

# Use Restrictions Have Expired

**Kennesborough Square Homeowners Association, Inc.**

The covenants restricting the use of land contained in the Declaration for Kennesborough Square Homeowners Association, Inc. expired on July 14, 2006. The covenants that impose an affirmative obligation will continue to run with the land, whereas the covenants that impose restrictions on how an owner can use his or her lot will expire. Given this, the valid restrictions on the use of land that have been lost as a result of the expiration of the covenants would at a minimum include those contained in Article VI "Use Restrictions and Rules" beginning with Section 2 forward. This Section includes restrictions on 1) the use of townhome lots for business purposes; 2) signage allowed on lots; 3) the types and numbers of vehicles that may be parked on the lots; 4) all leasing restrictions on the lot; 5) the keeping of animals and pets on the lot; 6) prohibitions against unsightly and unkempt conditions; 7) use of garbage cans and woodpiles on the lot; 8) subdivision of the townhome lot; 9) the keeping of guns; 10) the installation of solar devices and fences and; 11) the types of window treatments allowed in townhomes, among others. The loss of these restrictions means that the Board no longer has legal authority to enforce these restrictions or any rules or regulations based on them.

In addition, all architectural standards and regulations concerning the improvements and modifications that an owner can make to his or her lot have also expired. This means, for example, that the Board has no power to regulate the modifications that an owner wants to make to the exterior of his or her townhome.

Nevertheless, certain provisions contained within the Declaration are perpetual. This is based on a court case in *Arbor Station Homeowners Services, Inc. v Dorman*. In *Arbor Station*, the Georgia Court of Appeals held that covenants, which do not restrict the use of land do not expire pursuant to the applicable expiration provisions contained in O.C.G.A. § 44-5-60. Obligation to pay assessments is not a provision that restricts the use of land, and therefore, does not expire.

This means that the portion of the Declaration that obligates the members of the Association to pay assessments remains active and property owners are obligated to pay assessments.

The assessments pay for the common expenses of the association which include:

- Landscape maintenance of the entrances and common areas
- General maintenance of entrances and common areas
- Pool maintenance & monitoring
- Common area utilities: pool telephone, electricity, water, sewer and garbage
- Common area insurance
- Management costs
- Legal and accounting
- Common Area Real Estate Taxes