

ENFORCEMENT OF RESTRICTIVE COVENANTS FOLLOWING THE *TARR V. TIMBERWOOD PARK* DECISION

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GOALS

- Restrictive Covenants Generally
- Short-Term Rental Split Amongst the Courts of Appeal
- Supreme Court's Opinion: Tarr v. Timberwood
- Enforcement of Restrictive Covenants
- Injunctive Relief

RESTRICTIVE COVENANTS GENERALLY

- Negative covenant that limits permissible uses of land
- If unambiguous, then treated like a contract
- Courts will try to give effect to objective intent

SHORT-TERM LEASING



SHORT-TERM LEASING

- Simplicity
- Convenience
- But...
- Unsupervised Arrivals
- Increased noise, trash, and traffic
- Disregard for deed restrictions

TPC 202.003(a) v. FREE USE OF LAND

- Tex. Prop. Code 202.003(a)
 - A restrictive covenant shall be liberally construed to give effect to its purposes and intent.
- Free Use of Land
 - When a restrictive covenant is ambiguous, a court should resolve all doubts in favor of the free and unrestricted use of the property, strictly construing any ambiguity against the party seeking to enforce the restriction.

THE SPLIT AMONGST THE COURTS OF APPEAL

- **San Antonio**
 - *Munson v. Milton*, 948 S.W.2d 813 (Tex. App.—San Antonio 1997, pet. denied)
- **Austin**
 - *Zgabay v. NBRC Property Owners Association*, No. 03-14-00660-CV, 2015 Tex. App. LEXIS 9100 (Tex. App.—Austin Aug. 28, 2015, pet. denied)
- **Fort Worth**
 - *Garrett v. Sympson*, 523 S.W.3d 862 (Tex. App.—Fort Worth 2017, pet. denied)

SAN ANTONIO

- *Munson v. Milton*, 948 S.W.2d 813 (Tex.App.—San Antonio 1997, pet. denied)
 - Restriction provided that “[a]ll tracts with the [] subdivision shall be used solely for residential, camping or picnicking purposes and shall never be used for business purposes. Motel, tourist courts, and trailer parks shall be deemed to be a business use.”
 - Court finds business use based on:
 - definition of residence requiring “...both a physical presence and an intention to remain”;
 - Texas Tax Code definition of hotel for hotel occupancy tax purposes; and
 - Texas Property Code distinction between permanent residence and transient housing.

AUSTIN

- Zgabay v. NBRC Prop. Owners Ass'n. No. 03-14-00660-CV, 2015 LEXIS 9100 (Tex.App.—Austin August 28, 2015, pet. denied)
 - The deed restrictions provide that properties are only to be used “...for single family residential purposes.”
 - Third court indicated Section 202.003(a) of the Texas Property Code only applies if the restriction is unambiguous.
 - Court found family residential purpose ambiguous and used common law “free use of land” theory and the least restrictive use of the property would allow for leases of less than 30 days.

FORT WORTH

- *Garrett v. Sympson*, 523 S.W.3d 862 (Tex.App.—Fort Worth 2017, pet. filed)
 - Restriction requires all residences to be used for “single family residence purposes.”
 - TPC 202.003(a) v. Free Use of Land
 - As long as tenants are doing “residential-like things” the property is being used for residential purposes.

SUPREME COURT – TARR V. TIMBERWOOD

- Tarr v. Timberwood Park Owners Ass'n, NO. 16-1001, 2018 Tex. LEXIS 442 (May 25, 2018)
 - Background
 - Common Law v. Texas Property Code
 - Free Use of Land
 - TPC 202.003(a)

PRACTICAL IMPLICATIONS

- Practical Implications
 - What does TPC 202.003(a) mean anymore?
 - Policies v. Amendments to the Declaration

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