

Title Chat

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Why Title Insurance? – continued

But Doesn't Every Lot in a Subdivision Have the Same Restrictions?

Not necessarily!

Sometimes, when we try to save some money or shortcut an existing proven practice, we are successful and sometimes we are not, as appears to be the case that this “*Chat*” is about.

In a case decided by the Supreme Court of Virginia on September 12, 2003, the owners of a lot (say Lot 1) in a small exclusive subdivision created in the 1920's by a former governor of the State, purchased a small adjacent lot (say it is Lot 2). They did not have title to lot 2 examined and therefore did not have knowledge that the developer/governor had placed restrictions in his original deed of this parcel which provided that Lot 2 was to be used in conjunction with Lot 1 and “no house, garage or structure of any kind shall be erected thereon.” The deed restrictions contained in all other deeds from the developer, including the one to Lot 1, provided, among other things, that only single-family residences could be constructed on the lot being conveyed.

When the owners commenced construction of a residential structure on Lot 2 they were met with resistance from other owners in the subdivision, which resulted in litigation that ultimately went to the Supreme Court of Virginia.

The Supreme Court agreed with the appellate court's holding that the owners could not build a residential structure on Lot 2 because of the restriction.

Maybe the owners were trying to save some money by not having title to Lot 2 examined or insured because they thought it would be the same as that of Lot 1. They certainly spent a lot of money taking the litigation to the Supreme Court of Virginia. If they had purchased title insurance they would have received knowledge of the restriction and could have avoided what happened. If you would like to read the decision in the litigation, which is entitled *Barner v. Chappell*, it can be found in *Lexis at 2003 Va. Lexis 76*.

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