

Frequently Asked Questions About CC&Rs and View Protection

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Property Owners and CC&Rs

What are CC&Rs? The developers of the Marquez Knolls area recorded “Conditions, Covenants, and Restrictions” (CC&Rs) for most of these properties. In addition to many other restrictions, such as lot and building size, setback requirements, keeping of animals, etc. the CC&Rs include restrictions to protect views.

Generally, these CC&Rs state that no trees, shrubs or other landscaping may obstruct the view from any other lot, nor shall any structure be erected (including -- but not limited to -- decks, replacement houses, additions to existing houses, etc.) that may obstruct the view from any other lot. Generally, CC&Rs also prohibit the construction of two story houses or second story additions that will detract from the view of any other lot.

Why should I care about CC&Rs? CC&Rs place limits on the use of property. When you purchased your property, you received title subject to recorded CC&Rs applicable to your property. If you have any questions about your legal obligations, you should consult an experienced real estate attorney.

Do all properties have CC&Rs? Not every tract in Marquez Knolls has CC&Rs. All lots that have CC&Rs are subject to them. Where CC&Rs do exist, they are the same for all lots within that tract. Some tracts include view protection only for structures; some also include vegetation.

Where do I find CC&Rs?

One way to determine whether CC&Rs are applicable for your property is to review the title insurance documents you received when you bought your property. They will describe any applicable CC&Rs. You can also consult your real estate agent, real estate attorney, your title insurance company, or the county recorder. Many CC&Rs for you or your neighbors’ properties in Marquez Knolls are listed on the MKPOA website at www.MarquezKnolls.com.

What if my broker did not disclose that CC&Rs were applicable to my property? You are bound by any CC&Rs applicable to your property even if your broker did not disclose them.

If I "thin" my trees, will I be in compliance with CC&Rs? The basic question is whether your trees obstruct views from other properties. If after thinning your trees, they still obstruct the views from other properties, you are not in compliance. Simply thinning trees may not be sufficient to resolve a view obstruction.

I would like to build an addition to my house Is this possible? It depends. If your proposed addition will detract from or obstruct the view from any other lot it may be a violation of applicable CC&Rs.

How can I avoid CC&R problems with my neighbors? Keep trees trimmed so they don't obstruct the views from any other properties. Generally, trees shouldn't be higher than your roof. Before starting any construction, you should check with your neighbors and address any potential view obstruction problems.

Have the CC&Rs expired? . The CC&Rs have not expired. CC&Rs were created for the benefit of property owners and continue to be applicable. When the homes subject to CC&Rs in Marquez Knolls were built, Architectural Committees were established to approve (or not approve) building plans as part of a review procedure to ensure compliance with applicable CC&Rs. The terms of these Committees have now expired. The expiration of the terms of the Architectural Committees means that the responsibility for enforcement of CC&Rs has shifted from the Committees to property owners through the courts.

The Courts and CC&Rs

Who can enforce CC&Rs? Ultimately, enforcement of the CC&Rs is with the courts; property owners can initiate court proceedings. However, neighborly compliance is preferable over the expense of court ordered compliance.

What should I do if I have questions on legal issues related to CC&Rs? You should retain an experienced real estate attorney.

Have there been any court cases on Marquez Knolls CC&Rs? Yes, several.

(Note: MKPOA is not aware of cases other than those listed below; if you are, we would be grateful to hear from you. Please call the MKPOA hot line at (310) 454-7678 or e-mail to Info@MarquezKnolls.com.)

APPELLATE COURT CASES:

Additions - Zabucky v. McAdams (2005) 129 Cal. App. 4th 618: In 2005 the enforceability of the CC&R regarding structures was contested in court. This case involved the claimed obstruction of one party's view by another party's addition to an existing house. The trial court ruled that the CC&R use of the term "structures" did not include additions to existing houses. The losing party appealed, and the Appellate Court reversed the trial court, ruling that additions to existing houses are indeed included within the meaning of the CC&R use of the term "structures" and are thus restricted by the CC&Rs from obstructing the view.

"Note: Other issues in this case are currently before the appellate court, with a decision expected by June 2008."

Trees - Ezer v. Fuchsloch (1979) 199 Cal. App. 3d 849: In 1979 the enforceability of the CC&R regarding trees was contested in court. This case involved the obstruction of one party's view by another party's trees. The trial court granted a mandatory injunction ordering defendants "to cut down, to the level of the roof of their house, all specified trees and shrubs, and to thereafter keep their trees and shrubs cut so that they did not grow above the rooftop of their house". The losing party appealed this ruling and the Appellate Court affirmed the lower court's ruling.

