Prior to the advent of zoning, private landowners utilized deed restrictions to limit the activities and people who would inhabit properties. This was one way, for example, that neighbors could work together to prevent each other from developing other land uses in primarily residential areas. But property owners have also utilized deed restrictions to prevent African Americans, Jews, and women from owning property.

The legality of a racially restrictive covenant on land was tested in the well-known case *Shelley v. Kraemer*, 334 U.S. 1 (1948). In 1911, thirty out of thirty-nine property owners in a St. Louis, Missouri, neighborhood signed a restrictive covenant preventing their properties from being occupied by “any person not of Caucasian race” for a term of fifty years. In 1945, the Shellesys, an African-American family, purchased one of these parcels by warranty deed. Kraemer, the owner of one of restricted properties, sued in a Missouri State court, challenging the purchase. Ultimately, the Missouri Supreme Court ruled that the covenant was legally permissible and legally enforceable.

The Shellesys appealed this decision to the United States Supreme Court and claimed that the restrictive covenant on land was tested in the well-known case *Shelley v. Kraemer*, 334 U.S. 1 (1948). In 1911, thirty out of thirty-nine property owners in a St. Louis, Missouri, neighborhood signed a restrictive covenant preventing their properties from being occupied by “any person not of Caucasian race” for a term of fifty years. In 1945, the Shellesys, an African-American family, purchased one of these parcels by warranty deed. Kraemer, the owner of one of restricted properties, sued in a Missouri State court, challenging the purchase. Ultimately, the Missouri Supreme Court ruled that the covenant was legally permissible and legally enforceable.

The Shellesys appealed this decision to the United States Supreme Court and claimed that the restrictive covenant violated the rights guaranteed under the 14th Amendment to the U.S. Constitution. Kraemer’s attorneys argued that the 14th Amendment did not apply to restrictive covenants because they are contracts between private parties and not a product of state action, as required by the 14th Amendment. The Supreme Court chose to analyze this case more deeply, ultimately ruling that when a party to a private covenant requires a court to become involved to enforce the restriction, the court’s enforcement is, in fact, a state action covered by the 14th Amendment. The high court wrote, “Judicial action in each case bears the clear and unmistakable imprimatur of the State.” The court struck down the covenant.

With the enactment of the Federal Fair Housing Act, Congress made racially restrictive covenants illegal. However,
it took formal actions by state legislatures to ultimately remove these covenants from the chain of title to which they were attached.

The decision issued in *Shelley v. Kraemer* has been limited to covenants with racial context. The primary reason for this limitation is a reluctance from modern courts to consider court enforcement of private covenants as actions of the state. If this precedent was broadly applied, courts would always be able to overturn private contracts that could not have been constitutionally enacted. For example, settlement agreements that limit the parties’ rights to speak would no longer be permissible, nor would inheritance requirements based on marrying within a particular faith.

Rather than overturning the ruling in *Shelley*, some legal scholars have called for its reclassification. Professor Hayward Reynolds has argued that the courts should reclassify racial covenants as a violation of the 13th Amendment because they are badges of slavery.

**FURTHER READING**