# Section C: CREATING AND USING INSTITUTIONAL CONTROLS

In almost all cases, an RC[[1]](#footnote-2) will qualify as an acceptable Institutional Control under Section 376.301(22), F.S. (as renumbered pursuant to Ch. 2016-184, Laws of Florida), and Rules 62-780.680(2) and (3), F.A.C. See [Attachment 3](https://floridadep.gov/waste/waste/documents/attachment-3-sample-declaration-restrictive-covenant) Sample Declaration of Restrictive Covenant, ([Form A](https://floridadep.gov/waste/waste/documents/attachment-3a-form-%E2%80%93-any-section-rc-encumbers-entire-property) and [Form B](https://floridadep.gov/waste/waste/documents/attachment-3b-form-b-%E2%80%93-only-portions-property-grantor-are-be-encumbered)) and [Attachment 5](https://floridadep.gov/waste/waste/documents/attachment-5-ic-checklist): IC Checklist.[[2]](#footnote-3) However, a restrictive covenant is not the only acceptable form of an IC. The FDEP will consider other forms of Institutional Controls so long as they meet the definition of “institutional control” in Section 376.301, F.S., and comply with Rules 62-780.680(2) and (3), F.A.C., which fundamentally require the control to be protective of human health, public safety, and the environment. [Attachment 38](https://floridadep.gov/waste/waste/documents/attachment-38-institutional-controls-quick-reference-table) includes examples of institutional controls other than RCs that could potentially be sufficient for closure under RMO II or III. In some instances, “layering” various ICs may be necessary to ensure the controls are protective of human health, public safety, and the environment.[[3]](#footnote-4)

1. Restrictive covenants and deed restrictions are similar. Some differences lie in when the restriction is imposed and who is permitted to enforce it. In either case, the owner of the property must impose the restriction. A deed restriction is a restriction included in the deed of conveyance created and recorded by the seller of real property to control the use of the property by the buyer and any subsequent owners and may be enforceable by the seller against the buyer and successive owners of the property, depending on the language in the deed restriction. A restrictive covenant is created and recorded by the owner of the property to limit his or her own actions as well as those of subsequent owners of the property and is enforceable by third party beneficiaries named in the covenant (for example, the FDEP). [↑](#footnote-ref-2)
2. Attachment 3 consists of Sample Declaration of Restrictive Covenant Forms A and B. Form A should be used when the entirely owned parcel will be encumbered, and Form B should be used when only a portion of the parcel will be encumbered. [↑](#footnote-ref-3)
3. “Layered” ICs are used if a proposed control, alone, is insufficient to provide the necessary protections, but multiple controls, together may provide the desired level of protection. These controls may include notices that are warnings to the public that a hazard may exist at the property. Examples of such notices include: warning signs posted at a property; legal notices in a newspapers of general circulation; “Deed Notices” that contain information but impose no obligations; and government advisories. [↑](#footnote-ref-4)