Restatement (Third) of Property (Servitudes) § 6.19 (2000)

Restatement of the Law - Property
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Restatement (Third) of Property: Servitudes
Chapter 6. Common-Interest Communities
Part E. Relationship Between the Developer and the Common-Interest Community

§ 6.19 Developer's Duty to Create an Association and Turn Over Control

(1) The developer of a common-interest-community project has a duty to create an association to manage the common property and enforce the servitudes unless exempted by statute.
(2) After the time reasonably necessary to protect its interests in completing and marketing the project, the developer has a duty to transfer the common property to the association, or the members, and to turn over control of the association to the members other than the developer.
(3) After the developer has relinquished control of the association to the members, the association has the power to terminate without penalty:
(a) any contract or agreement for the provision of management or maintenance services to the association;
(b) any contract or lease between the association and the developer, or an affiliate of the developer;
(c) any lease of recreational or parking facilities; or
(d) any contract or lease that is not bona fide, or was unconscionable to the members other than the developer at the time it was entered into, under the circumstances then prevailing.

Comment:

- *a*. *Rationale.* When a common-interest community is created, a vehicle for managing the common property and servitude regime is generally contemplated because of the difficulties of managing common property as tenants in common. The developer is best positioned to create the association because of its resources and ability to coordinate the declaration, articles of incorporation, and bylaws, and to ensure that all lots or units in the community are included. In providing that the developer has an implied duty to create an association, this section reflects widespread development practice and follows modern common-interest-community statutes.

- The developer and the purchasers of property in a common-interest community have interests in controlling the common property and the association that may come into conflict. The developer's primary interest is in completing and selling the project, while that of the purchasers is in maintaining their property values and establishing the quality of life they expected when buying the property. Both the developer and the purchasers have substantial investment interests that are affected by the amount of assessments, the level of maintenance and capital improvements, and the establishment of reserves for future maintenance and replacement of common property. The developer needs to retain control of the association long enough to avoid

changes that will jeopardize its ability to sell the remainder, while the purchasers need to stabilize assessments and take charge of the rules governing operation of the community. The longer the developer retains control, the greater the likelihood of conflict. Accordingly, modern common-interest-community statutes specify timetables within which the developer must turn over control to the members.

- *b. Time reasonably necessary to protect developer's interests.* In determining when control of a project reasonably must be turned over to the members, the percentage of lots or units that have been sold, the interval since the first unit was sold, and the level of the developer's construction and marketing activities are relevant. The Uniform Common Interest Ownership Act provides a timetable for turnover of control based on these factors. In the absence of a controlling statute, a court may look for guidance to such a timetable in determining when the developer is required to cede control.

- Whether and how long the developer needs to retain control of the association to protect its interests can depend on the extent of the other rights it enjoys by virtue of the governing documents or applicable statutes. If it is protected against interference with its ability to build out and market the project as planned, control of the association may not be necessary, or may be necessary for a shorter period of time, than if those protections are absent.

- In projects with multiple phases that will be developed over a substantial period of time, more flexibility in the required transfer of control may be appropriate. Sold-out phases of the project can be given control over the local aspects of the project without jeopardizing the developer's ability to complete the project in accord with the plan. Subassociations can be used to give local control over budgets for maintenance, design review, and rules for common areas in that part of the project, while allowing the developer to retain control over facilities needed to serve remaining unsold or unbuilt phases and facilities needed for marketing.

- *c. Transfer of common property.* The common property that must be transferred includes all real and personal property intended for the community, including the governing documents of the community, rules and regulations, insurance policies, funds of the association, and the records of the association from its inception. The records of the association include financial records and membership records, records of any architectural-review process, and any other records reasonably necessary to management of the association.

- *d. Power to terminate long-term and unconscionable contracts.* The developer's duty to turn over control can be thwarted if the developer obligates the association to long-term arrangements that effectively deprive the owners of control of the common property. By the same token, the value of the members' investments can be significantly devalued by long-term leases or other arrangements that commit them to pay potentially exorbitant costs for services or facilities. While the association is under the developer's control, the members have little opportunity to protect themselves. Accordingly, modern statutes permit the association to terminate certain contracts that are likely to be critical to the members' enjoyment of their rights after the developer has relinquished control. The greatest abuses have occurred in contracts for maintenance and management services to the association and leases for recreational and parking facilities. This section adopts the rule that the association may treat as voidable contracts for

maintenance and management services, leases for recreational and parking facilities, and leases and contracts to which the developer is a party. The association may also terminate any contract or lease that is unconscionable. Unconscionability is to be determined under the circumstances prevailing at the time the contract was made.

