cover subsequent owners if the covenant is designed to “run with the land.” Later owners consent by buying the land, they do not have to be asked.

Restricting a wider area

Since every landowner has to agree to a covenant, the protected area will tend to be rather small. It may not protect against toxic drift from agriculture and industries, noise from wind farms or radiation from transmission towers. Wide-area protections are better done through zoning, since not every landowner has to agree, though it would be very difficult to get the local politicians to agree to such a zoning.

Creating a “white zone,” where mobile phones do not work, would take a very large area, since rural towers can provide good reception up to 20 miles (32 km) away in open country. They will reach less in hilly and forested areas, such as Green Bank, West Virginia, where the radio-free zone is 20 miles across. Some countries have laws against restricting the siting of mobile phone base stations (such as the U. S. Telecom Act of 1996 section 704).

Enforcing the covenant

The police or zoning authorities will probably not want to help enforce a covenant. That is a job for the local court. That means you have to be willing and able to take an offending neighbor to court.

If the covenant is poorly written or it seems unreasonable in the eyes of the judge, the judge may simply throw out the covenant. It is therefore important to create a covenant that is well thought out and does not seem unreasonable.

A covenant may first be challenged decades later, for instance when the owner of the property decides to sell or the owner dies and the heirs want to sell the property. It is important to design a covenant that makes sense decades later.

A restrictive covenant may make financing impossible

When applying for a loan to build or buy an existing house a bank (or other lender) will need to know of any restrictions on the property. The lender won't like restrictions that make the property difficult to sell if they have to foreclose and auction off the house.

Tailor the covenant to the situation

The covenant needed for a row of townhouses is a lot different from one with separate houses on large rural lots.

With much distance between houses, there may not be any need for a covenant if zoning prevents the lots from being subdivided into small lots. In such a place it may not matter much if some people use wireless networks, charcoal grills and fabric softener dryer sheets. In an area with smaller lots (say, a few acres or less), or apartments, those same nuisances can have a very big health impact.

Consider who the covenant will protect

Consider who the covenant will protect. That is a difficult question if trying to create a new community, that hopefully will grow over time.

A covenant is a compromise between being overly restrictive (so people rebel or a judge throws it out) and not restrictive enough (so people get driven out). Environmentally sensitive people can be affected by many things and not all the same things. Experience with existing communities show that conflicts are common because people's needs and sensitivities can be incompatible. One person may feel very insecure and insist on bright security lights and a barking dog that both disturbs the sleep of the next door neighbor. One person is so electrically sensitive that he can only drive an old diesel car, while the neighbor can't stand the exhaust. There are many such vexing examples.

A covenant should not restrict the type of person living there

Covenants were used in the United States to racially segregate neighborhoods, but the Fair Housing Act of 1968 (with 1988 update) forbids covenant discrimination based on disability, race, religion, sex or national origin. If a covenant states that only people with MCS can live there, it may be challenged on the grounds that it is discriminatory.

In one covenant it was specified that at least one member of each household had to have MCS. When the original owner died, someone with MCS tried to buy the property, but the bank refused to issue the loan as long as that restriction was in place.

Using the covenant to preserve zoning restrictions

Most areas have some sort of zoning, which often specifies the minimum lot size and whether they are residential only, or some businesses are allowed.

Developers sometimes get zoning changed to allow smaller lot sizes or more types of businesses there. Zoning changes require a public hearing, and can be opposed, but other landowners may like the zoning change if it makes their properties more valuable. It is difficult to fight a zoning change if the authorities think it is a good idea.

In some cases developers and the authorities “forgot” or were very late at notifying affected landowners when a controversial zoning change was considered. People have literally found out about it when bulldozers showed up next door and the game was over.

A covenant can preserve and enhance existing zoning by specifying minimum lot size and restricting the use to residential housing. If the zoning is later changed, the covenant will still stand.

Make the covenant durable

When the land is sold to a new owner, the covenant may expire. To ensure the covenant continues, include wording stating that it “runs with the land.”

Specifying construction methods

A covenant can provide guidelines and specifications for new construction. Common sense restrictions are to ban fireplaces and wood stoves.

Listing specific construction materials, or specifying “natural materials” is problematic, since people with MCS often do not tolerate wheat boards, wood, clay, unfired adobe and other natural materials. Plasters are too expensive for many. People with MCS often have to use less-natural materials such as steel, aluminum, glass, tile, concrete and even drywall.

