SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 782 (Quirk-Silva)
Version: June 2, 2026
Hearing Date: June 23, 2026
Fiscal: Yes
Urgency: No
ID

SUBJECT

Unlawfully restrictive covenants: redevelopment of commercial property for residential uses

DIGEST

This bill exempts owners of commercial property that is planned to be redeveloped with residential uses from the restrictive covenant modification process for restrictive covenants, conditions, restrictions, and private limits that restrict or prohibit residences on the property, when the development project is within specified charter cities that have adopted a compliant housing element and issued building permits for more than 500 residential units on an average annual basis, as specified.

EXECUTIVE SUMMARY

California property law enables the owner of property, upon subdivision or development of the land, to place covenants, restrictions, or other limitations on how the subdivided land may be used. Restrictive covenants can place a variety of restrictions on properties, including by limiting the number of people who may reside on the property. Because such covenants are considered to "run with the land," they remain on the property's title even after the original owner sells the land. Many restrictive covenants that restrict the size and density of residential property pose a hindrance to the development of affordable housing. Thus, in 2021, the Legislature passed AB 721 (Bloom, Ch. 349, Stats. 2021) to allow for the removal of these restrictive covenants for affordable housing projects. AB 1050 (Schultz, Ch. 504, Stats. 2025) built upon AB 721's process to permit the removal of restrictive covenants that restrict residential uses and the size and density of residential property on commercial property when the owner plans to redevelop the property to include residential units. AB 782 creates an exception to AB 1050 for commercial developments in charter cities with populations of between 200,000 and 400,000 that have adopted a housing element for their current planning period that is compliant with state housing element law and have issued residential building permits for more than 500 annual residential units on average, as specified.

AB 782 is author-sponsored, and the Committee has received no timely letters of support. It is opposed by the California Apartment Association and the California Building Industry Association. If it passes this Committee, it will next be referred to the Senate Housing Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Prohibits enforcement, against the owner of a housing development, of any covenants, conditions, restrictions, reciprocal easement agreements, or private limits on private or publicly owned land that restrict or prohibit the residential uses of the land, the number, size, or location of the residences that may be built on the property, or the number of persons or families who may reside on the property, if an approved restrictive covenant housing modification document has been recorded in the public record, as specified. (Civ. Code § 714.6(a).)

2) Authorizes the owner of a housing development to modify or remove a covenant restricting the number or size of the residences that may be built on a property or the number of persons who may reside on the property to the extent necessary to allow the housing development to proceed, by submitting a restrictive covenant modification document to the county recorder. (Civ. Code § 714.6(b)(1).)

3) Outlines the process for obtaining a modified covenant, in which the county counsel reviews for eligibility the covenant modification document submitted by the owner, and approves if eligible. Requires the county recorder to submit the modification document and accompanying documentation received with the application to the County Counsel within five business days of when the county recorder received them. Requires the County Counsel to determine within 15 days whether the restrictive covenant document restricts the property by residences or residents, as specified in (1), whether the owner has shown that they qualify as a housing developer, whether any required notice has been provided, whether an exemption applies to the restrictive covenant, and whether the restrictive covenant may no longer be enforced against the owner applicant. (Civ. Code § 714.6(b)(2).)

4) Permits an owner who requested a restrictive covenant modification, upon notification that the county counsel has approved the modification document, to mail by certified mail the modification document, a copy of this section, and a written explanation of the modification and if it was approved to anyone whom the owner knows has an interest in the property or the restrictive covenant, or who may publish a notice of the approved modification. Specifies that notice shall be deemed

to have been given if the notice is actually received by the interested party or is mailed to them, as specified, or in the case of a published notice, to anyone whose interest does not appear of record or for whom no mailing address is available or reasonably ascertainable. (Civ. Code § 714.6(b)(2)(D).)

