

AMENDED IN ASSEMBLY JANUARY 5, 1998

AMENDED IN ASSEMBLY MAY 1, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 707**

**Introduced by Assembly Member Ackerman**

February 26, 1997

---

---

An act to add Section 784 to, ~~to add Chapter 8 (commencing with Section 888.010) to Title 5 of Part 2 of Division 2 of, and~~ *and* to repeal Section 1464 of, the Civil Code, and to amend Section 336 of the Code of Civil Procedure, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 707, as amended, Ackerman. Real property: restrictions.

~~Under existing law relating to marketable record title, certain interests in real property and defects in titles to real property expire after a specified period of time has elapsed or otherwise, as provided.~~

~~This bill, with certain exceptions, would provide for the expiration of a restriction, defined to mean a limitation on the use of real property in a deed, declaration, or other instrument, whether in the form of a covenant, equitable servitude, condition subsequent, negative easement, or other form of restriction, after a specified period of time, as provided.~~

Under existing law, a covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in the property, and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far only as the assigns are concerned.

This bill would repeal this provision.

Under existing law, an action for mesne profits of real property is required to be commenced within 5 years.

This bill would provide that an action for violation of a restriction, ~~as defined above~~ *defined to mean a limitation on the use of real property in a deed, declaration, or other instrument, whether in the form of a covenant, equitable servitude, condition subsequent, negative easement, or other form of restriction*, shall be commenced within 5 years, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 784 is added to the Civil Code,  
2 to read:

3 784. "Restriction," when used in a statute that  
4 incorporates this section by reference, means a limitation  
5 on the use of real property in a deed, declaration, or other  
6 instrument, whether in the form of a covenant, equitable  
7 servitude, condition subsequent, negative easement, or  
8 other form of restriction.

9 ~~SEC. 2. Chapter 8 (commencing with Section~~  
10 ~~888.010) is added to Title 5 of Part 2 of Division 2 of the~~  
11 ~~Civil Code, to read:~~

12  
13 CHAPTER 8. ~~OBSOLETE RESTRICTIONS~~

14  
15 ~~888.010. As used in this chapter, "restriction" has the~~  
16 ~~meaning provided in Section 784.~~

17 ~~888.020. This chapter does not apply to any of the~~  
18 ~~following:~~



1 ~~(a) A restriction that is an enforceable equitable~~  
2 ~~servitude under Section 1354.~~

3 ~~(b) An environmental restriction under Section 1471~~  
4 ~~or other restriction that serves substantially the same~~  
5 ~~function.~~

6 ~~(c) A restriction enforceable by a public entity or~~  
7 ~~recorded in fulfillment of a requirement of a public~~  
8 ~~entity, provided that fact appears on the record. As used~~  
9 ~~in this chapter, “public entity” has the meaning given in~~  
10 ~~Section 811.2 of the Government Code.~~

11 ~~(d) A conservation easement under Chapter 4~~  
12 ~~(commencing with Section 815) of Title 2, or a negative~~  
13 ~~easement or other restriction that serves substantially the~~  
14 ~~same function, including an open-space easement under~~  
15 ~~the Open Space Easement Act of 1974 (Chapter 6.6~~  
16 ~~(commencing with Section 51070) of Part 1 of Division 1~~  
17 ~~of Title 5 of the Government Code) and a restriction~~  
18 ~~under the California Land Conservation Act of 1965~~  
19 ~~(Chapter 7 (commencing with Section 51200) of Part 1 of~~  
20 ~~Division 1 of Title 5 of the Government Code), regardless~~  
21 ~~whether the easement or other restriction is given~~  
22 ~~voluntarily and whether or not it is perpetual in duration.~~

23 ~~(e) A restriction enforceable by a utility, as defined in~~  
24 ~~subdivision (f) of Section 1882, to assure the safe and~~  
25 ~~reliable operation of its facilities.~~

26 ~~888.030. (a) A restriction of record expires at the last~~  
27 ~~of the following times:~~

28 ~~(1) Sixty years after the date the instrument creating~~  
29 ~~or otherwise evidencing the restriction is recorded.~~

30 ~~(2) Sixty years after the date a notice of intent to~~  
31 ~~preserve the restriction is recorded, if the notice is~~  
32 ~~recorded within the time prescribed in paragraph (1).~~

