6 Cal. Real Est. § 16:23 (4th ed.)

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Chapter 16. Covenants, Equitable Servitudes, and Other Restrictions
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D. Construction, Interpretation, and Enforceability

§ 16:23. Types of enforceable restrictions—Restrictions against obstructing view

Correlation Table

Reasonable restrictions to protect or limit views are enforceable. One of the most common types of restrictions is a restriction imposed to protect the views or to provide privacy from overlooking structures. In construing such restrictions, the court examines the objective intent of a reasonable person in light of the objectives to be achieved by the restriction in order to determine what would be contemplated by a reasonable person who contracted in reference to the restriction. [1]

Case Example:

A restriction limited the ground floor of buildings to no more than 1200 square feet and limited the buildings to one floor above the ground floor. The court found the restriction was imposed for the purpose of protecting views and approved a multi-floor "split level" structure that in places had more than one level above the ground floor but at no point was higher than nine feet above grade level. [2]

Case Example:

A restriction imposed by a negative easement of light, air and unobstructed view also expressly limited any structure, fence, trees or shrubs on the property to a certain height above sidewalk level. The court held that under the circumstances, a television antenna was a "structure" that obstructed the view in violation of the restriction. [3]

Case Example:

A neighbor sought damages for violation of a restriction limiting the height of a "house on street level" where a multi-level home stair-stepped up a steep hillside. The court held that the provision required that the house stand at street level, and did not mean that the top of the roof must be at street level. Compliance with the restriction was shown by evidence that a dwelling might exceed one story in height provided the top or higher story was on street level or lower. The floor of the upper story was on or below the street level at the point abutting the street and therefore in compliance. [4]

Case Example:

Recorded tract restrictions prohibited any "fence, wall or hedge over six feet in height." The court held that a property owner in the tract had violated the restrictions by allowing a row of trees to grow up to a height which exceeded the restriction and to spread and intertwine so as to constitute a "hedge," rather than merely a row of trees. In the court's

view, the primary purpose of the restriction was to prevent interference with full and free use of property by means of tall growth of shrubs and trees and the term "hedge" must be given a meaning consistent with that purpose. [5]

General restrictions against unreasonable obstructions are enforceable. Restrictions often limit the right of property owners to build improvements, to install landscaping, or add other features to their property which restrict the view of other owners in the tract. Such restrictions are enforceable if they are fair and reasonable in order to protect the enjoyment of property owners within the development. [6] A restriction that merely states "No … structure shall be … erected … upon any lot in such location or in such height as to unreasonably obstruct the view from any other lot …" has been upheld, even where the restriction contained no other reference to an architectural committee or homeowners association to determine what was unreasonably obstructive. [7] In upholding the enforceability of the restriction, the court stated:

> The term 'unreasonably obstruct' is to be applied to this view factor, and it is in this aspect wherein it must be determined whether or not the term is too vague or uncertain to allow the restriction to be enforced. Concededly, the restrictions contain no specific type of standard as to how much obstruction is not to be tolerated, such as a given percentage of the originally available view. The guide is simply not to be unreasonable. The validity of this gauge should depend on whether persons who become involved could be expected to have a general concept of what would be unreasonable and upon whether courts could, and would, undertake to make findings on the point as given cases are brought up for ruling. It is felt that normally conscientious persons of average prudence and intelligence would have such a concept, and numerous decisions exist which indicate that courts will readily deal with the attributes of reasonableness or unreasonableness. In some cases the particular attribute may not be articulated but rather is implied in a contractual document or governing statute. In either circumstance the court carries out the function of determining what is reasonable or unreasonable in light of the matter and the circumstances involved and renders its decision accordingly. [8]

Language of the restriction governs interpretation. The decisions in this context are highly fact-driven, and the particular language used in the written restriction is crucial to the interpretation and enforcement of the provisions.

