



# Property Law 2

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## A Sales Agreement

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**Thank you!**



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**What words are related to selling property?**

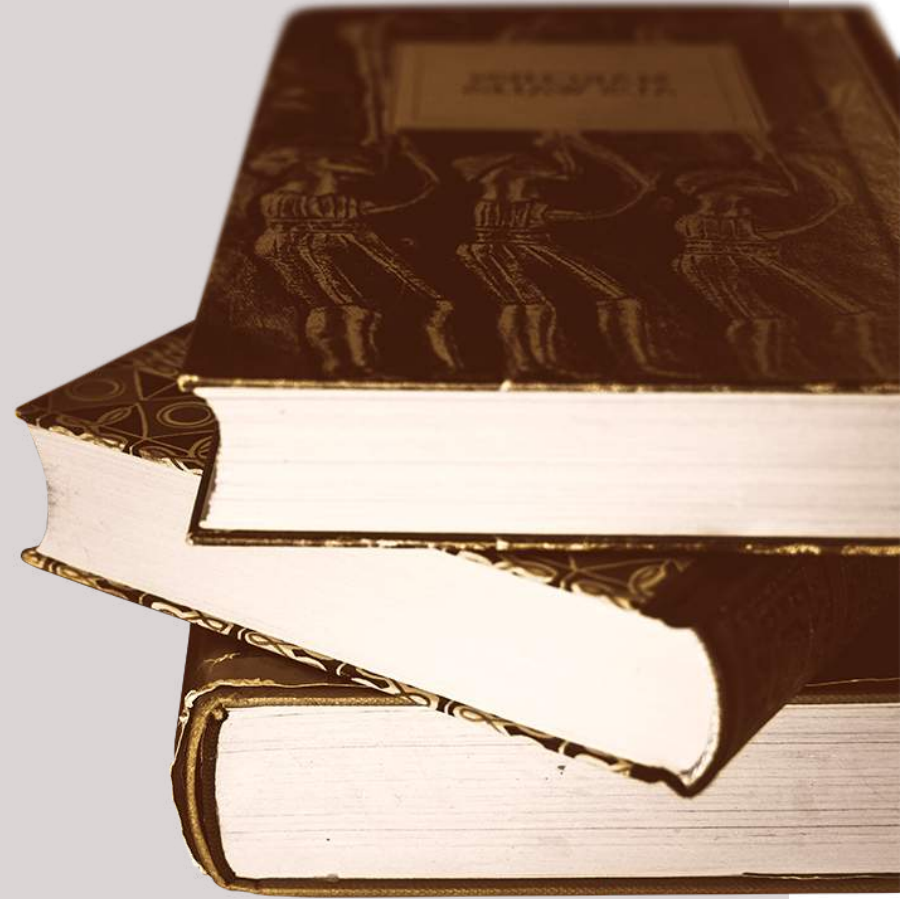
Write your answer here.

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# SALES IN RUSSIA

- Selling Process?
- Difficulties with Sales?



# PROPERTY SALES CONTRACTS: BASIC PROVISIONS

- Identifies buyer and seller
  - Describes property
  - Names price and manner of payment
  - Specifies deposit
  - Details financing  
(e.g. whether buyer will assume existing mortgage)
  - Is written and signed
- 



# TERMS IN A PROPERTY SALES CONTRACT

**Which would you NOT find in a sales contract?**

A clause stating the exact amount of the deposit

A covenant restricting the use of the property

A term specifying how the money due at closing will be paid

A provision allowing the buyer to inspect the property at any time before closing

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# RESTRICTIVE COVENANTS



# RESTRICTIVE COVENANTS: A NEW YORK EXAMPLE

["I]n *Neponsit* [*Neponsit Prop. Owners' Assn. v. Emigrant Indus. Sav. Bank*, 278 N.Y. 248, 15 N.E.2d 793 (1938)] we articulated three conditions ...that must be met in order for a covenant to run with the land:

- (1) it must appear that **grantor** and **grantee** intended that the covenant should run with the land;
- (2) it must appear that the covenant is one **touching** or concerning the land with which it runs; [and]
- (3) it must appear that there is **privity of estate** between the **promisee** or party claiming the benefit of the covenant and the right to enforce it, and the **promisor** or party who rests under the burden of the covenant."



*Wilmot v. Kirik*, N.Y. Slip Op. 51313 (N.Y. Sup. Ct. 2021).

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# RESTRICTIVE COVENANT SCENERIO

Neponsit Realty Company created a residential development and sold tracts of land. Emigrant Industrial Savings Bank eventually bought one through a judicial sale. Every deed in the conveyance chain stated:

*grantee, its heirs, successors, and assigns would pay a maintenance fee for streets and public places to the grantor or the grantors, its successors and assigns, which may include a Property Owners' Association.*

Failure to pay the fee would create a lien on the property. Emigrant did not pay the fee, a lien was placed on the property, and Neponsit sought to foreclose.

**Key Question:** *Does the covenant supporting foreclosure satisfy the three criteria?*

# RESTRICTIVE COVENANT SCENERIO

**Does the covenant supporting foreclosure satisfy the three criteria?**

Yes, the three criteria are satisfied.

No, none of the three criteria are satisfied.

No, there is no privity of estate, although the covenant does touch the land.

No, the covenant does not touch the land, although there is privity of estate.

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*Neponsit P.O. Assn. v. Emigrant Ind. Sav. Bank*, 278 N.Y. 248, 15 N.E.2d 793 (N.Y. 1938).

# AESTHETIC COVENANTS

- Require buyers of property to keep the property looking a certain way, or
- Require permission before the property is altered



# AESTHETIC COVENANT SCENERIO

Cheyenne Homes developed a **subdivision** with restrictive covenants, including:

***C-2 No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure shall have been approved by the architectural control committee.***

Rhue and Family Homes moved in a thirty-year-old Spanish-style house without asking the committee. The subdivision contained only modern ranch and split-level homes, so Cheyenne applied for an **injunction** against Rhue.

**Key Fact:** Cheyenne claimed the purpose of the covenant was to protect the value of the property.

# AESTHETIC COVENANT SCENARIO

**Is the restrictive covenant valid?**

No, people buying property should be entitled to have the house they want.

No, the covenant was too vague.

Yes, because the covenant is clear and has a legitimate purpose in protecting the value of the land.

Yes, because the buyer of the property agreed to this term.

*Rhue v. Cheyenne Homes, Inc.*, 168 Colo. 6, 449 P.2d 361 (Colo. 1969).



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## What was your most memorable word from this session?

Write your answer here.

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*Thank you for your participation!*

Next Session - April 3, 2024

# Civil Procedure Vocabulary (1): A Court Case