Reporter's Note

- This section is largely patterned after provisions of the Uniform Common Interest Ownership Act.

- *Time reasonably necessary to protect developer's interests, Comment b.*Hill v. Cole, 248 N.J.Super. 677, 591 A.2d 1036 (1991) (under statute providing that when unit owners other than developer own 75% of the units in a condominium, unit owners other than the developer shall be entitled to elect all of the members of the governing board, but notwithstanding the foregoing provision, the developer shall be entitled to elect at least 1 member of the governing board as long as the developer holds 1 or more units for sale in ordinary course, developer is not entitled to cast votes represented by the units it owns for election of board members other than the 1 member it is entitled to elect).

- *Transfer of common property, Comment c.*Dune I, Inc. v. Palms North Owners Ass'n, Inc., 605 So.2d 903 (Fla.Dist.Ct.App.1992) (developer had power to withdraw sewer-treatment facility and land on which it was situated from property to be conveyed to association after county required that condominium projects connect to new public-sewer facilities).

- Sun Valley Iowa Lake Ass'n v. Anderson, 551 N.W.2d 621 (Iowa 1996) (developer's agreement to convey common areas to association no later than the end of its involvement in the project bound successor that purchased developer's remaining lots and common areas; parol evidence, including sales brochures, videotapes, and statements of sales personnel, was admissible to identify the common areas covered by the agreement; successor developer was entitled to use common areas, including right to occupy a portion of clubhouse for sales and development purposes pursuant to declaration).

- Chesus v. Watts, 967 S.W.2d 97 (Mo.Ct.App.1998) (developer liable for breach of contract and fraud for failure to provide common areas, facilities, and amenities promised to purchasers who relied on sales brochure, oral representations of developer, and appearance of model used in sales presentations; developer owed duty to association to turn over common areas that were not substandard and in good repair).

- Knight v. City of Albuquerque, 110 N.M. 265, 794 P.2d 739 (Ct.App.1990) (developer's retention of right to change use of golf course or other open spaces shown on plat would not be given effect where developer used the golf course as a selling tool; permitting the developer to induce purchases by pointing to present or planned existence of a park or golf course while retaining the power to alter the use would be patently unfair and violative of public policy).

Transfer of Design-Control Rights

- B.C.E. Development, Inc. v. Smith, 264 Cal.Rptr. 55 (Cal.Ct.App.1989) held that the developer's successor, which owned no land in the development, had standing to sue to enforce architectural covenants under a provision in the declaration expressly conferring enforcement rights on the developer, its successors or assigns, or the owners of any portion of the realty covered by the declaration. The court noted that this was "not a case in which the developer is shown to have retained unreasonable or imperious control over artistic decisions of homeowners long after having completed the subdivision." In such a case "equity might well decline to enforce such asserted control, especially if it were shown to be contrary to the then desires of the homeowners." The developer's successor had appointed the architectural-control-committee members and no homeowners other than the one against whom enforcement was sought had objected to the developer's role. The court noted that the homeowners had the power to amend the declaration at any time.

Developer May Retain Property Not Intended to Become Common Property and Agreed-on Easements in Common Property

- Alexander v. Fairway Villas, Inc., 719 A.2d 103 (Me.1998) (requirement that developer deed common space to association following sale of 75% of house lots did not prohibit developer from retaining rights to use roads, rights of way, and emergency-access ways depicted or referenced on subdivision plan for future development and for use of the commercial zone; plan clearly contemplated use of roadways for access to commercial zone and gave notice to house-lot purchasers of developer's intention to complete development of commercial zone).

- Commercial Wharf East Condominium Ass'n v. Waterfront Parking Corp., 552 N.E.2d 66 (Mass.1990), appeal after remand, 588 N.E.2d 675 (Mass.1992) (developer's retention of rights to manage parking area and collect parking fees was not invalid where parking lot served other parcels on wharf in addition to condominium and portion of parking was included in condominium only to satisfy zoning requirements; management plan appeared in recorded documents and was not concealed from purchasers; coordinated management of parking was necessary, and declaration protected rights of unit owners to rent spaces at reasonable and competitive rates; rights retained were in nature of easement rather than lease or management contract subject to avoidance by association).

