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David E. MacEllven

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By DAVID E. MACELLVEN*

COVENANTS HAVE long been used for purposes of controlling the use and occupancy of land. Such controls relate to the purposes of use, such as residential contrasted to commercial or industrial, and also the type, style, materials and location of buildings or other improvements. Covenants relating to occupancy of land frequently had been used to control or restrict classes or races of persons who could occupy land. Such class controls are no longer judicially enforceable, if not totally void.

The widest modern usage of covenants for such control purposes has been in connection with the development and sale of land for residential subdivision purposes. Industrial and commercial developments of land have similarly been controlled through the use of covenants. In turn such commercial and industrial usages have been the subject of preventive controls through the imposition of restrictive covenants on land designed to be devoted solely to residential development.

It should be noted that any land use control through covenants is a matter of private contract. The use of land is also subject to public control by zoning ordinances under the police power. In addition both use and occupancy of land have been the subject of control through the imposition of conditions subsequent involving forfeiture of title upon breach. Neither such zoning regulations nor control through conditions will be discussed here.

For purposes of distinguishment, at least as between covenants and conditions, it should be noted that being matters of private contract, enforcement is solely a private right as contrasted to the "public official" enforcement of zoning regulations under the police power. The main distinction with relation to enforcement as between covenants and conditions is that covenants can be enforced in equity either by an original grantor (subdivision developer) or by lot owners in the tract as between themselves. A condition, however, and the enforcement of a forfeiture or reverter for breach can be enforced only by the grantor.

A covenant, as a matter of general definition, not necessarily related to covenants affecting use or occupancy of land, is said to be "an

* LL.B., University of Michigan; Vice-President and Counsel, Western Title Insurance Co.; Member, New York and California Bars.

agreement duly made to do or not to do a particular act. It is a species of express contract, and is a contract of a special nature."[1]

Historically, covenants have been used in transfers of land and have been the subject of much litigation. Covenants of varying kinds can be used in a single conveyance of a single parcel of land. We are here concerned chiefly, if not only, with the use of covenants for purposes of controlling use and occupancy of multiple parcels of land such as the lots in a tract or subdivision. Within the area of this usage of so-called restrictions or restrictive covenants, the commonly used and understood reference, whether contained in each deed in the tract or a recorded declaration of restrictions, is "Covenants, Conditions and Restrictions." This is further often reduced for brevity to "C.C. & R." This discussion will be limited, as above indicated, to that portion and application of such restrictions as are commonly referred to as "Restrictive Covenants."

For purposes of this usage of covenants, there is a distinction between so-called real covenants and personal covenants. Many types of covenants, even in connection with land, are so framed, or have been judicially construed, to be personal covenants binding upon the immediate grantee only. Obviously, for the continuing protection of lands in the hands of subsequent grantees, the covenants would have to be deemed and be enforceable as real covenants.

Covenants Running with the Land

The ordinary concept of covenants which will be enforceable against future owners, in addition to the immediate grantee in the instrument creating the covenants, is that of covenants running with the land. Such covenants have been in generality defined as follows: "A covenant running with the land is one so relating to the land, or which so touches and concerns the land itself that its benefit or obligation passes with the ownership, irrespective of the consent of subsequent owners."[2] This immediately leads into a problem encountered in California in the use of covenants in land control. This arises out of Civil Code sections which have been described as "somewhat unusual."

Civil Code section 1460 provides that certain covenants "contained in grants of estates in real property, are appurtenant to such estates, and pass with them," and that "such covenants are said to run with the land." Section 1462 provides that a covenant contained in a grant of an estate in real property "which is made for the direct *benefit* of the property" runs with the land. (Emphasis added.)

[1] 21 C.J.S. *Covenants* § 1 (1940).
[2] 21 C.J.S. *Covenants* § 54 (1940).

It is immediately apparent that only those covenants which benefit land will technically run in California,[3] whereas the desired future and continuing effect of restrictive covenants is the ability to impose covenants which will *burden* the land as to use and occupancy.[4]

The foregoing statements as to the inability to make burdensome covenants run with the title to land refer to such covenants contained in "grants of estates in real property." A further Civil Code section, 1468, makes possible the enforcement of burdensome covenants as running with the land if they are cast as covenants in an agreement between owners of land as distinguished from attempting to impose such covenants in a grant or conveyance. The effect of 1468 in agreements as contrasted to conveyances has been judicially discussed in California.[5] In addition, although not directly involved in restriction controls in subdivision development, sections 1469 and 1470 were added to the Civil Code in 1953 to provide that covenants in leases to do (affirmative) or refrain from doing (negative) certain acts are enforceable against successive owners (of the leased land).

