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Statutory Overrides Of “Restrictive Covenants” And Other Private Land Use Controls

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The use of private covenants governing the use, improvement, and occupancy of real property has a long and sometimes checkered history in California, as it does throughout the nation. Beginning in the late 19th century, the proliferation of larger real estate developments and subdivisions in growing metropolitan areas was accompanied by a proliferation of deed restrictions, restrictive covenants, and reciprocal covenants or equitable servitudes of various kinds. Often quite detailed, these recorded instruments typically were imposed by the developer or subdivider, rather than negotiated with individual purchasers or governmental agencies. They served to delineate roads, easements, rights of way, and landscaped areas, parklands, and other amenities and common facilities, and also to limit and prescribe the size, construction costs, height, setback areas, design features, uses, and occupancies of individual lots and the residences to be constructed on those lots.

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