Relinquishment of Control of Board of Directors and Architectural-Control Function

- Smith v. First Savings of Louisiana, FSA, 575 So.2d 1033 (Ala.1991) (successor developer and majority of lot owners were entitled to amend covenant providing that architectural-control committee is composed of Hugh Smith (the original developer) to permit creation of committee comprised of present owners of property in the subdivision; developer forfeited right to serve as architectural-control committee when he divested himself of his remaining proprietary and pecuniary interests in real property located in the subdivision).

- Marshall v. Pyramid Dev. Corp., 855 S.W.2d 403 (Mo.Ct.App.1993) (no appeal taken from trial court's enforcement of provision that developer's Class C membership cease and be converted to

Class A (single family) or Class B (multi-family) when total number of votes in Class C equaled total votes in Classes A and B; board increased from 7 to 9 members, to be elected 3 by Class A, 3 by Class B, and 3 jointly by Class A and Class B; authority of Class C member to appoint architectural review board terminated).

- Beaver Lake Ass'n v. Beaver Lake Corp., 264 N.W.2d 871 (Neb.1978) (property owners were entitled to elect entire board of directors despite bylaw providing that 4 of 7 members should be appointed by developer; bylaw provision was valid ab initio, but became void as against public policy after developer conveyed its remaining unsold lots and other property to its mortgagee in lieu of foreclosure and used its power to control board to further its interests in sale of sewer system to association and other matters in which it had conflict of interest; control by property owners was necessary to permit association to carry out its quasi-municipal functions of operating water and sewage systems, providing security, and caring for common areas).

- *Termination of long-term and unconscionable contracts, Comment d.*The rule stated is adapted from UCIOA § 3-105.

- Ainslie at Century Village Condominium Ass'n, Inc. v. Levy, 626 So.2d 229 (Fla.Dist.Ct.App.1993) (long-term lease of recreational facilities and management agreements entered into by developer and purchasers of units before owners assumed control of association could be canceled by 75% of unit owners after turnover of control even though statute literally covered only leases and contracts made by the association; purpose of the statute was to prevent a developer from entering into long-term operation and management agreements that would prove onerous to unit owners; statute prohibited waiver of any provision of condominium act by unit owner if waiver would adversely affect purpose of the provision; developer's scheme was directly tailored to avoid statutory cancellation rights, but, while clever, could not succeed in vitiating statutory protections created for condominium dwellers. Long-term management contract may deprive association of power to manage common areas in violation of statute providing that association shall manage).

- The Breakers of Fort Walton Beach Condominiums, Inc. v. Atlantic Beach Management, Inc., 552 So.2d 274 (Fla.Dist.Ct.App.1989) (statute permitting association to cancel contracts for operation, maintenance, or management of condominium association or property by vote of owners holding 75% of voting power other than power held by the developer did not require proof that contract is unfair or unreasonable).

- Burleigh House Condominium, Inc. v. Buchwald, 368 So.2d 1316 (Fla.Dist.Ct.App.1979) (99-year lease of community recreational facilities in which developer was lessor contained rent-escalation clause and provided that unit owners pay the taxes, insurance premiums, utility charges, repairs and maintenance on leased premises, and rent, secured by lien on the condominium units; statute of limitations on action for relief from unconscionable terms did not begin until cause of action was recognized in *Avila* in 1977).

- Wash & Dry, Inc. v. Bay Colony Club Condominium, Inc., 368 So.2d 50 (Fla.Dist.Ct.App.1979) (statutes permitting association to cancel contracts for operation of condominium property

entered into before unit owners assumed control applied to contracts for supply, service, and repair of laundry machines).

- Point East One Condominium Corp. v. Point East Developers, Inc., 348 So.2d 32 (Fla.Dist.Ct.App.1977) (99-year recreational lease between developer and developer-controlled association may be invalidated on basis of unconscionability independent of statute).

- Fleeman v. Case, 342 So.2d 815 (Fla.1976) (statute invalidating escalation clauses in condominium recreation leases does not apply to contracts antedating enactment).

- Kaufman v. Shere, 347 So.2d 627 (Fla.Dist.Ct.App.1977) (provision in declaration that, except as otherwise provided in declaration or bylaws, provisions of Condominium Act as presently existing or as it may be amended are incorporated, incorporates 1975 statute invalidating escalation clauses in recreation leases; no escalation permitted after statute's effective date).