In connection with the foregoing reference to the affirmative and negative effect of covenants, it should be noted that land restrictions have been considered as, or likened to, negative easements. An affirmative easement permits the easement owner or one entitled to enforce or use an easement (the owner of the dominant tenement or dominant estate) to do or perform acts on the servient estate or servient tenement, the land burdened by the easement. A negative easement permits the owner of a dominant estate or tenement to control acts by the owner of the servient land on the servient tenement or estate. Such control is generally the ability to prevent the doing of stated things on the servient land by the owner thereof. A further distinction is that in the exercise of an affirmative easement the easement owner enters upon or passes through the servient land, whereas, in the enforcement of a negative easement, the easement owner generally does not enter the servient land, but simply prevents the owner thereof from certain acts on the servient land. Building restrictions have been judicially referred to in California as being in the nature of a negative easement or equitable servitude.[6]

It has been above noted that use control covenants of the nature under discussion are generally found embodied in "covenants, conditions and restrictions." In multiple lot or properties restriction of land,

[3] Marra v. Aetna Constr. Co., 15 Cal. 2d 375, 101 P.2d 490 (1940).

[4] See generally, 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §§ 205-211 (7th ed. 1960).

[5] Marra v. Aetna Constr. Co., 15 Cal. 2d 375, 101 P.2d 490 (1940); Chandler v. Smith, 170 Cal. App. 2d 118, 338 P.2d 522 (1959).

[6] Sackett v. Los Angeles City School Dist., 118 Cal. App. 254, 5 P.2d 23 (1931).

two basic methods are used. One is to set forth in full the restriction provisions in the deeds of each lot in the restricted tract. The second method is for the selling developer to record the restriction provisions in the form of a Declaration of Restrictions. If this method is used the imposition of the restrictions on the land is accomplished by references in each of the deeds to the Declaration of Restrictions.

In some forms of restriction provisions only covenants are used. It would be possible to attempt to restrict land use through the medium only of conditions. It is frequently found, however, that both forms are combined in one set of restrictions. As above indicated, enforcement for violations of conditions can be only by the original grantor-developer, but the enforcement of covenants in a general plan of restrictions is available to the various lot owners between themselves and against each other.

It has been pointed out that technically restrictive covenants which burden land cannot be legally enforced in California as running covenants because of the fact that such covenants generally do not benefit the land conveyed. Burdensome covenants, of course, can be enforced against the original or first grantee.

Equitable Servitudes

Equity has found a remedy, however, through the medium of the enforcement of burdensome restrictive covenants as equitable servitudes. The doctrine of equitable servitudes permits the continuing enforcement of burdensome covenants against successors in interest of the original grantee. This enforcement is based on the equitable theory that if a subsequent grantee takes with knowledge or notice of a valid agreement concerning the use of land he cannot equitably refuse to perform.[7] This knowledge or notice can be actual, but the doctrine is also enforceable on the basis of constructive notice arising from the appearance of the restriction provisions in the recorded chain of title.[8] The doctrine of estoppel has also been invoked in restriction litigation.[9]

To make restrictive covenants which burden rather than benefit land enforceable as equitable servitudes there are certain requirements in declaring and imposing the restrictions. This is necessary in order that the restrictions can be equitably enforceable by each lot owner in the tract against the other owners. These requirements are present whether the method of imposition is through the embodiment of the restrictions in each of the deeds or the above referred to recording of

[7] Bryan v. Grosse, 155 Cal. 132, 99 Pac. 499 (1909).

[8] Wayt v. Patee, 205 Cal. 46, 269 Pac. 660 (1928).

[9] Smith v. Rasqui, 176 Cal. App. 2d 514, 1 Cal. Rptr. 478 (1959).

a declaration of restrictions and the later incorporation of the declaration into the separate conveyances.

It should be noted here that the restrictions, if they otherwise qualify for enforcement, can be imposed on all of the lots through the medium of one deed. This is true whether the restrictions are embodied in the deed itself or incorporated into the deed from a prior recorded declaration of restrictions.