Case Example:

The restrictions provided that "no building, structure or improvement" could be constructed that exceeded 22 feet in height. Another provision stated that "[n]o hedge, hedgerow, or wall or fence or other structure" shall be constructed in such a location or such a height as to "unreasonably obstruct the view" from another lot. The defendants' home was only 17 feet high, but it blocked plaintiff's unobstructed panoramic view of the city. The issue was whether the reference to "other structure" in the latter paragraph also applied to buildings. The court held that it could interpret the provisions of the document independently and, while they should be construed against the person seeking to enforce the restrictions, they also should be interpreted by examining the document as a whole to determine a fair and just interpretation giving effect to the intention of the parties. The court concluded that the first paragraph referred to buildings, but the word "structure" in the second paragraph, because of the preceding words, referred to improvements other than buildings, and therefore did not prohibit the defendants' home even though it obstructed the view. [9]

Case Example:

The defendants questioned the interpretation of a restrictive covenant (originally drafted as "not to obstruct another homeowner's view") to limit tree height to rooftop levels. The court held that in view of the entire document, the restriction was neither ambiguous nor unreasonable. The court summed up its conclusion as follows:

> The language 'nor shall any tree, shrub or other landscaping be planted or any structures created that may at present or in the future obstruct the view from any other lot,' seems clearly designed to maintain the area above the one-story homes free and clear in order to preserve the view …. [I]t must be construed to subject defendant's property to the restriction against the height of trees which would interfere with a neighbor's view. [A] limitation on the height of trees to roof-top level constitutes a reasonable interpretation of the language used in [the restrictive covenant] …. In view of all the restrictions and conditions contained in the restrictive covenant document, the topography of the tract and the elevation of the lots, and the limitation on structures to single-family dwellings one-story in height, the general plan…reflects a plain intent and purpose to maintain a one-story height for all structures and trees in the tract in order to preserve the view of the individual owner. [10]

Case Example:

The court reviewed a prohibition against erecting structures in the context of a proposal to construct a single-story residential addition to an existing home in an oceanside subdivision community. The CC&Rs permitted only single-story dwellings, except they permitted two-story structures with approval by an Architectural Committee if the dwelling "would not detract from the view of any other lot." The CC&Rs also provided "nor shall any tree, shrub or other landscaping be planted or any structures erected that may at present or in the future obstruct the view from any other lot." The court reviewed the principles of construction in two prior decisions, [11] both of which had construed similar language. The court concluded that the reasonable intent of the drafters in the first restriction was not to completely prohibit dwelling units from being enlarged beyond their original footprints into sideyards and setback areas, but rather to prohibit only *unreasonable* intrusions on the views of other residences in the subdivision.

The court also held that the second provision which prohibited the installation of landscaping or the erection of structures in such a manner as to obstruct the view from any other lot applied to any type of structure, including an addition to an existing single family dwelling, and not solely to landscape type structures. Even though it was not possible for any dwelling to be constructed without obstructing the view from another lot, the court held that the second provision must be construed so as not to permit any such dwelling to "unreasonably" obstruct views from another lot. [12]

Enforcement of view-preservation restrictions under a "balancing of hardships" test. If an owner has constructed an improvement in violation of a height restriction or view preservation restriction, the court may apply a "balancing of hardships" test derived from encroachment cases in determining whether the offending structure must be removed or reduced. [13]

Case Example:

The court of appeal affirmed a trial court's directive that a homeowner must remove part of a structure that violated a height restriction. In doing so, it applied a three-part test, finding (1) the defendant homeowner was not innocent; he was aware of the height restriction and never bothered to measure to determine if the structure under construction was in compliance, i.e., he was at least negligent and not innocent, (2) the adjoining owners who complained about the violation would be "irreparably harmed" by a continuing violation because their unobstructed views were impaired, which impacted the value of their homes, their views and their privacy, and (3) the court on appeal would not overturn the trial court's finding that the cost of correcting the violation (presumably the removal of the portion of the completed home that exceeded the height restriction), was not *grossly* disproportionate to the hardship caused by the continued violation. [14]

Owners association authority to interpret restrictions on obstructions in common interest developments. The delegation of enforcement of restrictions to an association or architectural committee in a common interest development has led some courts to suggest that a different standard of review applies to the association's or committee's interpretation when compared to standard subdivisions or other types of restrictions. Under some authorities, the interpretation of the restrictions by the association normally will be deferred to by the court [15] unless clearly inconsistent with the recorded Declaration [16] or with easements held by individual members in the association's common area, [17] or unless the association's interpretation is arbitrary, i.e., bears no reasonable relationship to the protection, presentation, operation or purpose of the property, [18] or is outside the scope of its authority under the non-ambiguous terms of the Declaration. [19] Under these authorities, disputes over the meaning and enforceability of the restriction are addressed initially at the level of the association, and ambiguities or uncertainties posed by general prohibitions on unreasonable obstructions are decided in the good faith exercise of discretion by the association, not the courts. [20]

