

What are subdivision trust indentures?

Subdivision trust indentures are written agreements that restrict or limit property used or activities in a subdivision. Indentures also detail the rules and procedures under which the subdivision will operate. These regulations and restrictions appear in the deed records and are private contracts between a property buyer and a property seller. Indentures are legally binding documents, recognized by the State of Missouri and recorded with the St. Louis County Recorder of Deeds.

Who must abide by subdivision trust indentures?

In unincorporated St. Louis County and most municipalities, indentures are binding upon every property owner in a defined private subdivision operating under an indenture. Additionally, all subsequent or future owners of property in a deed-restricted subdivision are required to abide by the indenture as well.

How are indentures put into place?

Indentures are usually created and activated on a subdivision by the initial developer. The developers are generally referred to as the "First Party," and serve as the initial governors, or trustees, of the subdivision. In most cases, at such time as 50 percent of the total lots in a subdivision have been sold, the First Party shall cause the resignation of one of the original trustees, and a successor trustee is elected by the lot owners. Once 95 percent of the total lots in a subdivision have been sold, the First Party shall cause the resignation of a second original trustee, and the lot owners will elect a successor trustee. After 100 percent of the lots in a subdivision have been sold, the term of the remaining original trustee is expired and all lot owners elect a specified number of trustees to serve staggered terms, thereby ensuring there are always experienced trustees governing an association.

Who is responsible for informing new home buyers of the subdivision trust indentures?

Since subdivision trust indentures are referenced on the title insurance policy, homebuyers should become aware of the indentures at closing. Also, it is common for trustees or a "Welcome Committee" of the subdivision association to educate new homeowners about the indentures after they move in. Associations may wish to contact local realtors and listing agents on "For Sale" properties to ensure that they are aware of the subdivision trust indentures.

Why are use restrictions important for my neighborhood?

Use restrictions are intended to preserve a subdivision's aesthetic appearance by setting standards for property maintenance, rules for construction on new or existing structures, and regulations for allowing or prohibiting certain uses or activities within a property in a subdivision. Before beginning any home improvement projects, it is wise to contact the subdivision trustees and review the subdivision indentures to ensure compliance.

What information should I expect to find in my subdivision trust indentures?

A well-written indenture will typically include the following components:

A preface giving the legal description of the subdivision property, the parties involved, and the purpose and details of all restrictions.

A description of the use restrictions placed on the properties within the subdivision. These restrictions can include limits on the use, type, and size of buildings, fences, swimming pools, or other structures, the quality of construction materials, building setback lines and provisions for architectural control committees, maintenance funds, yearly assessments, boards of trustees, meeting regulations, descriptions of common land, easements, and election information.

Definitions of key terms, specifications for the duration of the indenture and restrictions, their renewal and maintenance, enforcement, provisions for amendments or appeals, and application.

How long do subdivision trust indentures remain in effect?

Most indentures are drafted with perpetual life spans and have clear provisions for renewal. However, the length of time indentures remain in effect can be determined by a variety of factors: first, some indentures stipulate that they are tied into a particular parcel of property. In this sense, the indenture is said to "run with the land." The indenture is said to run with the land because it will always apply to the land, even if the land is sold from one owner to another. Secondly, some indentures specifically detail the timeline for which the restrictions and by-laws are valid. Lastly, if an indenture has not been enforced or maintained for a long duration of time, a judge can deem the indenture invalid due to lack of enforcement.

What can I do to help maintain compliance with the indenture in my subdivision?

The most effective way of maintaining or enforcing indentures is through active participation in the subdivision association. An active group of neighbors will provide an effective voice for proper land use and maintenance. Attending monthly and annual meetings will also keep trustees and residents well informed about current events, policy updates, and legislation that can affect your subdivision. Solid communication between neighbors will allow problems to be worked out more effectively.

How can our association enforce our indentures and deal with violations?

First and foremost, carefully read the indentures to be sure that the issue at hand is actually a violation. Then, speak with the owner of the property in question-this may solve the problem, since it is possible that the property owner did not know that the indenture was violated. If a problem persists, approaching the subdivision trustees is a good next step. The trustees can take the necessary steps to attempt to remedy the situation. They can also decide at which point the assistance of an attorney will be necessary. It is important to note that government authorities do not enforce subdivision trust indentures; indentures are private, contractual agreements between a subdivision association and an individual property owner.

Our subdivision's trust indenture is old and outdated. Is it possible to amend our indentures to make it more effective?

Yes. It is quite common for indentures to be updated or rewritten when they are old or are lacking substance. The ease or difficulty of amending a subdivision's trust indenture depends on the procedures established in the documents themselves. Some indentures allow amendment by a majority of property owners in the restricted subdivision. In other indentures, it may be necessary to obtain the approval of all property owners within the subdivision. A well-written indenture will usually have a clearly defined amendment provision. It is recommended that subdivision associations enlist the assistance of an attorney in creating or updating their indenture. Since indentures are legal documents, attorneys have the necessary expertise to ensure a subdivision association drafts a properly structured and legally sound document.

Can my subdivision join or consolidate with an adjacent subdivision?

Adjoining subdivisions may find it advantageous to consolidate their developments and manage them under one trust indenture. To accomplish this, the subdivisions would need the appropriate vote of the residents from both subdivisions and would likely form a single Board of Trustees. Typically an attorney would draft a new indenture and possibly a new warranty deed (describing a single development, including a general deed for common ground) which would be approved by the residents, executed by the Board of Trustees, and recorded in the office of the Recorder of Deeds in the same manor as any other original indenture or amendment.

Should my subdivision have liability insurance?

In most subdivisions that have common elements such as common ground, private streets, recreational facilities, and other amenities for the use and benefit of the subdivision residents and their guests, the subdivision association is responsible for the proper management of these elements. It is therefore suggested that the Board of Trustees or the subdivision's professional property management company have liability insurance. The policy should provide coverage from accidents and personal injury that may occur in the common elements of the development.