

AMENDED IN SENATE JUNE 26, 1995
AMENDED IN ASSEMBLY MAY 16, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1120

Introduced by Assembly Member Kuykendall

February 23, 1995

An act to add Section 1471 to the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 1120, as amended, Kuykendall. Real property: covenants.

Existing law provides that covenants contained in grants of estates in real property and made for the direct benefit of the real property pass with the grants so as to bind the assigns of the person who makes the covenant and run with the land.

~~This bill would provide that covenants made for the direct benefit of the real property may include, but are not limited to, covenants to restrict land use or unilaterally impose land use restrictions, as specified, to prevent unrestricted land use which could result in unsafe exposure to hazardous materials, as defined, known to the coventor at the time of creation of the covenant~~ *a covenant made by an owner of land or by the grantee of land to do or refrain from doing some act on his or her own land which doing or refraining is expressed to be for the benefit of the covenantee, regardless of whether or not it is for the benefit of land owned by the covenantee, runs with*



the land owned by or granted to the covenantor; and it shall be binding upon each successive owner, during his or her ownership, of any portion of the land affected thereby and upon each person having any interest therein derived through any owner thereof, where specified requirements are met. The bill would also make related changes with respect to the apportionment of the burden of such covenants.

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 1471 is added to the Civil Code,
2 to read:
3 ~~1471. For purposes of this title, on and after January~~
4 ~~1, 1996, covenants that are made for the direct benefit of~~
5 ~~the real property and which shall run with the land may~~
6 ~~include, but are not limited to, covenants to restrict land~~
7 ~~use or unilaterally impose land use restrictions in~~
8 ~~conjunction with real property to prevent unrestricted~~
9 ~~land use which could result in unsafe exposure to~~
10 ~~hazardous materials, as defined in Section 25260 of the~~
11 ~~Health and Safety Code, known to the covenantor at the~~
12 ~~time of creation of the covenant.~~
13 *1471. Notwithstanding Section 1468 or any other*
14 *provision of law, each covenant made by an owner of land*
15 *or by the grantee of land to do or refrain from doing some*
16 *act on his or her own land which doing or refraining is*
17 *expressed to be for the benefit of the covenantee,*
18 *regardless of whether or not it is for the benefit of land*
19 *owned by the covenantee, runs with the land owned by*
20 *or granted to the covenantor; and, except as provided by*
21 *Section 1466 or as specifically provided in the instrument*
22 *creating the covenant, it shall be binding upon each*
23 *successive owner, during his or her ownership, of any*
24 *portion of the land affected thereby and upon each*
25 *person having any interest therein derived through any*
26 *owner thereof, where all the following requirements are*
27 *met:*



1 (a) *The land of the covenantor which is to be affected*
2 *by the covenant is particularly described in the*
3 *instrument containing the covenant.*

4 (b) *The successive owners of the land are expressed to*
5 *be bound thereby for the benefit of the covenantee in the*
6 *instrument containing the covenant.*

7 (c) *Each such act relates to the use of land and each*
8 *such act is reasonably necessary to protect present or*
9 *future human health or safety or the environment as a*
10 *result of the presence on the land of hazardous materials,*
11 *as defined in Section 25260 of the Health and Safety Code.*

12 (d) *The instrument containing the covenant is*
13 *recorded in the office of the recorder of each county in*
14 *which the land or some portion thereof is situated and the*
15 *instrument includes in its title the words:*
16 *“Environmental Restriction.”*

17 *Where several persons are subject to the burden of any*
18 *such covenant, it shall be apportioned among them*
19 *pursuant to Section 1467, except that where only a portion*
20 *of the land is so affected thereby, the apportionment shall*
21 *be only among the several owners of that portion. This*
22 *section shall apply to the mortgagee, trustee, or*
23 *beneficiary of a mortgage or deed of trust upon the land*
24 *or any part thereof while but only while he or she, in such*
25 *capacity, is in possession thereof.*

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