

## **Information Regarding the Mayfair & Bel-Aire Restrictive Covenants (Land Titles Instruments 4159 HG & 5783 HU)**

This information paper briefly describes, in general terms, what restrictive covenants are and how they work. It also discusses, more specifically, the application of several covenants in the Mayfair and Bel-Aire communities. If you have any questions or concerns about the application of the communities' covenants with respect to a proposed development in either Mayfair or Bel-Aire, please consider contacting the Mayfair Bel-Aire Community Association.

Community association email: [maybel@shaw.ca](mailto:maybel@shaw.ca)

Website: <http://mayfairbelaire.ca/>

### ***History of Mayfair & Bel-Aire communities***

The community of Mayfair is located east of the Glenmore Reservoir, near the site of the Glenmore Dam. Mayfair was annexed to the City of Calgary in 1956 and neighbourhood developed in approximately 1957.

Bel-Aire is located in Calgary's southwest, just east of where the Glenmore Reservoir is drained by the Elbow River. Glenmore Dam is located beside the bank of land where Bel-Aire is situated. This community was annexed to the City of Calgary in 1954. The land on which the community was later built was originally owned by the Graburn family and was developed in three phases from the original Graburn parcel. Substantial development of the first phase commenced in approximately 1960, by developer Sam Hashman (Plan 5815HT) and continued into the 1970's. The second phase occurred in approximately 1982 (Plan 801 0118) with the remaining Graburn homestead being the final and third phase in 2016 (Plan 1610565).

Residents of Mayfair and Bel-Aire have access to numerous recreational activities provided by the proximity to Heritage Park, the Glenmore Reservoir, Calgary Golf and Country Club, and the City's pathway system. Direct access to the Downtown, which is approximately 6 kilometres north, is available via Elbow Drive.

The Mayfair community association was first registered as an Alberta society on November 13, 1958. The two communities of Mayfair and Bel-Aire Estates now jointly collaborate as the "Mayfair Bel-Aire Community Association".



Figure 1 - Portion of City of Calgary Land Use map (33S) - August, 2017

**What is a Restrictive Covenant?**

A restrictive covenant is a contract that has been registered against the title of a property. Restrictive covenants operate as “building schemes” that are outside of and in addition to municipal zoning bylaws. They are created by developers to maintain the value and character of properties located in a specific area. Many inner city neighborhoods, such as the community of Bel-Aire, are subject to restrictive covenants.

A restrictive covenant will set out a list of obligations that every development subject to the restrictive covenant must comply with. These obligations will vary for each restrictive covenant but will generally set out requirements such as the setback from the street, the

exterior wall material or height of the house. These obligations “run with the land” and are binding on any future owner of the property.

### ***Who Can Enforce a Restrictive Covenant?***

Any property with a restrictive covenant registered on its title can enforce it against any other property with the same restrictive covenant. You do not need to be an immediate neighbour or even live on the same street to enforce a restrictive covenant. You simply have to have the same restrictive covenant registered on your title.

A restrictive covenant can only be enforced through the courts. This could be through a Court Order to prevent the construction of a house that would violate the restrictive covenant or even a Court Order requiring the demolition of a structure that does not conform to the restrictive covenant. However, it is advisable to first discuss any issues regarding a restrictive covenant with the "offending" homeowner before proceeding to the courts.

It is the responsibility of those residents seeking to ensure that the restrictive covenant is being followed to enforce it when a proposed development will breach it. It is important that residents monitor and enforce violations because a restrictive covenant can fail and become unenforceable through continued violations and lack of enforcement.

### ***How is a Restrictive Covenant Removed or Altered?***

A restrictive covenant can only be removed or altered with the approval of the courts. As it involves an application to the courts, the process of removing a restrictive covenant can be laborious, expensive and uncertain.

In an application to remove or alter a restrictive covenant, **all** homeowners with the same registered restrictive covenant must be notified of the court application. Generally, if anyone with the same restrictive covenant objects to the removal or alteration the application will fail.

### ***How do I know if my property has a Restrictive Covenant?***

Any restrictive covenants will be registered on the title of your property. You may obtain a copy of any restrictive covenant from the Alberta Land Titles Office.

<https://alta.registries.gov.ab.ca>

If you are considering building a new structure (including a new house or additions to an existing house) you should review any restrictive covenant registered on your title and ensure that the proposed structure complies. As the City of Calgary does not review land use amendments or development applications for compliance with restrictive covenants, it is entirely possible to secure a City planning approval but yet still not be in compliance with a restrictive covenant. It is the responsibility of the homeowner to ensure that any proposed development complies with the applicable restrictive covenant.

### ***The Mayfair Restrictive Covenant (4159 HG)***

The Mayfair restrictive covenant was registered on, effectively, all the lots created in 1957 within the original plan for the Mayfair community (Plan 8375 HF). Its principal restrictions require that:

- a) There be no more than one single family dwelling house with private garage (attached or detached) on any one lot
- b) Minimum building lot coverage requirements
- c) No trade or business or other such use
- d) Minimum front, rear and side property setbacks (multiple standards apply)
- e) Max. 2 foot front yard fence / hedge limitation

### ***The Bel-Aire Restrictive Covenant (5783 HU)***

The Bel-Aire restrictive covenant was registered on, effectively, all the lots created in 1960 within the original phase 1 plan for Bel-Aire community (Plan 5815 HT). Its principal restrictions require that:

- f) There be no more than one single family dwelling house with private garage (attached or detached) on any one lot
- g) Minimum building lot coverage requirements
- h) No trade or business or other such use
- i) Minimum front, rear and side property setbacks (multiple standards apply)
- j) No burning and storage of garbage and refuse unless concealed underground or built into the garage or dwelling house "in such a manner to be readily accessible for collection and disposal"

While the Mayfair Bel-Aire Community Association is not a landowner with "dominant" rights under the Bel-Aire restrictive covenant, it has a role to play whenever the covenant is challenged. The continued application of the covenant is a significant factor in the desirability of the Mayfair and Bel-Aire communities. The community association has, in the past, supported its residents when they have chosen to defend the requirements found within either the Mayfair or Bel-Aire restrictive covenants.

### ***Additional Resources***

The Britannia community is also subject to a restrictive covenant, filed at around the same time as Mayfair and Bel-Aire's. Britannia has created a detailed and historical resource for the residents of their community. Anyone wanting to know more about how a restrictive covenant may apply to their property will benefit from reviewing the published Britannia information. The following is a link to this resource:

[https://calgaryarea.com/content/communities/britannia/documents/britannia\\_caveat.pdf](https://calgaryarea.com/content/communities/britannia/documents/britannia_caveat.pdf)

### ***Case law authority***

1. Anjulin Farms Ltd. v Hashman, ABSC (1970) 10 DLR (3d) 228.
2. Anjulin Farms Ltd. v Hasman, ABCA (1970) 17 DLR (3d) 113.
3. Crump v Kernahan, 1995 ABQB, CanLII 9145.
4. Potts v McCain [2002] ABQB 734.
5. Furano v Montgomery, 2006 ABQB 230.
6. March v Evans and Dawson, 2017 ABQB 200.