



# PARKS & DRAKE

ATTORNEYS AT THE LAKE

June 21, 2023

Forbes Landowners Association  
26506 Gardiner Road  
Edwards, Missouri 65326

*RE: Opinion on Homeowners' Association Authority Regarding "Owners"  
under Declarations and Covenants*

*Matter ID: 0123- 00108, Forbes Landowner's Association,*

Dear Forbes LOA:

I have reviewed the provisions outlined in Article 1, Section 16 of your Declarations and Covenants, which define the term "owners" within your Landowners' Association (LOA). After careful consideration of both your Declarations and Covenants definitions and the caselaw regarding fee simple ownership of properties in Missouri, particularly the decision in *Long v. Smith*, 776 S.W.2d 409, 413 (Mo. Ct. App. 1989), I have prepared the following legal opinion on this matter.

As stated in Article 1, Section 16, "owners" within the context of your LOA refers to individuals or entities holding a fee simple title interest in a Lot, or purchasers of a fee simple interest in a Lot through an installment sales contract. Notably, the provision explicitly specifies that purchasers under a contract for deed or installment contract will only be considered "owners" if their names are reflected as fee simple owners on the recorded deeds of Camden or Benton Counties.

The decision in *Long v. Smith* clarifies the legal distinction between a contract for deed and a mortgage. While these two arrangements serve similar economic functions, such as financing the purchase price of real estate, they have distinct legal consequences. A contract for deed, also known as an installment land sale contract, acts as an alternative to a mortgage or deed of trust. Under a contract for deed, the buyer makes a down payment and agrees to make the remaining payments, with interest, in installments to the seller. Possession of the property is typically transferred to the buyer upon entering into the contract. However, legal title to the property is not conveyed until the buyer fulfills the installment payments, at which point a warranty deed is delivered by the seller. Until this transfer occurs, the buyer holds an equitable interest in the property but not legal title.

Based on the language of your Declarations and Covenants and the principles established in Long v. Smith, it is my opinion that the LOA is within its rights, according to the caselaw of the state of Missouri and the provisions of your By-laws, to only consider those individuals or entities as "owners" whose names are recorded as fee simple owners on the deeds of Camden or Benton Counties. As purchasers under a contract for deed or installment contract have equitable interests rather than legal title until the completion of the payment terms, it is reasonable for the LOA to require such recorded ownership as a criterion for recognition as an "owner" within the association.

It is important to note that this opinion is based on the information provided and the specific provisions of your Declarations and Covenants. If there are additional factors or specific circumstances that may impact the interpretation and application of these provisions, I may need to revisit this analysis.

Should you require any further clarification or assistance in this matter, please do not hesitate to contact me. I am available to discuss any concerns you may have.

Sincerely,

*Danielle R. Drake*

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