5) Provides that a restrictive covenant invalidated under this section will be enforceable if the property in question is utilized in a manner that violates the terms relating to housing, and provides a process through which a city or county may provide notice of a violation of the terms of this section relating to affordable housing when an owner who obtained a covenant modification under this section fails to utilize the property for housing. (Civ. Code § 714.6(b)(4)-(5).)

6) Requires any party that is deemed to have been given notice that wishes to file a suit challenging the validity of a restrictive covenant modification document to file the suit within 35 days of receiving notice, and provides that, in any suit to enforce the rights provided by this section or to defend against any suit filed against those rights, a prevailing owner will be entitled to recover litigation costs and reasonable attorney's fees. (Civ. Code § 714.6(d).)

7) Defines, for the purposes of the sections above, the term "restrictive covenant" to mean any recorded covenant, condition, restriction, or limit on the use of private or publicly owned land contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest that restricts the number, size, or location of residences that may be built on the property, or that restricts the number of persons or families who may reside on the property. (Civ. Code § 714.6(j)(6).)

8) Defines, for the purposes of the sections above, "housing development" to include, among other things: property that is owned or controlled by an entity or individual that has submitted a development project application to redevelop an existing commercial property, when the development project includes residential uses permitted by state housing laws or local land use and zoning regulations. (Civ. Code § 714.6(j)(1)(A)

9) Authorizes the appointment of a county counsel by a county board of supervisors and vests the county counsel with the duties of a public prosecutor. (Gov. Code §§ 27640 et seq.)

10) Authorizes a county counsel to represent and advise the officers and employees of special districts organized within the county and to have exclusive charge and control of all civil actions and proceedings in which special districts or their officers or employees are concerned or are parties, as specified. (Gov. Code § 27645.)

11) Provides that any property owner of a property subject to an unlawfully restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry may submit for recordation a document striking out the unlawfully restrictive covenant. (Gov. Code § 12956.2.)

This bill:

1) Specifies that the definition of a housing development, as described in (8), above, for the purposes of the restrictive covenant modification process, does not apply to a development project within a charter city that meets all of the following criteria:
    a) The charter city has a population size between 200,000 and 400,000;
    b) The charter city has adopted a housing element for the current planning period that is in substantial compliance with the housing element law; and
    c) The total number of residential units allowed by the residential building permits issued by the charter city on an average annual basis, during the current regional housing needs allocation cycle applicable to the charter city, exceed 500.

COMMENTS

1. Author's statement

According to the author:

> California needs more housing, and we should continue removing barriers that prevent underutilized commercial sites from becoming homes for families. AB 782 makes a narrow, targeted adjustment to ensure jurisdictions already delivering housing and maintaining compliant housing plans are not unintentionally swept into a process that was designed to address a different problem. This bill preserves the original intent of AB 1050 while recognizing and supporting cities that are already doing the work to meet our housing goals. California's housing crisis demands urgency, but it also demands precision. This bill delivers both.

2. Restrictive Covenants and their discriminatory history

Restrictive covenants are legally binding restrictions within real property deeds that limit the property owner's use of the land. Restrictive covenants can require that any development on the property follow certain architectural styles, limit the types of uses or development on the property, or even limit the number of people who may reside on the property. The primary purpose of such restrictions is to provide assurance to property owners that the surrounding properties will not develop in ways that they do not expect and do not want. Thus, a covenant is essentially an agreement of the property owner or purchaser not to use their property, or to only use their property, in certain ways, to the benefit of an adjacent or surrounding property. Such covenants are recorded with the real property deed and "run with the land," as in they can remain on the property's title through successive owners. These restrictions can then be enforced through legal action by anyone who has an interest in compliance with the covenant, such as a neighboring property owner.

Historically, restrictive covenants have been used in California and throughout the nation to exclude and discriminate against persons of color. In the most explicit examples, covenants prohibited non-white owners from purchasing or owning a property throughout entire neighborhoods. Such racially-restrictive covenants were promoted and encouraged by the Federal government through the process of "red-lining" sections of cities as too risky for underwriting mortgage guarantees and giving higher loan scores to properties that included racially-restrictive covenants.[1] These practices confined persons of color to poorer neighborhoods and denied them the ability to purchase property and accrue wealth.

