

HASKINS SETTLEMENTS AND CONVEYANCING SERVICES CHECK FOR PROPERTY RESTRICTIONS

In order to market and sell a property you must read and understand the searches you order.

Surveys such as Plans and Strata Plans now contain a lot of information including notifications such as:

- Details of Easements – detailing the Easement area, the Lot encumbered and the Lot benefited
- Restriction on use – Details the Restrictive Covenant document which must be searched and read to identify the restriction
- Restriction of access – if a land development abuts a major road but is accessible by internal streets, the LGA may lodge a restrictive covenant that restricts the owners of the Lots having direct access to and from the major road
- Age Restrictions – recorded on Strata Plans as a Notification document
- Occupancy restrictions – usually on Strata Plans and limits the occupancy to e.g. permanent residential use only
- Management Statements - contain bylaws and may contain details of future development on the Strata Plan

In a sale of a vacant block of land in Joondalup we discovered that the use was restricted to a Fire Station. The Buyer and Agent were a little surprised when this was brought to their attention and yet the Covenant was registered on the Title for all to see. The Covenant had to be modified resulting in settlement being delayed six months.

In the City of Perth there are a number of developments which are restricted to "permanent residential use only" i.e. short term accommodation use is prohibited. This restriction is noted on the Strata Plan. Penalties for breach are \$50,000.00 plus \$25,000 per day for a corporation or \$5,000 per day for an individual.

The Strata Titles Act Section 6A permits restrictions to be placed on Strata Lots by limiting occupancy to retired persons or persons over a certain age. A retired person is a person who has attained the age of 55 years or a person who has retired from full time employment. So a 28 year old who won Lotto and has retired from full time employment would satisfy the definition of a retired person!!!

Age restrictions only apply to the occupier of the property i.e. it would appear that a person under 55 can buy a property with an age restriction however they cannot occupy the property until they attain the age referred to in the restriction. Likewise a person who is over the age of 55 with a spouse who is younger can both buy and occupy a property with this restriction.

In short make sure you order all the necessary searches and read them and if you don't understand the searches ask someone who does. No one likes surprises least of all your clients, your boss or heaven forbid your professional indemnity insurer.

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