Restricting wireless devices

Wireless gadgets are considered an essential part of life by many people and restrictions could meet defiance. There may also be cases where wireless devices are unavoidable. A blanket prohibition of all wireless devices may not be a good idea. This has to be thought out and based on the specific community

Some portable devices, such as laptop computers, can have their wireless transmitters turned off and instead use cabled communications. These should be allowed in their wired modes.

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People sometimes have to use medical equipment in their homes on a temporary or permanent basis. Such equipment is often equipped with a wireless transmitter to control it or to transmit data to a hospital.

Getting tangled up in cords is a real threat to mobility impaired people, so wireless controls are often used instead.

Nursing homes are a very bad place for people with EI. Some of these assistive technologies may allow the patient to stay at home, despite the wireless features. Some of these controls radiate infrequently or they are designed to reach just a few feet.

A total wireless ban would prevent UPS and FedEx from delivering packages, since their drivers use a wireless device to record when and where (GPS) they deliver. The drivers also carry a mobile phone, as will most contractors and handymen (and they may refuse to turn them off).

Telephone landlines are being dismantled in rural areas, forcing people to use wireless instead for both telephone and data. Some electrically sensitive people successfully use “fixed wireless” systems where a small transmitter is placed outside the house with a cable going to the house. It may be possible for a community to create its own telephone company, but that is a big task.

Some rural telephone land lines are not able to carry DSL (ADSL) internet service because the cables are too long.

Wireless networks (Wi-Fi/WLAN) can probably be banned, since cables work so well, though it may be some work to pull cables between multiple floors and to an outbuilding. But many gadgets do not have the option to use a cable, such as security monitors and wireless refrigerators. Wireless gadgets of this sort will be increasingly common and it may become difficult to avoid them or turn them off.

Some wireless devices are intended to communicate within a room only and use a very weak transmitter. In some cases a directional antenna (parabolic or yagi) can be used to restrict the radiation to specific directions.

Consider writing the covenant with flexibility, such as making exceptions for medical devices and other essential equipment where non-wireless options are prohibitively expensive or not available. Perhaps have a council that can approve certain uses.

An option is to restrict transmitter power, but it's a crude instrument as some devices transmit continuously while others do so rarely. A mobile phone has a max transmission power of 2 watts (though radiates less if near a tower). Smart meters typically transmit with 0.1 to 1 watt.

Make sure to use generic wording, such as “wireless networks,” as “Wi-Fi” and “4G” will become obsolete.

Restricting wireless power

Wireless power is used to charge or power mobile gadgets without a cord. This technology is likely to be further developed and become as common as electrical outlets.

Consider banning any wireless power system that can transmit power further than one inch (2.5 cm). There is probably no need to ban electric toothbrush chargers and cell phone docking stations, some of which transmit electricity wirelessly but very short distances.

Restricting towers

Banning mobile phone base stations and wind turbines may not hold up in court, as such restrictions are sometimes illegal. However, it should be perfectly legal to place an area-wide height restriction that happens to make such structures impossible.

Consider placing a height restriction of 20 ft (7 m) for “buildings, poles, towers, and structures.” This will allow any normal one-story building, but not multi-story buildings.

Such restrictions are commonly used to preserve the character of a neighborhood.

Restricting PLC networks

PLC networks transmit data through the household electrical system by adding radio-frequency signals to the electrical current. This turns the wires throughout the house into radiating antennas, and possibly also those of the neighbors. Proponents say it is “wired, not wireless,” but that is beside the point. Regular cabled networks use special shielded cables (such as Cat 5 or Cat 6), which are much better.

Restricting trash burning

It is a good idea to specify that trash cannot be burned on the property, whether it is household trash, yard trash, construction trash or any other kind.

Restricting laundry chemicals

Consider banning any form of dryer sheets, i.e. fabric softener impregnated sheets added to clothes dryers.

Other offensive products include any sort of fragranced laundry product.

It is individual what products actually works best, so mandating specific products won't work. There are people sensitive to even baking soda. Besides, products change over time.

Personal care products

It is probably best to be very careful about restricting personal care products. If a person wears something offensive, they will automatically be subjected to peer pressure if they want to have a social life.

Consider simply banning any product containing fragrances and essential oils.