The basic requirement, in either form of imposition, is that the restrictions must describe all the land in the tract and must clearly declare that they are intended for the benefit of all of the land. This results in what is referred to as an enforceable "general plan" of restriction.[10] It is not sufficient to alone describe the area and recite the restrictions without an express statement that the declaration is intended for the benefit of all the described lands.[11] It is better, and less vulnerable to attack, for the imposing declaration to specifically describe the lands in the restricted area, either by a perimeter metes and bounds description or by reference to all of the lots in a subdivision map (such as lots one to fifty-six inclusive on that certain map etc.), although it has been held that a more generalized form of description can be sustained. This would, however, seem to invite litigation. This occurred in connection with a restriction plan in which the description simply referred to "other property . . . still retained by grantor."[12]

The basic restriction case is *Werner v. Graham*,[13] which has been almost invariably cited and followed in all cases involving this subject since its decision in 1919. The principle as set forth in *Werner* is as follows:[14]

> It is undoubted that when the owner of a subdivided tract conveys the various parcels in the tract by deeds containing appropriate language imposing restrictions on each parcel as part of a general plan of restrictions common to all the parcels and designed for their mutual benefit, mutual equitable servitudes are thereby created in favor of each parcel as against all the others. The agreement between the grantor and each grantee in such case as expressed in the instruments between them is both that the parcel conveyed shall be subject to restrictions in accordance with the plan for the benefit of all the other parcels and also that all other parcels shall be subject to such restrictions for its benefit. *In such a case the mutual servitudes spring into existence as between the first parcel conveyed and the balance of the parcels at the time of the first conveyance.* As each conveyance fol-

[10] Wing v. Forest Lawn Cemetery Ass'n, 15 Cal. 2d 472, 101 P.2d 1099 (1940).
[11] Burt v. Hellman, 92 Cal. App. 446, 268 Pac. 436 (1928).
[12] Moore v. Ojai Improvement Co., 152 Cal. App. 2d 124, 313 P.2d 47 (1957).
[13] Werner v. Graham, 181 Cal. 174, 183 Pac. 945 (1919).
[14] *Id.* at 183, 183 Pac. at 949.

lows, the burden and the benefit of the mutual restrictions imposed by preceding conveyances as between the particular parcel conveyed and those previously conveyed pass as an incident of the ownership of the parcel, and similar restrictions are created by the conveyance as between the lot conveyed and the lots still retained by the original owner. (Emphasis added.)

The following constitutes an example of the type of language which has been used in numerous recorded declarations of restriction or could be used alternatively in the deeds themselves if the recorded declaration method is not used. It should be noted that this form indicates the use only of covenants. If in addition a declaration or plan of restrictions is to involve conditions subsequent and forfeiture for breach, the language would have to be appropriately enlarged.

WHEREAS, _____ is the owner of the following described property:

(Complete legal description of the property, such as by reference to numbered lots on an identified subdivision map.)

WHEREAS, it is the desire and intention of the owner to sell the property described above and to impose on it mutual, beneficial restrictions under a general plan or scheme of improvement for the benefit of all the lands in the tract and the future owners of those lands;

NOW, THEREFORE, the owner hereby declares that all of the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, and covenants, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, and sale of the lands and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the lands and every part thereof. All of the limitations, restrictions, and covenants shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the described lands or any part thereof.

It is to be noted that this form contains a statement of intent that the covenants shall run with the land. In the light of the above discussion this probably has no other legal effect than to declare, as a matter of constructive notice in the record title, that the intent is to create enforceable continuing restrictions. Enforcement can then become available through the doctrine of equitable servitudes.

If the declaration method is used and the restrictions are not set forth in each deed, although incorporated therein by reference, the following is a type of paragraph which has been used for such incorporating and imposing.

> This conveyance is made subject to covenants, conditions, and restrictions contained in a declaration executed by the grantor herein, recorded _____, 19____, in book _____, page ____, Official Records of _____ County, California, and these covenants, conditions, and restrictions are made a part of this conveyance.

If the imposition of the restrictions is through the medium of setting them forth in full in a deed, with the necessary perimeter or other description and declaration of intent to create general plan, the restrictions are imposed on the tract by the first such deed of a single lot which is recorded. If the declaration method is used, imposition occurs only upon the recording of the first deed which refers to and incorporates the declaration.[15]

Restrictions—Creation, Alteration, Effect and Enforcement

For covenants to exist, there must be a conveyance, transfer or contract involving a covenantor and a covenantee (grantee and grantor). A recorded declaration of restrictions is only a unilateral declaration of intent on the part of the subdivider to restrict the lands upon later conveyance. It has been judicially stated "easements and restrictions on real estate can be created only by grant . . . . So long as a tract remains in one ownership, there can be no dominant and servient tenements as between different portions, and the owner may rearrange the quality of any possible servitude."[16] The quoted language of *Murry v. Lovell*[17] again indicates the easement theory through the reference to "dominant and servient tenements."

