

FHV COVENANTS

Among the paperwork you should have received when you closed the purchase of your home in Four Hills Village (FHV) was a document titled "RESERVATIONS, COVENANTS, AND RESTRICTIONS" (or similar). It would have had annotation of installment number or subdivision name to which the document applies. But whether or not you received the document, or even knew of its existence, you are still bound by it.

FHV as a whole is an "addition" to the city of Albuquerque: a tract of land annexed by the City, and given the name Four Hills Village. It was subsequently sold off in pieces over time (50 plus years) for development. Those parcels, called installments, were further subdivided into residential lots. There are 20 (or maybe 21) installments in FHV. Two have subdivision names: The Reserve at Four Hills, and Vista Four Hills. The others are referred to simply by the Installment number: 1 through 19. Installment 15 seems to be missing, and may be the Vista Four Hills subdivision referenced above.

A Covenants document was created by the developer and recorded with the County Clerk for *each* of the 20 installments. While these documents are all similar, most are different in some way from the others; hence there is no such thing as a FHV Covenants document. Each installment must be considered on its own just as if it were a standalone subdivision.

Covenants are essentially restrictions on property use and development that are put in place by the developer when land is subdivided. They apply to all parcels or lots within the subdivision, and run with the land: that is, they are permanent, and cannot be removed or made less restrictive by individual property owners. However, there may be a procedure included in the covenants by which a majority of property owners in a specific installment can legally alter the covenants at some future time.

Covenants are a non-negotiable contract which the buyer of a property implicitly accepts upon closing the purchase of a property. As with any contract, the property owner has a legal duty (obligation) to abide by the covenants, and a legal right to expect other owners in the *same installment* to also abide by them. The owner of any property has the right (legal standing) to sue any other owner within that installment to enforce compliance with the covenants. But only parties to the contract have such a right.

The right to enforce covenants and the ability to enforce are different issues. There is a serious question whether all FHV Covenants can be enforced now. Some have been rendered moot or voided over time by events or social change. Whether or not a covenant requirement can be enforced can only be decided by a judge at trial. An arbitrator might also be able to do that if that less expensive path is available.

Assuming that Covenants are enforceable, a so called Homeowners' Association (HOA) would have to be a party to the covenant contract in order to have legal standing to enforce it. HOAs are creatures of the covenants: i.e., they must be created and empowered by the covenant document to exist as a true HOA. It spells out the HOA's specific legal rights and duties, and how the HOA will function. If a right or duty is not assigned to the HOA in the covenants, then the HOA does not have that right or responsibility. Even though an organization may call itself an HOA, that does not mean that it has the right to enforce covenants. FHV has two Neighborhood Associations that are officially recognized by the City: FHVHA and FHVNA. Neither has covenant enforcement authority.

The information above is based in part on discussions with expert Real Estate Attorneys. It is offered as a general guide to help FHV residents to better understand covenants. It is not intended to provide legal advice. If you have a covenant compliance problem with a neighbor that you cannot resolve through discussion or negotiation, then you should consult a Real Estate Attorney.