

PROPERTY PRACTICE QUESTIONS

QUESTION 17

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Topic: Real Property

Sub-topics: Covenants

Type: Essay

Difficulty: Easy

Time: 30 minutes

Mark Anderson owned two lots on Lake Livingston in Huntsville, Texas; lot A and lot B. Lot B had a beautiful view of the lake. Lot A also had a good view of the lake but only if the shrubbery on lot A was cut down below 6 feet. However, when the shrubbery on lot A was cut down to less than 8 feet, lot B received significant wind damage from the strong winds that often hit that part of the country.

One day Mark decided to sell lot A to Kelly Burdette. At the time of the sale, Kelly and Mark entered into the following covenant: "I Kelly Burdette and my heirs and assigns hereby covenant not to ever cut the shrubbery on lot A below 8 feet." Kelly faithfully kept the covenant for as long as she owned the property and never saw the beautiful lake from her house windows.

A few years later, Kelly sold her property to one Neil Foster. The deed to Neil did not mention a word about the covenant. On the second day in his new house, Neil realized that but for the tall shrubbery on his property, he would have a beautiful view of the lake and could watch the sunrise from his own windows. Immediately, Neil got out

some hedge trimmers from his garage and cut down the shrubbery. Neil was very content as now he had the beautiful view of the lake.

However, Neil's happiness did not last long. Aggravated, Mark knocked on his door and informed Neil that by cutting down the shrubbery, Neil broke an enforceable covenant that ran with his land and that if he kept trimming the shrubbery, Mark would sue him in court. Puzzled and unhappy Neil immediately called his attorney to get her advice on the appropriate course of action.

Is the covenant between Kelly and Mark enforceable against Neil? Discuss all pertinent issues.