- Plaza del Prado Condominium Ass'n v. Del Prado Management Company, 298 So.2d 544 (Fla.Dist.Ct.App.1974) (statute effective Jan. 1, 1972, granting association power to cancel management contracts made by developer-controlled association, could not be applied to contract executed Dec. 28, 1971).

- Dana Point Condominium Ass'n, Inc. v. Keystone Service Co., 141 Ill.App.3d 916, 491 N.E.2d 63 (1986) (association could not set aside as unconscionable unfavorable long-term lease of laundry room entered into by owner of apartment complex prior to condominium conversion where there was no evidence of collusion between former owner and laundry company or of overreaching in bargaining process).

- Wiley v. Berg, 282 Or. 9, 578 P.2d 384 (1978) (unit owners not bound by amendments to ground lease made after subscription and sales agreements were signed but before unit-owner association was formed; since purchasers were third-party beneficiaries of lease, their consent was required for amendment adding minimum price to owners' option to purchase at appraised value).

- Dover Elevator Co. v. Hill Mangum Inv., 766 P.2d 424 (Utah Ct.App.1988) (corporation representing unit owners, even if deemed the unit owners' association, is not liable for debt incurred on elevator maintenance contract entered into by developer before sale of first unit where nothing in contract indicated that unit owners' association was intended to be liable; even if contract had been executed by developer on behalf of the association, the contract would not be binding after termination of developer's control of association without renewal or ratification by majority of votes in association).

Rights to Terminate Under Federal Condominium and Cooperative Conversion Act

- 2 Tudor City Place Assoc. v. 2 Tudor City Tenants Corp., 924 F.2d 1247 (2d Cir.1991), cert. denied 502 U.S. 822 (1991) (post-conversion co-operative tenants association had power under federal Condominium and Cooperative Abuse Relief Act of 1980 to terminate by two-thirds vote lease of parking garage entered into by developer as lessor and an affiliate as lessee and assumed

by tenants in contract for purchase of garage; lease term remaining when tenants gained control of association was more than 50 years and rent was approximately one-half of market value; statute is designed to alleviate developer abuses during conversion process and developer should not be able to avoid its application by changing the form of self-dealing transactions; leases are contracts covered by statute; period of special developer control did not end until unit owners elected independent board of directors; disclosure of the lease terms in the Offering Plan did not deprive tenants of right to terminate under the statute; it is unrealistic to expect prospective homeowners to understand all the financial data revealed in the offering materials; average cooperative buyer is vulnerable to the practices of developers who may bury the hidden costs of self-dealing contracts in lengthy, legally mandated disclosure documents).

- Cromwell Assoc. v. Oliver Cromwell Owners, 941 F.2d 107 (2d Cir.1991) (condominium and cooperative owners' right to terminate self-dealing leases and contracts entered into before control of association is turned over extends to property owned by the condominium or cooperative that is leased to the developer, but is limited to property that is used primarily to serve the unit owners rather than the public; leases for restaurant, pharmacy, and doctors' offices not covered).

- Board of Managers Charles House Condominium v. Infinity Corp., 21 F.3d 528 (2d Cir.1994) (association not entitled to gain control of commercial unit retained by prior owner of apartment complex and then, after conversion was complete, conveyed by prior owner to developer of conversion project; statute was designed to prevent sponsors from binding unit owners to long-term self-dealing leases, not to prevent sponsors from carving out most profitable part of the property for themselves).

- Welco Assoc. v. Gordon, 174 A.D.2d 58, 578 N.Y.S.2d 547 (1992) (Act does not preclude sponsor who previously relinquished control of board from reestablishing control by voting its shares).

- Barnan Assoc. v. 196 Owner's Corp., 797 F.Supp. 302 (S.D.N.Y.1992) (lease entered into before effective date of the act not subject to termination).

- West 14th St. Commercial Corp. v. 5 West 14th Owners, 815 F.2d 188 (2d Cir.1987) (contracts for parking garage and laundry facilities primarily used by unit holders were subject to termination under the act; commercial leases were not subject to termination).

