

bc: Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson  
Mr. Verne Walton  
Legal Section

(916) 323-7713

March 29, 1983

Mr. Byron D. Athan  
Deputy County Counsel  
70 West Hedding Street  
San Jose, CA 95110

Dear Mr. Athan

Enforceable Restrictions

This is in response to your phone call to me on March 29, 1983. You asked whether or not the land use restrictions depicted in Revenue and Taxation Code Section 402.1 mandated a special assessment practice with respect to private party contracts or deed restrictions.

It is our opinion that Section 402.1 deals with restrictions brought about only by government imposed land use restrictions. You will note that the enumerated restrictions of Section 402.1 deal only with government imposed restrictions. There is no mention of special treatment for restrictions imposed on land because of a private party contract or deed restrictions. And also, the courts have ruled that the assessor is mandated to ignore restrictive private contracts and measure the market value of property in light of full economic rental value even though the actual rental income was contractually restricted below the economic level. (Clayton v. Los Angeles County, 26 Cal. App. 3d 390.)

It is therefore our opinion that the provisions of land use restrictions in Section 402.1 deal only with those restrictions created by government. We are of the opinion that land use restrictions or deed restrictions created by or between private parties are not restrictions to be considered in the valuation of property for property tax purposes.

Very Truly Yours,

Robert R. Keeling  
Tax Counsel

RRK:fr