33 ~~(3) Sixty years after the date an instrument creating or~~  
34 ~~otherwise evidencing the restriction or a notice of intent~~  
35 ~~to preserve the restriction is recorded, if the instrument~~  
36 ~~or notice is recorded within 60 years after the date such~~  
37 ~~an instrument or notice was last recorded.~~

38 ~~(b) This section applies notwithstanding any provision~~  
39 ~~to the contrary in the instrument creating or otherwise~~  
40 ~~evidencing the restriction or in another recorded~~



1 document unless the instrument or other recorded  
2 document provides an earlier expiration date.

3 888.040. (a) Recordation of a notice of intent to  
4 preserve a restriction within the time prescribed in  
5 Section 888.030 preserves the restriction described in the  
6 notice for the benefit of the claimant or claimants named  
7 in the notice against the real property described in the  
8 notice.

9 (b) Recordation of a notice of intent to preserve a  
10 restriction is constructive notice to the owner of the real  
11 property described in the notice, notwithstanding the  
12 indexing of the notice under the name of the claimant  
13 pursuant to Section 880.350.

14 888.050. Recordation of a notice of intent to preserve  
15 a restriction that is enforceable as a mutual equitable  
16 servitude preserves the restriction for (a) the benefit of  
17 the claimant or claimants named in the notice against the  
18 real property described in the notice and (b) the benefit  
19 of the real property described in the notice against the  
20 claimant or claimants.

21 888.060. In lieu of the legal description of the real  
22 property in which the interest is claimed as otherwise  
23 required by paragraph (3) of subdivision (b) of Section  
24 880.330 and notwithstanding the provisions of Section  
25 880.340, Section 888.040, or any other provision in this  
26 title, a notice of intent to preserve a restriction that is  
27 enforceable as a mutual equitable servitude may refer  
28 generally and without specificity to all parcels subject to  
29 the restriction located within a tract or subdivision, and  
30 preserves the restriction for the benefit of all parcels  
31 subject to the restriction located within the tract or  
32 subdivision, if the tract or subdivision is identified in the  
33 restriction as composed of parcels subject to the  
34 restriction pursuant to a general plan of restrictions  
35 common to all the parcels and designed for their mutual  
36 benefit.

37 888.070. Nothing in this chapter shall be construed to  
38 revive or make enforceable a restriction that is otherwise  
39 unenforceable before expiration of the times provided in



1 ~~Section 888.030, whether because the restriction is~~  
2 ~~abandoned, obsolete, unlawful, or for any other reason.~~

3 ~~888.080. Expiration of a restriction pursuant to this~~  
4 ~~chapter makes the restriction unenforceable and is~~  
5 ~~equivalent for all purposes to a termination of the~~  
6 ~~restriction of record.~~

7 ~~888.090. (a) This chapter is operative January 1, 1998.~~

8 ~~(b) Subject to Section 880.370, this chapter applies on~~  
9 ~~the operative date to all restrictions, whether executed or~~  
10 ~~recorded before, on, or after the operative date.~~

11 ~~SEC. 3.~~

12 ~~SEC. 2.~~ Section 1464 of the Civil Code is repealed.

13 ~~SEC. 4.~~

14 ~~SEC. 3.~~ Section 336 of the Code of Civil Procedure is  
15 amended to read:

16 336. Within five years:

17 (a) An action for mesne profits of real property.

18 (b) An action for violation of a restriction, as defined  
19 in Section 784 of the Civil Code. The period prescribed in  
20 this subdivision runs from the time the person seeking to  
21 enforce the restriction discovered or, through the  
22 exercise of reasonable diligence, should have discovered  
23 the violation. A failure to commence an action for  
24 violation of a restriction within the period prescribed in  
25 this subdivision does not waive the right to commence an  
26 action for any other violation of the restriction and does  
27 not, in itself, create an implication that the restriction is  
28 abandoned, obsolete, or otherwise unenforceable. This  
29 subdivision shall not bar commencement of an action for  
30 violation of a restriction before January 1, ~~2000~~ 2001, and  
31 until January 1, ~~2000~~ 2001, any other applicable statutory  
32 or common law limitation shall continue to apply to such  
33 an action.