The result of this is that after the recording of a declaration but before imposition by conveyance of any of the lands, the subdivider or developer can, as he may see fit, change or modify to enlarge, reduce, or completely revoke his declared intent. This was a commonly accepted theory in the title industry even prior to *Murry,* and the case confirms that concept of restriction imposition.

The measure of the necessary extent of incorporating reference or language in the deeds was indicated in an early case. A declaration of restrictions was recorded, but the deeds contain no specific reference to the declaration or any other intent to restrict. The deeds were simply made subject to any and all matters of record. This deed language was held to be a sufficient reference to the declaration of restrictions in *Burkhardt v. Lofton.*[18] The commonly accepted practice,

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[15] Smith v. Rasqui, 176 Cal. App. 2d 514, 1 Cal. Rptr. 478 (1959); Murry v. Lovell, 132 Cal. App. 2d 30, 281 P.2d 316 (1955).

[16] Murry v. Lovell, *supra* note 15, at 34, 281 P.2d at 318 (1955).

[17] *Ibid.*

[18] 63 Cal. App. 2d 230, 146 P.2d 720 (1944).

however, is not to depend on any such generalized or all-inclusive reference to matters of record, but to make specific reference to and specific incorporation of the recorded declaration in the deeds.

In *Burkhardt,* it was also held that restrictions on use and occupancy are not void because of being unlimited as to time. The distinction was drawn between restrictions on ownership or conveying of land as being void restraints on alienation, and the permissive unlimited restrictions on use and occupancy of the land.[19]

A situation occasionally arises in which some lots in a development may be conveyed expressly subject to restrictions, while other lots have been conveyed without express restriction. If this occurs, in the absence of any general plan of restrictions imposed on the whole tract under the rules of *Werner v. Graham,* the servitudes cannot be legally enforced against the grantee of a lot conveyed without restriction.[20] There is authority, however, even in such absence of declaration and imposition, for equitable enforcement against a grantee who can be established as having taken with knowledge or notice of the general restrictive plan.[21] This principle of enforcement has, however, if based on grounds of estoppel, been limited by a decision that "the estoppel must be mutual and reciprocal, and that either both parties must be bound or neither party is bound."[22]

Another type of restriction or attempted restriction of lands, but without conveyance or declaration or express imposition of restrictions, is found in the recording of subdivision maps showing such control matters as "building set back lines." Such showings on recorded maps are, of course, in no sense of the word covenants, and it would seem that any such attempted controls could be enforced only on such grounds as estoppel or equitable servitude based upon knowledge and notice. The question has not been clearly and decisively ruled on in California, and there is apparent conflict in other jurisdictions.

If lots in a subdivision or any other area of land intended to be restricted have been subjected to a properly created and properly imposed general plan of restrictions, enforcement in the manner and under the theories above outlined is available to the various lot owners as between themselves. In addition, if the original subdivider has not parted with title to all the lands in the restricted area, he has a right of enforcement of the general plan for the benefit and protection of any lands which he retains in the area. Such retained lands are in turn subject to the restrictions for the benefit of the lands he has conveyed.

[19] *Ibid.*

[20] Moe v. Gier, 116 Cal. App. 403, 2 P.2d 852 (1931).

[21] Martin v. Holm, 197 Cal. 733, 242 Pac. 718 (1925).

[22] Smith v. Rasqui, 176 Cal. App. 2d 514, 1 Cal. Rptr. 478 (1959).

If he no longer owns any land in the restricted area, his rights of enforcement terminate.[23]

Although we are concerned here only with the use of covenants to enforce restrictions, it should be noted that *Kent v. Koch*[24] cites other judicial pronouncements that when the subdivider retains no lands in the restricted area he can no longer enforce forfeiture upon breach of conditions if the conditions are a part of a general plan of restrictions for the benefit of the entire area.

It is not intended to discuss manner or method of enforcement here, but it should be noted that, assuming properly created and enforceable restrictions, the various lot owners may enforce restrictions against each other, or against the original subdivider if he continues to own land in the restricted area, through such remedies as injunction against violation, actions to enforce removal of violations, or an action for damages to the plaintiff's property through the effect of violations.

