

# Building covenants: what to be aware of

**J asks what building covenants are and how enforceable they are.**

A building covenant is an agreement between land owners (often between the developer and purchasers) to protect other sections.

They usually prevent land owners from building on their sections in a particular manner.

Often these restrictions will relate to the type of building, how many floors the building can have, alterations to the roof-line, the number of buildings, and where exactly they can be located on the section.

A building covenant should be on the certificate of title for the property.

On the title this will often be referred to as a "land covenant, created by Easement Instrument...".

If you are uncertain as to what your title contains or are worried that there may be restrictions that limit how you use or what you can do on your property, you need to seek legal advice so that these can be explained.

A building covenant applies to the property.

It binds the initial owner of the property, and each subsequent owner, until the covenant is removed from the title by agreement.

If you purchase a property with a building covenant on it and at a later date decide to sell it, the purchaser of the property



will also have to comply with the covenant.

The rights created by building covenants arise from the agreements created between individuals or companies. They can be enforced in court just like any other contract.

If your property is subject to a building covenant, but you still want to proceed with your building plans, you will need the agreement of the owner of the property protected by the covenant.

They do not have to agree, no matter how reasonable your plans may appear.

If your property is protected by a building covenant over a neighbouring piece of land, then you do not have to agree to any requested changes if they breach the covenant (for example, something too high or in the prohibited area on the section).

If they ignore the restrictions you can seek an injunction. An injunction would prevent the construction of any building in breach of the covenant.

If the building has already

been constructed, then a mandatory injunction could be sought. That could order the modification or demolition of a building that has been constructed in breach of the building covenant.

Building covenants are often confused with other types of restrictive covenants that relate to how the property can be used.

Common types of restrictive covenants include restrictions on parking certain vehicles on the property, restrictions on putrid or unsightly rubbish being left on the property and restriction on noise levels after a certain hour of the day.

Those are also enforceable and injunctions can be granted for breaches.

**D asks what happens if his house is not worth what it is insured for? How much will be paid out?**

It depends on the wording of the agreement.

In general, insurance contracts state that they will pay out only to the value of the property damaged/destroyed, even if it is insured for more, but some insurance policies can have an agreed value that is paid out.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have a legal inquiry you would like discussed in this column, email Alan on [aknowsley@raineycollins.co.nz](mailto:aknowsley@raineycollins.co.nz).