

Covenants

Enforceable promises related to an owners' use or enjoyment

Affirmative: puts an affirmative obligation on owner to do something on the land

Restrictive: Restricts an owner's use or development of the land

Creation:

- 1) Incorporated into each deed
- 2) Master Deed
- 3) Mutual covenants in 1st grantee's deed

For Benefit to Run:

- 1) Intent to Run
- 2) Touch & Concern the Land
- 3) Vertical Privity

For Burden to Run:

- 1) Intent to run
- 2) Touch & Concern the Land
- 3) Vertical Privity
- 4) Horizontal Privity
- 5) Notice of Covenants

Vertical Privity =
succession of title

Horizontal Privity =

- 1) Landlord/Tenant relationship
- 2) Simultaneous Interest Test
- 3) Creation of covenant with conveyance of an interest in the burdened land

An adverse possessor will take free of all benefits and burdens of any covenants

The burdens of covenant must be clearly and explicitly stated; they will not be extended by implication

Terminating Covenants:

- 1) by express terms of the deed
- 2) by release (SoF)
- 3) by unity of title
- 4) benefit/burden didn't run w/land
- 5) Laches/prescription (SoL has run)
- 6) Estoppel
- 7) Abandonment
- 8) Original purpose not furthered
 - no substantial benefit
 - changed conditions
 - no mutuality w/in UBP
- 9) Public policy veto
- 10) Eminent Domain/Gov't action
- 11) "Unclean Hands"

Remedies for Breach:

- Damages –
 - nominal,
 - actual,
 - punitive
- Injunctive relief
- Specific performance