



G R C + C

Restrictive
Covenants and
C Investments 2,
LLC v. Ager et al.

Agenda

- The NC Marketable Title Act and Exemptions
- C Investments 2, LLC v. Ager et al., 2022-NCSC-119
- Association and Developer Responses
- Other Restriction Questions – short term rental use, etc.



The Marketable Title Act (NCGS Chapter 47B)

§ 47B-2. Marketable record title to estate in real property; 30-year unbroken chain of title of record; effect of marketable title.

- (a) Any person having the legal capacity to own real property in this State, who, alone or together with his predecessors in title, shall have been vested with any estate in real property of record for 30 years or more, shall have a marketable record title to such estate in real property.
- (c) Subject to the matters stated in G.S. 47B-3, such marketable record title shall be free and clear of all rights, estates, interests, claims or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to such 30-year period. All such rights, estates, interests, claims or charges, however denominated, whether such rights, estates, interests, claims or charges are or appear to be held or asserted by a person sui juris or under a disability, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void.

§ 47B-3. Exceptions.

As originally written in 1973, the Act provided 13 exceptions to the applicability of the Act, including such items as:

- Easements
- Deeds of Trusts or liens that remain enforceable
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The 13th Exemption was for “[c]ovenants applicable to a general or uniform scheme of development which restricts the property to residential use only, provided said covenants are otherwise enforceable....”

C INVESTMENTS V. AUGER ET AL,

2022-NCSC-119
(herein referenced as "C Investments")

C Investments

The property at issue - 7 lots in a historical residential subdivision in Charlotte, with each lot subjected to 1950's restrictions, including one limiting the property to residential use. Title to the 7 Lots of C Investments was devoid of any reference to the restrictions for over 30 years.

In 2018, C Investments filed a lawsuit against the owner lot owners seeking a declaration that the restrictions were null and void under the Act. Lower court granted the declaratory judgment for C Investments

On appeal, the owners claimed the remaining restrictions were enforceable under the general or uniform scheme of development section of the exemption, but C Investments prevailed.

The Court of Appeals found the Act clearly limited the exception to residential use – not any provision related to residential use.

The Supreme Court **affirmed**, holding

(1) the court of appeals correctly held that all but one of the restrictive covenants, as applied to Plaintiffs' property, were to be extinguished under the Act; and

(2) a plain reading of section 47B-3(13) exempts from extinguishment only those covenants that actually require that a property be used residentially within the confines of a general or uniform scheme of development.

DOOR STILL OPEN? Chief Justice Newby dissented from the majority's opinion and would have held that the Act's language was broad enough to preserve all the restrictive covenants at issue in the case

Navigating the Act post C Investments

In 2022, the NC legislature responded added a 14th exemption to the Act including the entirety of the provisions of any declaration of covenants for any condominium developed under the NC Condominium Act, any cooperative under NC law and any residential planned community created under the Planned Community Act (but if created prior to 1/1/1999 only if governed by an Association in effect as of 7/1/2022).

C Investments still means that some older restrictions may be void, or voidable, based on the individual situation. This creates a wild west of development in communities across the state. An open window was provided to the housing industry, and a giant hole was punched in protections which were in place for decades.

Local example: 550 Lakeshore Drive – Lake View Park - subdivision restriction

Impact



This has created opportunities and consternation on the part of owners and industry leaders. Can the owner build a duplex or townhome development on that lot - apartments?

It now takes more effort than ever to know the answer.

VERY IMPORTANT - let your attorney know if you and/or your client(s) are planning to subdivide, demolish, adding new structures, etc. so that research can be done and clients are properly informed.

Other Restriction Matters / Q&A

“Residential use only” restriction and restriction stating no “business or commercial activities”
vs.
Short-term rental use





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Thank you

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