

## Know rules before you buy

- Deborah K. Rich

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If you plan to purchase a new home in California, you will probably have to consider whether you can abide by a given set of covenants, conditions and restrictions. Approximately 80 percent of new homes planned or under construction in California will be subject to CC&Rs.

To avoid buying into a contractual relationship that you may regret later, demand a copy of a development's CC&Rs early in your home-buying process and allow yourself time to read them. Don't wait until close of escrow.

Ron Kingston of the California Association of Realtors says that although most real estate agents make every effort to get the CC&Rs into the hands of a potential buyer as early as possible, the CC&Rs are a deed restriction that runs with the property, and the onus is on the title company to transfer the CC&Rs, along with title to the property, at close of escrow.

Oliver Burford, executive director of the Executive Council of Homeowners, recommends that in addition to the CC&Rs, prospective home buyers in California read the Davis-Stirling Act of 1985, the state law regulating homeowners associations; that's about 150 pages of non-user-friendly language to absorb before you fall in love with the floor plan. ("Each owner shall be responsible for compliance with the provisions of the Project Documents by his Invitees" means you're responsible for your guests' behavior, for instance.)

If you have pets, be sure to read the pet restrictions before moving day -- especially if your pets are unusual, large or beloved by you or your children. You are sure to be in the doghouse if you have to leave a family member behind. All CC&Rs will have something to say about pets, but specifics vary depending on the homeowners association's past encounters with problem pets (and remember, your neighbor's problem is your problem).

Know that CC&Rs cannot violate existing laws barring housing discrimination based on race, color, religion, sex, familial status, marital status, disability, national origin or ancestry.

Robert S. Niemann, a real estate attorney in the San Francisco office of Seyforth Shaw, says that before he would buy a home in an association he would do three things: speak to someone who has been on the board of directors for more than one year, preferably the president; talk to current homeowners about crime, safety and how happy they are with the association's management; finally, ask for and read the minutes of a year's worth of board meetings -- be on the lookout for discussions of problem residents, litigation over construction defects and pending assessments.

"By doing these three things," says Nieman, "a home buyer will find out things that will affect their property from within the development, as well as from without. The board of the development I live in is discussing the noise and dust generated by a quarry near some members' homes. A home buyer can find out things he or she would miss by only reading the CC&Rs."

If you do buy into a development and run afoul of CC&Rs, Brian Perkins, legislative staffer for Sen. Jackie Speier, D-Hillsborough, recommends that, if at all possible, you make amends first, then dispute the violation later.

"Homeowners associations can use the equity in your home to finance their argument against you," he says. "The association has a contractual right to attach a lien on your property for work it authorizes to rectify the perceived obligation."

If you choose to dispute a citation before correcting the problem, the association can not only bill you for costs it incurs in fixing the problem on its own, but it can even bill you for the lawyer fees it accumulates in arguing with you.