Statutory Note

(All statutory citations are to WESTLAW, as of April 1, 1999)

UCIOA: Section 3-103(d): Subject to (e), the declaration may provide for a period of declarant control of the association. Regardless of the period of control provided in the declaration, and except as provided for master planned communities, the period terminates no later than the earlier of 60 days after conveyance of 75 percent of the units that may be created to unit owners other than a declarant; two years after all declarants have ceased to offer units for sale in ordinary course of business; two years after any right to add new units was last exercised; or the

day the declarant, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association. If the declarant voluntarily surrenders the right to appoint and remove officers and members of the executive board before termination of that period, declarant may require for the duration of the period of declarant control that specified actions of the association or executive board, as described in a recorded instrument executed by declarant, be approved by the declarant before they become effective.
Section 3-103(e) provides for a gradual transition to unit-owner control: at least one member and not less than 25 percent of the board when 25 percent of the units have been conveyed; not less than one-third of the members when 50 percent of the units have been conveyed.
Section 3-103(f): Not later than the termination of declarant control the unit owners shall elect an executive board of at least three members, a majority of whom must be unit owners. The board shall elect the officers and board and officers shall take office upon election.

Florida: Fla. Stat. Ann. § 718.301(1) provides for transfer of control of the association to unit owners beginning when owners other than the developer own 15 percent of the units. Owners other than the developer are entitled to elect a majority of the board three years after 50 percent of the units have been conveyed to purchasers, three months after 90 percent of the units have been conveyed to purchasers, all the units have been completed and none are being offered for sale by the developer in the ordinary course of business, or some units have been conveyed to purchasers and none are being constructed or offered for sale by the developer in ordinary course, or seven years after recordation of the declaration, or in a phased condominium, seven years after recordation of the declaration creating the initial phase, whichever occurs first. The developer is entitled to elect at least one member of the board as long as the developer holds at least five percent of the units in condominium with less than 500 units, or two percent in condominium with more than 500 units, for sale in ordinary course. After the developer relinquishes control, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control or selecting the majority members of the board.
(3) If the developer holds units for sale in the ordinary course, none of the following actions may be taken without approval in writing of the developer: assessment as a unit owner for capital improvements; action that would be detrimental to sales of units by the developer (except that an increase in assessments for common expenses without discrimination against developer is allowed).
(4) When unit owners other than developer elect a majority of the board, the developer shall relinquish control of the association and simultaneously deliver to the association at the developer's expense all property of the unit owners and of the association which is held or controlled by the developer, including the recorded declaration and all amendments thereto, the articles of incorporation, bylaws, minute books and other books and records, house rules and regulations, resignations of officers and board members required to resign, the financial records, and association funds. Records shall be audited by an independent certified public accountant and include financial statements of the association, and source documents from incorporation through the date of turnover. The developer is also required to turn over other documents listed in (4)(e)-(o).

- *Long-Term and Self-Dealing Contracts*

  UCIOA: Section 3-105 permits the association, at any time after the executive board elected by the owners takes office, to terminate without penalty any (i) management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contractor lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, entered into before the executive board elected by the unit owners took office. Termination is effected on not less than 90 days' notice to the other party. The section does not apply to: (i) any lease the termination of which would terminate the common-interest community or reduce its size, unless the real estate subjected to that lease was included in the common-interest community for the purpose of avoiding the right of the association to terminate a lease under this section, or (ii) a proprietary lease.
  The Comment to § 3-105 notes that the temptation on the part of the developer, while in control of the association, to enter into, on behalf of the association, long-term contracts and leases with himself or with an affiliated entity is a common problem in the development of condominium, planned community, and cooperative projects. It points out that in addition to self-dealing contracts or leases, there are also certain contracts and leases "so critical to the operation of the common interest community and to the unit owners' full enjoyment of their rights of ownership that they too should be voidable by the unit owners upon the expiration of any period of declarant control." By limiting the contracts that are voidable, the section does not jeopardize the position of commercial tenants under bona fide leases that are not unconscionable to the unit owners when entered into.

  Federal: Condominium & Cooperative Conversion Protection and Abuse Relief Act, 15 U.S.C.A. § 3607 provides for termination of contracts entered into after Oct. 8, 1980, which provide for operation, maintenance, or management of a condominium or cooperative in a conversion project if the contract was entered into while the association was controlled by the developer and is for a period of more than three years. Section 3609 invalidates any provision for reimbursement without regard to outcome of a developer's attorney fees or money judgments in a suit involving a lease or contract covered by § 3607 or § 3608.

  Florida: Fla. Stat. Ann. § 718.401 regulates the terms of leases of common areas or facilities to the association of a residential condominium. It provides, inter alia, that a lease of recreational facilities or other commonly used facilities entered into before control of the association is turned over to unit owners shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the term after the tenth anniversary at a price then determined by agreement or arbitration, and a right of first refusal for 90 days after receipt of a bona fide offer to purchase the lessor's interest. The option shall be exercised on approval by two-thirds of the units served by the leased property.