Case Example:

In a common interest subdivision, an amendment of the restrictions provided the board of directors of a condominium association with discretion to allow encroachments beyond back patios of lower units. The amendment was upheld as "a reasonable and common sense solution" to a complaint by certain owners that the letter of the original restrictions was being violated, since it would increase, rather than decrease, the owners' use and enjoyment of their units. [21]

Case Example:

A homeowners association Board adopted a rule allowing for the growth of palm trees despite language of the Declaration that prohibited an owner from allowing any tree or hedge to grow above a certain height on the lot. The court held that the regulation was invalid because it conflicted with the unambiguous language of the Declaration, and refused to allow the Board's interpretation that the "intent" of the Declaration was only to prohibit "unreasonable" encroachments on the view by trees. [22]

Rejection of argument for judicial deference to association's interpretation. The argument that the association in a common interest development has the initial authority to interpret the restrictions, and favoring judicial deference to the association's determination on the issues, has been *rejected* by several decisions. [23] These cases limit the judicial deference rule solely to the management decision of how to carry out a maintenance responsibility of the association, and *not* to the interpretation of the ownership interests in common areas or other rights of the owners among themselves under the Declaration. For example, in one case, the court found that the homeowners association exceeded its authority in attempting to impose responsibility for maintenance or repair of a sewer pipe that was found by the court, in carrying out the judicial function of construing the Declaration, to be clearly "common area" located under an affected unit, rather than "exclusive common area" for which the owner could be made responsible under the Declaration. [24]

In another case, the court held that an association's discretion is limited to its decision of *how* to implement its repair and maintenance obligations under the Declaration. If the association does not exercise this responsibility but merely *ignores* the problem rather than taking steps to correct it, the association is not entitled to rely on the principle of deference to its management decisions. Only if the association actually exercised its discretion and made a particularized decision will the court be required to defer to the association's judgment. [25]

Comment:

The scope of the association Board's authority to interpret the restrictions, and the protections afforded to the Board by the business judgment rule if the Board's determination is unreasonable, are discussed in greater detail in the common interest developments chapter. [26]

Footnotes

1 See § 16:17 (rules of construction; evidence).

2 Smith v. North, 244 Cal. App. 2d 245, 248, 53 Cal. Rptr. 94 (4th Dist. 1966) (noting that restrictions would be construed in favor of the free use of land and that in ascertaining the effect of language the court should look to the purpose of the restriction).
See King v. Kugler, 197 Cal. App. 2d 651, 655, 656, 17 Cal. Rptr. 504 (2d Dist. 1961).

3 Petersen v. Friedman, 162 Cal. App. 2d 245, 247, 328 P.2d 264 (1st Dist. 1958).

4 Coppotelli v. Dawson, 269 Cal. App. 2d 731, 732–734, 75 Cal. Rptr. 214 (4th Dist. 1969).

5 Mock v. Shulman, 226 Cal. App. 2d 263, 268–272, 38 Cal. Rptr. 39 (2d Dist. 1964).
See § 17:33 (division fences), § 15:10 (easements for light air or view).

6 Seligman v. Tucker, 6 Cal. App. 3d 691, 693, 86 Cal. Rptr. 187 (2d Dist. 1970).
See What constitutes a "structure" within restrictive covenant, 75 A.L.R.3d 1095.

7 Seligman v. Tucker, 6 Cal. App. 3d 691, 693, 86 Cal. Rptr. 187 (2d Dist. 1970).

8 Seligman v. Tucker, 6 Cal. App. 3d 691, 697, 86 Cal. Rptr. 187 (2d Dist. 1970).

9 White v. Dorfman, 116 Cal. App. 3d 892, 897, 172 Cal. Rptr. 326 (2d Dist. 1981). The recorded restrictions also provided for an architectural committee, but its term had expired and it was no longer operative. The court held that testimony of prior members of the committee regarding their interpretation of the restrictions was not relevant because their prior actions and interpretations could not alter the plain meaning of the words used in the document.

10 Ezer v. Fuchsloch, 99 Cal. App. 3d 849, 862, 160 Cal. Rptr. 486 (2d Dist. 1979).

11 White v. Dorfman, 116 Cal. App. 3d 892, 172 Cal. Rptr. 326 (2d Dist. 1981); Seligman v. Tucker, 6 Cal. App. 3d 691, 86 Cal. Rptr. 187 (2d Dist. 1970).

