

**Form 6: Sample Equitable
Servitude**

Note: This document creates an equitable servitude because the owner of the land unilaterally places restrictions on the land. These restrictions will be binding on anyone who takes the land with notice of the restrictions.

Q: How could you, as attorney for the developer, make sure that any buyer would take with notice of these restrictions?

Q: How could you, as attorney for a buyer of one unit in the first increment of the project, make sure that all other subsequent buyers of units in the first or second increment of the project will be bound by the same restrictions?

Q: Will this provision give all subsequent owners standing to enforce the equitable servitudes?

Note: See Section 4.A for an unusually short sample of the full declarations for a condominium. Virtually all condominium declarations are samples of equitable servitudes.

SAMPLE EQUITABLE SERVITUDE

**PARK ALMADEN
ENABLING DECLARATION
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP**

THIS DECLARATION, made on the date hereinafter set forth, by DAVIDSON, KAVANAGH & BREZZO DEVELOPMENT CO./RALPH THOMPSON PARTNERSHIP, a California general partnership, hereinafter referred to as "Declarant," is made with reference to the following facts:

A. Declarant intends to develop certain real property located in San Jose, California, into a residential condominium complex. The project will be developed in two increments. . . .

B. . . . The first phase will be subject to this Declaration on the date this Declaration is recorded in Santa Clara County, California. Each subsequent phase shall be made subject to the Declaration by the recordation of a Declaration of Annexation that annexes the real property in that phase into the project. Declarant is under no obligation to annex any additional phases.

C. [Omitted]

D. Declarant intends by this document to impose upon the property restrictions under a general plan of improvement for the mutual benefit of all of the owners of condominiums.

NOW, THEREFORE, Declarant hereby declares that Phase I shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the property for the purpose of enhancing and protecting the value and attractiveness of the property, and the project, and every part thereof, in accordance with the plan for the improvements of the property and the division thereof into condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the property or the project. . . .

[Continues for 49 pages]

DRAFTING EXERCISE 4

Drafting an equitable servitude to preserve the rural character of a beautiful valley

Assume that you are lucky enough to own 200 acres of land in a beautiful valley. Your land begins about halfway up the hill and slopes gently down to a stream, which runs through the valley. The central portion of your land has been cleared just enough to give you a spectacular view across a meadow you own, which is filled with wildflowers, is edged by large trees, and slopes gently down to the stream. Your house is at the top part of your land, close to the one road that goes through the area.

On the other side of the highway, 100 acres of land are owned by someone who has lived in the area for years, and likes the rural character of the area, but is financially tempted to subdivide the land if that becomes feasible. Your neighbor's house is situated so that he also benefits tremendously by the view across your land to the stream.

Right now, your neighbor seems interested in making a deal with you that if you will not increase the height of your house, which would block his view of the stream, then he will not subdivide his land. Thus, the rural character of the area would be preserved - at least for a time.

As a lawyer, you realize that conditions may change, so that permanent restrictions (such as easements) would not be appropriate for either you or your neighbor. But you would like to impose some restrictions on both pieces of land so that, for the foreseeable future, the rural

character of the land will be preserved.

Draw up an equitable servitude that will appropriately restrict the height of buildings to be built on your land in the future. If you like, you may also draft an appropriate equitable servitude for your neighbor to place on his land - limiting subdivision and construction of additional buildings.

As you begin your drafting, you may want to check the Pointers for Drafting that follow Drafting Exercise 5.

DRAFTING EXERCISE 5

Drafting an equitable servitude to protect a solar collector

As a firm believer in energy conservation and alternate sources of energy, you are investigating the possibility of installing a solar collector on the roof of your house in the city. Right now, the local specialist has told you that the angle of your roof and the amount of sunlight it receives make it ideal for installation of a solar collector. However, the local specialist has warned you that if your neighbor across the street adds a second story to her house or allows the evergreen trees near the front of her lot to grow to a height of thirty feet or more, this could seriously interfere with the efficiency of your solar collector.

Right now, your neighbor has no intention of changing the use of her property. But since she is a successful, single, young lawyer, you feel that future financial success, or romantic