Restricting heating systems

Some people with severe electrical sensitivities, or living off the grid, use woodstoves, but most do not tolerate them. The smoke from a low-quality wood stove can bother sensitive people even more than ½ mile (750 m) away.

As there are non-electric propane alternatives available, that can work quite well, consider banning any type of fireplace, stove or furnace that burns coal, firewood or wood pellets. An alternative is to limit the stoves to models that conform to all official guidelines (EPA guidelines in the USA) and always be maintained to that standard.

Restricting use of yard care products

Unless living in a desert, consider inserting wording restricting what types of lawn care products and practices can be used.

Restricting the use of barbecues

The smoke from a barbecue can be a big nuisance if it uses charcoal or greasy meat is grilled. Surprisingly enough, some people with MCS do use smoky barbecues with the smoke wafting next door.

Where the houses are close to each other (less than 30 yards or so), it is probably best to ban barbecues entirely.

With greater distances, consider restricting barbecues to electric and gas powered (i.e. propane, natural gas or hydrogen) versions.

Keep in mind that electrically sensitive people may need a barbecue for regular cooking, baking and heating of foods. They are not just used for greasy burgers.

Restricting outdoor lighting

Outdoor lighting can be surprisingly bothersome to sensitive people, especially in rural areas where the contrast can be a problem, and it can destroy the nightview. The low quality light, especially bluish light, can physically affect some people. Some types of light can also give off an annoying hum.

The loss of the night sky is a common concern and some areas in the West have ordinances requiring outdoor lighting be directed downwards. Consider specifying that outdoor lights must be directed downwards and the bulb not be visible beyond the property line. Also that any sound must not be audible beyond the property line.

Restricting generators

Generators are an essential part of off-grid living and there can be reasons people on-the-grid have them too.

Generators are generally noisy. Cheap models can be very noisy, while higher quality generators are usually much quieter. The noise from generators is disturbing to many sensitive people, especially if it goes on for an hour or more. A noisy generator can be a nuisance more than a mile (1.6 km) away on a calm day in an open and quiet area.

In rural areas, and areas prone to hurricanes, some homeowners have a backup generator for emergency use. In one neighbor conflict, one neighbor liked to run the backup generator regularly to assure herself it was okay and to really exercise it – often for more than an hour at a time.

A covenant for on-grid areas could specify that a generator can only be exercised for ten minutes once a month unless there is a power outage. If the houses are closer than 200 yards, consider requiring the generator to be a low-noise model, such as according to the guidelines of the U. S. National Park Service (max 60 dBA at 50 ft/16 m).

Generators are often needed during construction. The covenant should allow for that.

A generator is a necessity for anyone living in an off-grid area. Most people use a generator to run some appliances now and then (such as a washing machine and a well pump) and during cloudy periods to charge the batteries. Such a household may run it for an hour or two once or twice a week. Some people have such large solar/wind systems that the generator is used only during winter storms.

There are unfortunately a few off-grid people who choose to use their generator as their main or sole source of electricity and run it for many hours each day. Such neighbors can be a great nuisance. Consider requiring all generators to be low-noise models (i.e. adhering to U. S. National Park Service guidelines). Also restrict their use to daytime (such as 8 am to 6 pm) and maximum two or three hours in a day, unless an emergency.

Solar and wind energy systems

Modern solar electric systems almost all use inverters, MPPT optimizers and PWM charge controllers. These devices generate high-frequency pulses, which turn the wires and solar panels into radiating antennas. This is a problem for some sensitive people who need to live at least 100 yards (meters) from such a solar system. The radiation also interferes with short wave radio reception (see the April 2016 issue of *QST* magazine).

It is possible to have a radiation-free solar system by using inverter-less DC electricity. Such systems are used by people with severe EHS. DC solar systems have several limitations compared to conventional AC solar systems. See www.eiwellspring.org/offgrid.html

Solar water heaters should not be a problem for the neighbors.

Wind power generators should probably not be allowed at all. They have similar problems with high-frequency dirty electricity as solar electric systems, and cannot be modified to create clean DC electricity (they make dirty DC). Worse is the noise they generate, especially the small residential size models.

Notifications

Consider inserting a clause about notifying the neighbors when some toxic activity will happen, such as

- painting the house
- sealing or paving the driveway
- pesticing the yard (if allowed)

Legal Help

This article is not written by someone with legal expertise. It is best to get help from an attorney specializing in real estate. An attorney will know the local laws and can better craft a legally solid document.

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