12 Zabrucky v. McAdams, 129 Cal. App. 4th 618, 28 Cal. Rptr. 3d 592 (2d Dist. 2005). In so holding, the court of appeal found the language of the CC&Rs to be more closely analogous to similar language in Seligman v. Tucker, 6 Cal. App. 3d 691, 86 Cal. Rptr. 187 (2d Dist. 1970), although the *Seligman* CC&Rs actually included the term "unreasonably obstruct" whereas the current case did not. It rejected the claim that the language was more akin to that of the CC&Rs in White v. Dorfman, 116 Cal. App. 3d 892, 172 Cal. Rptr. 326 (2d Dist. 1981), because although the *White* CC&Rs did include the words "unreasonably obstruct," they did not refer to structures along with landscaping.

13 Clear Lake Riviera Community Ass'n v. Cramer, 182 Cal. App. 4th 459, 471–473, 105 Cal. Rptr. 3d 815 (1st Dist. 2010).
See § 17:6 (balancing of hardship test for encroachments).

14 Clear Lake Riviera Community Ass'n v. Cramer, 182 Cal. App. 4th 459, 471–473, 105 Cal. Rptr. 3d 815 (1st Dist. 2010).

15 See § 16:16 (creation; common interest developments), §§ 28:76, 28:191 (architectural and design control); §§ 28:107, 28:220 (enforcement of restrictions).
See Lamden v. La Jolla Shores Clubdominium Homeowners Assn., 21 Cal. 4th 249, 262–267, 87 Cal. Rptr. 2d 237, 980 P.2d 940 (1999).

16 Woodridge Escondido Property Owners Ass'n v. Nielsen, 130 Cal. App. 4th 559, 567, 30 Cal. Rptr. 3d 15 (4th Dist. 2005).

17 Ekstrom v. Marquesa at Monarch Beach Homeowners Ass'n, 168 Cal. App. 4th 1111, 1123–24, 86 Cal. Rptr. 3d 145 (4th Dist. 2008).
See § 28:86 (homeowners' easements in common area).

18 Posey v. Leavitt, 229 Cal. App. 3d 1236, 1246, 280 Cal. Rptr. 568 (4th Dist. 1991).

See § 16:17 (rules of construction; evidence), § 28:107 (enforcement of restrictions).

19 Ekstrom v. Marquesa at Monarch Beach Homeowners Ass'n, 168 Cal. App. 4th 1111, 1123, 86 Cal. Rptr. 3d 145 (4th Dist. 2008).

20 See Harvey v. Landing Homeowners Ass'n, 162 Cal. App. 4th 809, 819, 76 Cal. Rptr. 3d 41 (4th Dist. 2008); Rancho Santa Fe Ass'n v. Dolan-King, 115 Cal. App. 4th 28, 37–38, 8 Cal. Rptr. 3d 614 (4th Dist. 2004).

See § 28:82 (restrictions on construction of improvements in the common areas by the homeowners association).

21 Haley v. Casa Del Rey Homeowners Ass'n, 153 Cal. App. 4th 863, 875–876, 63 Cal. Rptr. 3d 514 (4th Dist. 2007).

22 Ekstrom v. Marquesa at Monarch Beach Homeowners Ass'n, 168 Cal. App. 4th 1111, 1123–1124, 86 Cal. Rptr. 3d 145 (4th Dist. 2008).

23 Dover Village Assn. v. Jennison, 191 Cal. App. 4th 123, 130, 119 Cal. Rptr. 3d 175 (4th Dist. 2010); Affan v. Portofino Cove Homeowners Ass'n, 189 Cal. App. 4th 930, 942–944, 117 Cal. Rptr. 3d 481 (4th Dist. 2010). See Lamden v. La Jolla Shores Clubdominium Homeowners Assn., 21 Cal. 4th 249, 257–258, 265–266, 87 Cal. Rptr. 2d 237, 980 P.2d 940 (1999).

24 Dover Village Assn. v. Jennison, 191 Cal. App. 4th 123, 130, 119 Cal. Rptr. 3d 175 (4th Dist. 2010).

25 Affan v. Portofino Cove Homeowners Ass'n, 189 Cal. App. 4th 930, 942–944, 117 Cal. Rptr. 3d 481 (4th Dist. 2010).

26 See §§ 28:107 to 28:114, 28:220 to 28:227 (common interest developments; enforcement of restrictions).

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