REAs 101: The Agreement That Can Override the Lease (and Block Redevelopment)

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Many of the most basic aspects of a commercial retail development, including where customers park, how traffic circulates, and what signage is permitted, governed not by leases or deeds, but by a reciprocal easement agreement, or an "REA." Also sometimes known as a Declaration of Covenants, Conditions, and Restrictions or "CC&R," an REA is a recorded contract that typically grants each property owner certain rights to use portions of neighboring parcels while also imposing obligations designed to ensure the development functions as a cohesive whole.

REAs are often negotiated at the outset of a development and can remain in effect for decades or even in perpetuity. Because they are recorded against the land, they bind not only the original parties but also all future owners and tenants. In this post, we take a closer look at what REAs typically cover, how they can limit landlord and developer flexibility, and why understanding these agreements early is critical when considering redevelopment.

Basic Provisions

REAs are commonly used in multi-owner developments intended to function as a unified whole, such as shopping centers, malls, office parks, and mixed-use developments. They are also used in developments with different uses where owners want to establish certain basic rights and obligations given their proximity and need to coordinate uses and responsibilities among each other, including potential liabilities created by their operations.

REAs address matters such as access, parking, signage, utilities, and stormwater management. They also can allocate maintenance responsibilities and operating costs, helping ensure consistent upkeep across the development. Additionally, REAs often establish basic operational requirements, including mutual insurance

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coverages, construction standards, and indemnities (agreements to compensate for certain losses).

How REAs Constrain Flexibility and Override the Lease

While REAs help shopping centers and other shared commercial projects operate smoothly, they can also significantly limit flexibility. Converting a shopping center with existing tenants typically requires either waiting for leases to expire or negotiating lease buyouts, neither of which is quick nor inexpensive. Beyond the leases themselves, co-tenancy provisions (which tie one tenant's obligations to another tenant's presence), anchor lease requirements, and REAs between co-owners can create significant additional obstacles. Use restrictions, approval rights, and other binding covenants in the REA may control what can be built, how space can be used, and when changes can be made.

Because REAs are typically recorded in the public land records, and their restrictions "run with the land," they remain enforceable over time, even after ownership changes and even when a lease would otherwise allow a particular use or redevelopment plan.

Use restrictions can slow, or even stop, redevelopment before it has a chance to start. Common restrictions include prohibitions on residential or multifamily housing, drive-through restaurants, outparcel development (building on smaller parcels at the edge of a larger development), or "competing" retail uses. Very often there are also certain "prohibited uses" that are deemed undesirable or unsavory, such as pawn shops and tattoo parlors, or parking-intensive uses like movie theaters and skating rinks. These provisions may have been negotiated to protect a tenant mix or satisfy anchor tenant concerns at the time of the original deal. But they often outlast their business purpose and remain in place long after the commercial rationale has faded.

Approval rights can create an additional barrier to redevelopment by requiring **consent from other owners or protected parties** to make changes to the property or the REA. Many REAs also establish an architectural review board or similar committee with authority to

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approve or reject any redevelopment or remodel plans, adding another layer of oversight and potential delay. Securing consent from these various parties can be time-consuming and uncertain, particularly where a party holding approval rights has little incentive to agree. As a practical result, REAs can directly or indirectly dictate what a landlord may lease space for, and **expansions, redevelopment, or adaptive reuse plans** may be delayed or blocked altogether.

Understanding REAs Before You Redevelop

REAs should be reviewed early in any acquisition, leasing strategy, or redevelopment plan. Use restrictions, amendment requirements, and **third party** approval rights can materially affect feasibility, timing, and value. Identifying these constraints upfront and developing a strategy to address outdated or overly restrictive provisions helps owners preserve flexibility, reduce delays, and avoid costly surprises.

If you are evaluating a property, negotiating an REA, or facing redevelopment challenges tied to existing easements or approval rights, we would be glad to help. Please contact the authors or any attorney with FBT Gibbons' **Retail and Shopping Center Finance** team for assistance.

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