The United States Supreme Court eventually ruled that such covenants were unenforceable because they violated the Equal Protection Clause of the Fourteenth Amendment. (*Shelley v. Kramer* (1948) 334 U.S. 1.) Yet these covenants still exist in many housing deeds, even though they are unenforceable. Recognizing this, a process was created in state law through which a property owner can remove a discriminatory covenant from the title of their land. (Gov. Code § 12956.2.)

However, as racially-restrictive covenants were banned, developers and neighborhood associations found other ways to subvert the *Shelley* ruling. Many developers and homeowners associations began adopting covenants that restricted the number or size of the residences that may be built on a property, or that restricted the number of persons who may reside on the property. Although race-neutral on their face, these covenants had the practical effect of maintaining white, single-family neighborhoods in California's affluent suburban communities.

3. <u>AB 721's restrictive covenant modification process</u>

To combat the negative effects that covenants restricting residential density have on the production of affordable housing, the Legislature passed AB 721(Bloom, Ch. 349, Stats. 2021). Under AB 721, any covenants, conditions, restrictions, or private limits on private or publicly-owned land that restrict the number or size of the residences that may be built on the property, or that restrict the number of persons who may reside on the property, would be unenforceable against a property owner developing the land for housing composed exclusively of affordable units.

[1] Farrell Evans, "How Neighborhoods Used Restrictive Housing Covenants to Block Nonwhite Families," History (Dec. 15, 2022), https://www.history.com/news/racially-restrictive-housing-covenants (accessed on Jun. 25, 2025).

To facilitate that end, AB 721 allowed an affordable housing developer to request the county recorder remove the covenant from the property deed, using much the same process that property owners can currently use to remove discriminatory restrictive covenants. An owner of an affordable housing project must first submit a covenant modification document to the county recorder, who then has five business days to submit the documentation and modification document to the county counsel for review. The county counsel is required to determine if the request for modification meets the requirements under AB 721 to have the covenant removed within 15 business days of receiving the documents from the county recorder. If it does, the county recorder notifies the owner so that they may provide notice to interested parties, and records the modification.

AB 721 included a number of other important provisions intended to ensure that property owners who obtained a restrictive covenant affordable housing modification document used the property for the required purpose. Those provisions specified that a restrictive covenant invalidated by a restrictive covenant affordable housing modification document would be enforceable if the property is used in a way that violates the bill's requirements for affordable housing development. (Civ. Code § 714.6(b)(4).) AB 721 also provided a process through which a city or county may provide notice of a violation relating to the affordable housing requirement when an owner who obtained a covenant modification fails to utilize the property for affordable housing. (Civ. Code § 714.6(b)(5).) That provision allows the property owner to have such a notice rescinded if they come into compliance with the affordability restrictions.

The AB 721 process was most recently amended by AB 911 (Schiavo, Ch. 750, Stats. 2023), which placed limits on when an interested party may sue to challenge a restrictive covenant modification and permitted for the AB 721 process to take place before an affordable housing developer has finalized a purchase of the restricted property.

4. <u>AB 1050 permitted restrictive covenant modification to build housing in commercial developments</u>

However, neither AB 721 nor AB 911 addressed covenants related to commercial real property, yet these commercial properties often include reciprocal easement agreements (REAs), which are agreements often created when a property is owned by more than one entity and the owners wish to develop the property into a shopping center. An REA outlines the rights, obligations, and limitations of the parties, and can outline how shared areas will be used, accessed, and maintained. They also can specify how the property can or cannot be developed. These rules help ensure the coordinated development and operation of the property, and that all owners have the appropriate use and access to the property for their business. REAs also often contain provisions regarding how and when the agreement may be changed or terminated.