If the effectiveness of restrictions is not limited as to time in the original declaration, they are, in effect, perpetual. As above indicated, this constitutes no invalidity of general plan restrictions. It sometimes is provided in restrictions, however, that they shall exist only until a certain date. It can also be provided that the restrictions can be continued beyond such a date, for specified periods, upon the recording of written election by stated percentages of the land owners in the area of such intent to continue the restrictions. An alternative provision is sometimes used, under which the restrictions will be automatically extended for stated periods, such as five years or ten years, unless a similar percentage of the owners in the area record a termination of the restrictions.

Restrictions also sometimes provide that they can be altered or amended, either by removal of some provisions or the addition of new provisions, through a recorded contractual agreement by stated percentages of the owners and encumbrancers of the land in the restricted area. It is, of course, true that even without any provision in the restrictions themselves the owners and encumbrancers of *all* land affected thereby can, by recorded agreement, alter or amend or entirely cancel restrictions in any desired manner. This is purely a matter of the right of private contract.

In addition to the foregoing effecting of restrictions by contractual agreements, there has also been frequent resort to equitable actions to alter or change restrictions, and even to completely free property from the effect of the restrictions. This generally takes the form of an

[23] Kent v. Koch, 166 Cal. App. 2d 579, 333 P.2d 411 (1958).

[24] *Ibid.*

action seeking an equitable decision by the court that restrictions are no longer enforceable. The underlying theory of actions of this type is that conditions in the area have so changed that it would no longer be equitably proper to enforce the restrictions. The entire restrictive plan is for the benefit of the land in the area, and if a proper showing can be made of the fact that enforcement of the restrictions would no longer benefit the land, a decree in equity as to such termination would seem proper.[25]

Any such action, of course, must join all parties whose rights would be affected, although there has been usage made in this area of the so-called "representative" action. In that type of proceeding a limited number of the owners involved are made parties under the theory that the rights of all owners in the area are the same and that all owners will be adequately represented by the joinder of less than all of them.

There may be some obvious questions here, as appear in all such representative actions, as to whether the rights of parties not specifically named are truly and adequately represented by the joinder of only such a limited number. One of the chief functions of this kind of action, however, is to establish as a matter of record through the judgment that the factual situations existing in the area are such as to preclude any maintainable assertion that the judgment of the court concerning the enforceability of the restrictions could be successfully attacked by other parties not specifically named.

A natural corollary to the right to obtain affirmative judicial pronouncement that restrictions are no longer enforceable is the use of the showing of such changed conditions as defense to an action to enforce.

It should also be noted that although the effects of restrictions created by private imposition have no direct relation to or connection with land use control by zoning ordinances, the existence or changing of zoning regulations as to the property in question has been used as evidence in the equity type of law suit.[26]

Another factor, in addition to the effects on equitable enforcement of change of character of neighborhood and the related changes of zoning controls, may enter into either affirmative attempts to declare restrictions to be no longer enforceable or as defense to attempted enforcement. There sometimes is encountered a situation in which, within the restricted tract itself, there have been repeated violations in

[25] Key v. McCabe, 54 Cal. 2d 736, 8 Cal. Rptr. 425, 356 P.2d 169 (1960); Wolff v. Fallon, 44 Cal. 2d 695, 284 P.2d 802 (1955); Hess v. Country Club Park, 213 Cal. 613, 2 P.2d 782 (1931); Hirsch v. Hancock, 173 Cal. App. 2d 745, 343 P.2d 959 (1959); Forman v. Hancock, 3 Cal. App. 2d 291, 39 P.2d 249 (1934).

[26] Key v. McCabe, 54 Cal. 2d 736, 8 Cal. Rptr. 425, 356 P.2d 169 (1960); Hirsch v. Hancock, 173 Cal. App. 2d 745, 343 P.2d 959 (1959); Rice v. Heggy, 158 Cal. App. 2d 89, 322 P.2d 53 (1958).

greater or lesser degree. The effect of such continuing violations, unobjected to by other owners, has been given consideration in equity law suits concerning restriction enforcement.[27] In one case, repeated violations of some portions of the restrictions, such as set back distances from street lines, resulted in judicial modification of the set back provisions but the court ordered continuing enforcement of other restrictive provisions.[28] In other cases violations of restriction provisions by one owner have been held to prevent that owner from in turn enforcing restrictions against the other owners in the restricted tract.[29]

