

# ***El Di, Inc. v. Town of Bethany Beach***



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*“This covenant is made expressly subject to and upon the following conditions: viz; That no intoxicating liquors shall ever be sold on the said lot, that no other than dwelling or cottage shall be erected thereon and but one to each lot, which must be of full size according to the said plan ... a breach of which said conditions, or any of them, shall cause said lot to revert to and become again the property of the grantor, his heirs and assigns; and upon such breach of said conditions or restrictions, the same may be restrained or enjoined in equity by the grantor, his heirs or assigns, or by any co-lot owner in said plan or other party injured by such breach.”*

## ***El Di, Inc. v. Town of Bethany Beach***

- Eli Di purchases Holiday House 1969
- Files for alcohol permit in 1981
- Prior to permit:
  - C-1 section of original 180 acres
  - 29 commercial buildings

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## ***El Di, Inc. v. Town of Bethany Beach***

- Eli Di purchases Holiday House 1969
- Files for alcohol permit in 1981
- Prior to permit:
  - C-1 section of original 180 acres
  - 29 commercial buildings
  - Can buy alcohol outside 180 acres

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## ***El Di, Inc. v. Town of Bethany Beach***

- First, enforceable covenant?
  - What type?
  - Writing?
  - Notice?
  - Horizontal Privity?
  - Vertical Privity?
  - Touch & Concern?

## *El Di, Inc. v. Town of Bethany Beach*

- “A court will not enforce a restrictive covenant where a fundamental change has occurred in the intended character of the neighborhood that renders the benefits underlying imposition of the restriction incapable of enjoyment”
  - This just benefit > burden test?
  - Intent or value?
  - Difference from 3<sup>rd</sup> Restatement T&C Approach?