Just last year, the Legislature passed AB 1050 (Shultz, Ch. 504, Stats. 2025) to allow a property owner of commercial property wishing to redevelop the property to include housing to utilize the AB 721 process to remove an REA or other covenant that restricts the residential uses of the property, number or size of residences, or the number of persons residing on the property. AB 1050 allowed a property owner to thus redevelop a commercial property into one that includes residential uses, without the risk of litigation for doing so against the restrictions of the restrictive covenant. Any redevelopment utilizing AB 1050 would still need to be compliant with all applicable housing laws and local ordinances. The author of AB 1050 asserted it was a necessary measure to remove roadblocks to building more housing and mixed-use development in the state, particularly redevelopment of struggling commercial spaces.

5. <u>AB 782 creates an exception to AB 1050's process for certain charter cities</u>

AB 782 would create an exception to AB 1050, only five months after it went into effect, for specific charter cities in the state that already meet certain housing goals. Specifically, it would exempt charter cities that: have a population of between 200,000 and 400,000; have adopted a housing element for the current planning period that substantially complies with the requirements for housing elements in state law; and that issue on average residential building permits that allow more than 500 total residential units per year. Thus, such large, "high performing" charter cities would be exempt from AB 1050's provisions, thus foreclosing owners of commercial property within the city from being able to remove restrictive covenants on the commercial property to build more housing.

The author argues that this is important because such charter cities that are meeting their housing needs were unintentionally swept into AB 1050's process. According to the author, AB 1050 was about struggling commercial properties and helping jurisdictions struggling to meet their housing needs to do so, not about cities that already meet their housing needs.

Yet while AB 782 makes a distinction based on cities that have met their housing requirements under state housing element law and are producing a certain amount of housing annually, it also limits its applicability to only certain charter cities. Why this exception should be that specific, if it is about high-performing jurisdictions, is less clear. Based on current population estimates, the charter cities likely covered by AB 782 are: Modesto, San Bernardino, Chula Vista, Irvine, Santa Ana, Riverside, Stockton, and Anaheim.[2] The number of cities within this cohort that meet the housing performance standards required by AB 782 is unclear.

[2] *See*, "Cities of California by Population" (2026) https://www.california-demographics.com/cities_by_population.

6. Considerations

The development of more housing is critical to the state in resolving its housing crisis. The Legislature has enacted a plethora of laws in the last few years to encourage and streamline the construction of new housing, and AB 1050 was proposed as such a law. Yet on the other side of restrictive covenants are potential parties with an interest in the enforcement and compliance with that covenant. When the covenant was created through an REA, there were clear and important reasons for that restriction to be in place, and the parties to the REA agreed to that restriction. While the reasons for that benefit may no longer be present, in some instances, another party may still believe they stand to benefit from the restriction. AB 1050 permits owners looking to build housing in contravention to a restrictive covenant or REA to proceed with removing the restrictive covenant over the objection of owners of neighboring property who otherwise would have had the power to block it. Thus, AB 1050 can impair a party's rights, rights they previously believed they would have when they bought their property or created the restrictive covenant.

This raises a possible question under the Contracts Clause of the U.S. Constitution, since it can interfere with existing contracts. Article I of the United States Constitution states that "no State shall … pass any … law impairing the obligation of Contracts." (U.S. Const. Art. I, Sec. 10.) This provision prohibits state governments from passing laws that infringe upon contracts. Caselaw on the Contracts Clause has typically differentiated between government interference with private contracts, and government interference with its own contracts. Under current law, government interference with a private contract will be unconstitutional if there is a "substantial impairment" of the contract, the law fails to reasonably serve a "substantial and legitimate public purpose," and does not have a reasonable relation to achieving the state's goal. (*Energy Reserves Group v. Kansas Power & Light* (1983) 459 U.S. 400, 411.) In the *Energy Reserves Group* case, the Court upheld a Kansas law that prohibited the price to be paid for natural gas under a contract from being increased because of prices set by federal authorities, in direct conflict with contracts that specified that the price would be increased if federal regulators set a higher price. Thus, the Contracts Clause does not prohibit interference with a contract in all circumstances; even a contract that does interfere with a contract may still be constitutional if the second two factors established in *Energy Reserves Group* are met.

