

**FINAL EXAMINATION  
PROPERTY II  
PROFESSOR VAN CLEAVE  
SPRING 2010**

1. You have **two (2)** hours to complete this exam.
2. This is a **closed** book exam. Students may not use any outside materials or confer with each other during the exam.
3. This examination contains **one (1) essay question**. I strongly encourage you to spend 15-20 minutes outlining your answer before writing. I have allotted sufficient time for you to outline, write and review your answers. Read the questions carefully to ensure you address all the issues identified.
4. Please write your response in the blue books provided. Please write *clearly*. Write on *every other line* and *every other page* to permit instructor comments. Be sure to incorporate course materials into your answer.
5. Write your student exam number on your exam envelope. Put your **correct class section and student exam #** at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
6. At the conclusion of the exam, return all test materials, including blue books, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Failure to return all materials will result, among other sanctions, in a failing grade of "F" for the course. **Do not** seal the envelope.

**GOOD LUCK!**

**ESSAY QUESTION (TWO HOURS)**

*Watersedge* is a residential development that was created in the 1970s in Coastal Town. The original developer recorded a declaration that imposed a number of conditions, covenants and restrictions (CC&Rs) on each of the 150 lots. The CC&Rs specified that once all lots were sold by the developer, the Home Owners Association Board (“the Board”), made up of owners in the development would have the power to amend and enforce the CC&Rs. The CC&Rs limited the types of residences permissible in *Watersedge* to detached single-family dwellings. Another restriction is the following:

**7. TEMPORARY STRUCTURES.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot as a residence at any time. Residents who violate this policy shall be subject to a \$20/day fine for every day they maintain such a structure on their property after being asked to remove it.

In 2005 Coastal Town suffered a devastating hurricane that leveled nearly all of the Town’s buildings and all of the homes in *Watersedge*. About 6 months after the hurricane, residents who had left Coastal Town under evacuation orders returned to begin rebuilding. A number of *Watersedge* owners brought mobile homes onto their property so that they would have shelter while they worked on rebuilding their homes. By January of 2009 there were about five (5) mobile homes remaining on lots in *Watersedge* and these were occupied by owners of the lots.

Other *Watersedge* residents have bought and assembled modular homes on their lots. These residents decided not to rebuild on their lots, but to buy the modular home sections and put them together on their property.

Mobile homes are built in factories and delivered and placed on the particular site. By contrast, parts of modular homes are manufactured in sections and the sections are delivered to the site. The sections are then put together at the site. Both mobile homes and modular homes can be less costly alternatives to homes that are built completely on site. In addition, modular homes give buyers a great deal of selection in terms of floor plans as well as materials used to manufacture the homes.

Asha is one of the owners who continue to live in a mobile home on her lot. Asha’s mobile home was installed on cement foundation on her property to provide some protection against future hurricanes. Asha is a single mother with two children and she has been having a hard time getting the money she needs from the insurance company that insured her home or from any state or federal source of assistance. In the meantime, she and her children continue to live on the land in the mobile home.

Another resident of *Watersedge*, Omar, purchased a modular home from a company that specializes in environmentally friendly and energy efficient materials. Omar has been living in his modular home in *Watersedge* since January of 2006.

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By January, 2009 all of the *Watersedge* Home Owners Association Board members had rebuilt their homes and returned to *Watersedge*. The Board notified the owners who were still living in mobile homes that they had 10 days to remove the mobile homes from their property pursuant to CC&R #7. In addition, the Board voted unanimously to **amend** the provision quoted above to add that “modular or pre-manufactured homes” were also prohibited in *Watersedge*. The Board then notified Omar that his modular home violated the CC&Rs and must be removed.

Omar and Asha have not removed their homes from their property. The Board has initiated an action to enforce CC&R #7, inclusive of the amendment.

- (1) **Articulate and evaluate** the arguments and counterarguments about whether the Board can enforce CC&R #7 against Asha and Omar.

The Coastal Town City Council has learned that *Watersedge* and other Home Owners Associations have prohibited mobile and modular homes and is concerned that these types of restrictions will deter residents from returning. Only about one-half of the pre-hurricane residents have returned. One member of the Council has proposed the following ordinance:

In order to protect the “right of return” of Coastal Town residents, no covenant or condition or other land use restriction may prohibit mobile homes or modular homes on property otherwise zoned for single-family dwellings.

- (2) The City Council has asked you to **evaluate** the proposed ordinance to determine whether it would withstand a court challenge.