  Fla. Stat. Ann. § 718.4015 prohibits inclusion or enforcement of escalation clauses in leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums.

Fla. Stat. Ann. § 718.302(1) provides that any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control by unit owners other than developer, that provides for operation, maintenance, or management of a condominium association or property shall be fair and reasonable, and may be canceled by unit owners other than developer after assumption of control or after owners other than developer own not less than 75 percent of the voting interests in the condominium. Concurrence by owners of 75 percent of the voting interests other than those held by developer is required for termination.

Phasing condominiums is covered by Fla. Stat. Ann. § 718.403.

Illinois: 765 ILCS 605/18.2(d) requires the developer to deliver a detailed accounting setting forth the source and nature of receipts and expenditures in connection with management, maintenance, and operation of the property, copies of all insurance policies, and a list of outstanding loans or advances to the association.

Ohio: Ohio Rev. Code Ann. § 5311.25: neither the owners association nor the unit owners will be subject to any management contract or agreement executed by the developer prior to the assumption of control by the owners association for more than one year subsequent to that assumption of control unless such a contract or agreement is renewed by a vote of the unit owners.

Federal: Condominium and Cooperative Conversion Protection and Abuse Relief Act, 15 U.S.C.A. Ch. 62, § 3607 provides for termination of self-dealing contracts entered into after Oct. 8, 1980, providing for operation, maintenance, or management of a condominium or cooperative association or property serving the unit owners in a conversion project if the contract is for a period of more than three years, is between the unit owners or association and the developer, and was entered into while the association was controlled by the developer. Termination requires a vote of owners of not less than two-thirds of the units other than those owned by the developer and must occur within two years after the earlier of the dates on which the developer's special control (control by means other than regular votes assigned to units owned by the developer) terminates or the developer owns 25 percent or less of the units.
Section 3608 provides for judicial relief from certain unconscionable leases entered into prior to June 4, 1975, while a condominium or cooperative association was controlled by the developer.

Case Citations - by Jurisdiction

M.D.Fla.2011. Com. (a) quot. in ftn. Developer sued condominium unit owners association in state court, alleging that association breached its lease for the use of development's recreational facilities. After association petitioned for Chapter 11 relief and removed the action, the bankruptcy court found that the lease was unconscionable and disallowed claims against the bankruptcy estate deriving from the lease. Reversing, this court held, among other things, that the lease was not procedurally unconscionable; while the lease constituted “an act of self-dealing” in that developer dictated the terms of the lease as both lessor and developer in control of association, and neither association nor individual unit owners had any meaningful choice

regarding the terms of the lease, a developer typically acted on behalf of an association until the units were sold and the association was turned over to the unit owners, because, until the units were sold, there was no one else to act for the association. In re Colony Beach & Tennis Club Ass'n, Inc., 454 B.R. 209, 218.

Idaho, 2012. Cit. but not fol., cit. and quot. in ftn., com. (a) cit. in ftn. Subdivision developer sued subdivision's homeowners association, seeking damages for unpaid rent on a lot upon which developer had constructed storage facilities for the use of individual homeowners in the subdivision. The trial court granted summary judgment for developer on association's counterclaim asserting that the lot was a common area pursuant to the Restatement Third of Property: Servitudes § 6.19. Affirming, this court held that the trial court was not obligated to apply § 6.19, because Idaho's common law doctrine of dedication provided a means by which to resolve the parties' ownership dispute. Asbury Park, LLC v. Greenbriar Estate Homeowners' Ass'n, Inc., 271 P.3d 1194, 1196, 1197, 1200, 1201.

Wis.App.2008. Subsec. (2) cit. in sup. Condominium unit owners in a master-planned community sued developers, alleging, among other things, that a restrictive covenant recorded against their units, which provided that developers' control over the community would end on developers' conveyance of 85% of the maximum number of residential units in the community, was unreasonable, ambiguous, vague, and against public policy. The trial court granted summary judgment for defendants. Affirming, this court held, inter alia, that the 85% trigger was reasonable; if a developer had to relinquish control before fully developing the land, the unit owners could dictate further development, potentially destroying the developer's investment along with the property values in the community. Solowicz v. Forward Geneva Nat., 2009 WI App 9, 316 Wis.2d 211, 763 N.W.2d 828, 840, 841.