In addition to problems of mutual enforcement as between owners, situations are sometimes encountered in which restriction provisions are sought to be enforced against condemning governmental agencies or bodies. An example of such a situation would involve the use for school or such other public purposes of lands within an area restricted solely to residential use. This problem has been considered in at least two California cases.[30] The courts there held that restrictive covenants are not enforceable against property acquired for public use. A similar result followed in a federal case.[31]

Enforcement in the courts of restrictive covenants is clearly an equitable matter. Enforcement will be denied, however, if the effect would be to violate public policy. In one case enforcement of restrictions against the sale of liquor was denied upon a finding that the intent of the restriction was to create a monopoly as to the sale of liquor in the restricted area.[32] The case involved restrictive conditions rather than covenants, but it would seem that the courts would apply the same reasoning in denying enforcement of covenants, if found to be designed for such a purpose.

Restrictions based upon race or other group classification had generally been held to be enforceable until a series of decisions in the United States Supreme Court and the California Supreme Court establishing the law to be that restrictions of any kind based upon classes or conditions of color, race or creed were no longer enforceable. The previous doctrine of enforceability in California was evidenced by a decision as late as 1944.[33] In 1948, a lower court California judgment

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[27] Morgan v. Veach, 59 Cal. App. 2d 682, 139 P.2d 976 (1943); Hanna v. Rodeo-Vallejo Ferry Co., 89 Cal. App. 462, 265 Pac. 287 (1928).

[28] Rice v. Heggy, 158 Cal. App. 2d 89, 322 P.2d 53 (1958).

[29] Bryant v. Whitney, 178 Cal. 640, 174 Pac. 32 (1918); Diederichsen v. Sutch, 47 Cal. App. 2d 646, 118 P.2d 863 (1941).

[30] Friesen v. City of Glendale, 209 Cal. 524, 268 Pac. 1080 (1930); Sackett v. Los Angeles City School Dist., 118 Cal. App. 254, 5 P.2d 23 (1931).

[31] United States v. Certain Lands, 112 Fed. 622 (C.C. R.I. 1899).

[32] Burdell v. Grandi, 152 Cal. 376, 92 Pac. 1022 (1907).

[33] Fairchild v. Raines, 24 Cal. 2d 818, 151 P.2d 260 (1944).

enforcing restrictions was reversed[34] citing the then current decisions of the United States Supreme Court.[35] A series of California Supreme Court memorandum decisions was entered citing and following the United States Supreme Court rule.[36]

The theory of the Supreme Court decisions was not that private restrictive agreements or covenants, based on race or other class distinctions, are void as such. The decisions only determined that it would be against the constitutional provisions to permit enforcement of such restrictions through judicial pronouncement. The refusal to enforce restrictions in the courts was also extended to the preventing of an action for damages for violation of the covenants.[37]

The effect of these decisions was simply that race or other class restrictions were not void as such, but could be voluntarily complied with by those concerned, although they could not be judicially enforced. The restrictions, therefore, would remain effective of record as against the title to the land in question.

The California legislature in the 1961 session, however, added two new sections to the Civil Code. The apparent effect of these provisions is that any restrictions of the class set forth are void in the absolute sense. Section 53 as so added to the Civil Code provides that any provision in a written instrument which restricts the conveying, encumbering or leasing of real property on the basis of "a specified race, color, religion, ancestry or national origin, is void." Such restrictions as to conveying or otherwise affecting the title to land have always generally been considered to be void as restraints on alienation. The section further provides that any restriction or prohibition "directly or indirectly" by way of covenant or condition, upon "the acquisition, use or occupation" of property on a similar class basis is also void.

The 1961 legislature also added section 782 to the Civil Code providing that "whether executed *before or after* the effective date of this section" any provision in any deed of real property in California is void if it purports to restrict the sale, lease, rental, use or occupancy of property to persons "of a particular racial or ethnic group." This new section covers any such provision which attempts to accomplish this result through "payment of a penalty, forfeiture, reverter, or otherwise." (Emphasis added.)

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[34] Cumings v. Hokr, 31 Cal. 2d 844, 193 P.2d 742 (1948).

[35] Shelly v. Kraemer (McGhee v. Sipes), 334 U.S. 1 (1948), Annot., 3 A.L.R.2d 466; Hurd v. Hodge, 334 U.S. 24 (1948).

[36] 32 Cal. 2d 892-96, 197 P.2d 161-62 (1948).

[37] Barrows v. Jackson, 112 Cal. App. 2d 534, 247 P.2d 99 (1952).