

COMPARABLE SALES AND COVENANTS

Navigating through improper restrictions

BY MICHAEL F. YOSHIBA, ESQ.

While reviewing a preliminary title report and examining the various title exceptions, conditions, covenants and restrictions, I was reminded of a memorable conversation that I had with my dad several years ago about our family, and me growing up in Los Angeles, California. My parents were both born in Hawaii in the 1950s and moved to California for better job opportunities. In the early sixties, Los Angeles was not the sprawling metropolis that it is today. New freeways were being planned, designed and constructed to try to keep the ever-increasing population mobile and moving. New housing developments known as the new “suburbs” were sprouting up away from the central city core.

For a number of years, my parents rented an apartment in the Crenshaw District that was close to family, friends and their jobs on the westside and downtown Los Angeles. In 1962, they decided that it was time to reach for the American Dream by moving our family from our apartment and into a house. They were excited but had no particular plans or preference on location aside from being close to downtown Los Angeles. They would randomly drive to and through Southern California cities and neighborhoods looking at “For Sale” signs and billboards advertising new housing developments. The occasional “stop and gawk” at homes for sale provided them with hope and enthusiasm, but it was often only followed by the disappointment dance after discovering high listing prices or an unsuitable home layout.

One Saturday, they were enticed to stop by a large signboard announcing a new housing development. The advertisement called for potential home buyers to tour their model homes and then select and purchase the perfect house-lot-financing combination. Entering the housing development foyer, they were treated to a decidedly lukewarm reception by the sales agents. After walking through the model home variations and looking at the scaled development display with colorful push pins depicting sold and available lots, they approached the sales agent inquiring about price and financing. The sales pricing and

monthly mortgage payments for the most modest home would stretch the family budget, but the neighborhood appeared to nicely fit their future needs.

Upon inquiring about specific home sites in the development and their availabilities, the responding sales agent’s demeanor turned measurably cold. The sales agent, in no uncertain terms, stated that he could not sell to them nor could my parents buy a home in this development. This was because there was a recorded covenant over the land prohibiting the sale of property to my parents who—though born as U.S. citizens—were of Japanese ancestry. They left without asking to see the restrictive covenant nor did they lodge a complaint or protest. Eventually, they bought a house in another neighborhood of Southern California.

Restrictive Covenants

Right of way agents and attorneys are frequently called upon to review preliminary title reports, litigation guarantees and title reports. As a permanent public record, these restrictive covenants still remain in the original





recorded documents. Although title reports often indirectly reference any and all “illegal” restrictive covenants, they do not provide the actual text from the recorded documents. A careful review of a typical title report will often contain a reference (fictitious for illustration only) as follows:

“Covenants, conditions, restrictions, easements, assessments, liens, changes, terms and provisions in the document recorded January 10, 1945 in Book 99999 as Instrument No. 45-9999999 of Official Records, which provide that a violation thereof shall not defeat or render invalid the lien or first mortgage or deed of trust made in good faith and for value, **but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, condition or restrictions violate Title 42, Section 3604(C), of the United States Codes.**”

Prior to 1964 and the Rumford Fair Housing Act, landowners in California could and would include restrictive covenants prohibiting the sale of property to others for irrational and inappropriate reasons.



Right of Way and Restrictive Covenants

In right of way, we sometimes find these unfortunate restrictive covenants intertwined in the language of the deeds, mortgages and recorded transfers of title. As stated in the fictitious title report clause above, there were inappropriate conditions and restrictions that ultimately affected how some properties were bought and sold in the real estate market, but they are now illegal, unenforceable and cannot be included or will be considered deleted and invalid under law.

Appraisals and Relocation Assistance

If an appraiser identifies a quantifiable market condition or trend that involves the sale of property based on race, color, religion, sex, handicap, familial status or national origin, does the appraiser report on this market condition? Exclusion of the identified market condition in reporting appears to be an error by omission. In theory, the appraiser can be questioned and critiqued for failing to adjust values based upon this market condition. A property owner in a real estate market that is primarily driven by nationality or race may command a premium from persons of similar origin or race because it is closer to familiar speaking persons, restaurants and commercial businesses. An appraiser risks being challenged on opinions if they cite these market conditions, but fail to include that in reporting. A true example of between a rock and a hard place.

Think about when relocation assistance agents interview displacees and inquire about their specific needs and wants. Displacees may ask for a RAP agent for referrals to certain neighborhoods that are primarily a certain religious group, church or race. If the only available listings provided to these displacees are in an area that does not have these requested demographics, the listings may be universally comparable for the purposes of providing replacement housing referrals, but insufficient for those specific religious groups, churches or race. Is this improper or appropriate?

Conclusion

The law is a constantly-evolving vehicle for governing real estate transactions. Sometimes we skip over information in title reports because it is formulaic. We see them too often and we don't make time to research and understand the reasons they are included. If interested, more information and background on how and when California prohibited the above noted “illegal” restrictive covenants can be found using any search engine citing the terms “Rumford Fair Housing Act of 1963” and “Proposition 14 of 1966.” 📌



Michael Yoshida is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.