TRIAL COURT CASES:

(Note: These cases, while not precedent, clearly show that judges have a history of enforcing compliance with the CC&Rs.)

Additions to height or footprint – BC 368 737 (2007): In 2007 a trial court judge issued a preliminary injunction ordering the defendants to cease adding to or extending, in any way, the footprint, height, roof, or structure beyond the currently existing structure.

Additions to height – SC 063 640 (2001): In 2001 a trial judge issued a permanent injunction stipulated in favor of the owners of two properties who claimed that the construction of a second story addition commenced by another property owner would detract from their view. The judge’s order forbade any increase in height of the existing house without first obtaining written approval by the Marquez Knolls Property Owners Association (MKPOA).

Additions to height -- WEC 130 907 (1989): In 1989, after ordering a preliminary injunction, a trial court judge made permanent an injunction stipulating (1) cessation of a partially constructed six foot addition in height to an existing house because the addition detracted from the view from another property, and (2) restoration of the height of the house so as not to exceed the original pre-construction roofline.

Trees – WEC 064 521 (1980): In 1980 a trial court judge issued a permanent injunction stipulated against the owners of three properties, ordering them to prevent trees, shrubs or other landscaping from obstructing the view from another property.

Neighbors and CC&Rs

What is the Role of Neighbors? If you believe that CC&R violations are or will be an issue with a neighbor’s property, politely make the property owner aware of applicable CC&Rs and express your concerns.

In the case of proposed construction, ask to meet with the property owner as soon as possible in order to review building plans and determine whether the proposed structure will negatively impact your view with the objective to reach a mutually agreeable resolution that complies with the CC&Rs. . In case of vegetation, ask that the trees be trimmed. Your neighbor may not even be aware that his trees are obstructing your view. Consider offering to bear a portion of the costs involved.

If your view will be negatively impacted, but your neighbor refuses to address your concerns, you may consider mediation/arbitration or legal action to protect your view.

If you are considering construction or landscaping, it is advisable to confer with your neighbors on any impact your construction or landscaping might have on their view. If you are considering construction (including the addition of chimneys, satellite dishes, and air conditioners), the best method of communicating to neighbors the extent of your proposed structure is by erecting a silhouette with story poles. If you are considering landscaping consider the future cost of pruning and controlling fast growing trees which frequently become view obstructions over time.

LA City Building Permits and CC&Rs

Does the Los Angeles Building and Safety Department consider CC&Rs? The City Attorney of Los Angeles has ruled that CC&Rs are a private matter between property owners and that the City has no enforcement powers or rights. Therefore, the Department of Building and Safety does not consider CC&Rs when requested to issue building permits. There is no notification process to those affected by potential CC&R violations. Many construction projects are required to post public notices at the site and send letters to neighbors regarding the project. However, these notices do not take CC&R restrictions into account. This places the burden of monitoring the permit process on the property owner who must seek information from the builder/owner or from the Department of Building & Safety. Information may be obtained from Building & Safety by calling their hotline at (888) 524-2845.

More information can be obtained at the following web sites:

Map and data for a specified address:

<http://maps.assessor.lacounty.gov/mapping/viewer.asp>

Regulatory profile report for a specified address:

<http://www.permitla.org/parcel/index.html>

Permit activity report for a specified address:

<http://www.permitla.org/ipar/index.cfm>

Case applications for variances, etc.:

<http://cityplanning.lacity.org/>

MKPOA and CC&Rs

What is the Role of MKPOA? The MKPOA has obtained an assignment of the judgment rights and powers relative to CC&Rs from the developers (Declarants) of most properties in Marquez Knolls. This assignment gives MKPOA the right to make "judgments" on these properties as to whether trees, shrubs, etc. obstruct the views from other properties or whether construction, proposed or in process, will obstruct or detract from the view of any other property. By working in a cooperative way with property owners, MKPOA's goal is to motivate them to voluntarily comply with applicable CC&Rs.

What is the MKPOA's overall goal regarding CC&Rs? The MKPOA is not against trees, new construction, or modification but is simply pro CC&Rs.

Can I avoid going to court by using the MKPOA? Cooperation through mediation or negotiation is the preferred method of gaining compliance. Most potential conflicts involving view protection issues are resolved by the affected neighbors without going to court. Ultimately though, property owners might have to resort to the courts to enforce compliance with CC&Rs.