AB 1050 and AB 782 certainly implicate contract rights, since they relate to invalidating contracts in the form of restrictive covenants and REAs. However, the laws both reasonably serve a substantial and legitimate public purpose as increasing the state's supply of housing is an important policy goal of the state, particularly with the current state shortage of affordable housing. The restrictive covenant modification process also reasonably relates to achieving the state's goal of building more housing, as it makes possible the construction of more housing where housing may otherwise be prohibited by a restrictive covenant.

7. Arguments in opposition

According to the California Apartment Association and the California Building Industry Association, which opposes AB 782:

> AB 782 would weaken an existing law that helps property owners convert commercial property into housing. It exempts certain charter cities and would make it harder to overcome restrictive covenants that block residential development.
>
> This is the wrong approach. California should be removing obstacles to housing, not creating new ones. Working families need more homes, and state law should continue to support the reuse of commercial property where housing can be built. AB 782 moves in the opposite direction by limiting current law without a clear policy justification.

SUPPORT

None received

OPPOSITION

California Apartment Association
California Building Industry Association

RELATED LEGISLATION

Pending Legislation:

AB 1857 (Aguiar-Curry, 2026) makes void and unenforceable a restrictive covenant that effectively prohibits or restricts the use of property as a grocery store or supermarket, if a grocery store or supermarket previously operated on the property and has ceased operations, and an approved restrictive covenant modification document has been recorded, and provides a process by which an interested party can record a restrictive covenant modification document, as specified. AB 1857 is being heard in this Committee on the same day as this bill.

AB 1385 (Petrie-Norris, 2026) permits an owner of a property subject to a restrictive covenant that limits the size or density of housing on the property and that is located in a county subject to the state of emergency declared by the Governor in January 2025 related to the Palisades Fire to record a restrictive covenant modification document making those restrictive covenants unenforceable. AB 1385 is currently pending before the Senate Appropriations Committee.

Prior Legislation:

AB 1050 (Schultz, Ch. 504, Stats. 2025) permitted owners of commercial properties who wish to redevelop the property to include residential units to utilize the existing legal process to remove restrictive covenants on the property that limit the number, size, or location of residences on the property or the number of persons or families who may reside on the property. *See Comment 4.*

AB 911 (Schiavo, Ch. 750, Stats. 2023) amended the AB 721 process by creating an optional notice process whereby a property purchaser can provide notice to interested parties that they intend to remove the covenant, by creating a 35-day timeline for parties that received notice to file a lawsuit objecting to the covenant's elimination upon the providing of such notice, and by clarifying that affordable housing developers may request the covenant be removed before they have finalized a purchase of the property in question.

AB 1466 (McCarty, Ch. 359, Stats. 2021) required the county recorder of each county to establish a restrictive covenant program to assist in the identification and redaction of unlawfully restrictive covenants, and made other changes regarding the modification of unlawfully restrictive covenants.

AB 721 (Bloom, Ch. 349, Stats. 2021) made any recorded covenants, conditions, restrictions, or limits on the use of private or publicly owned land contained in any deed, contract, security instrument, or other instrument affecting the sale that restricts the number, size, or location of residences on the property or the number of persons or families who may reside on the property unenforceable against the owner of an affordable housing development if an approved restrictive covenant affordable housing modification document has been recorded, and created a process by which such a restrictive covenant affordable housing modification document may be approved by the county counsel and recorded. *See Comment 3.*

PRIOR VOTES:

This bill was amended on June 2, 2026 to completely change the bill's provisions, and therefore any prior votes are irrelevant.

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