

24-67-106. Enforcement and modification of provisions of the plan.

(1) To further the mutual interest of the residents, occupants, and owners of a planned unit development and of the public in the preservation of the integrity of the plan, the provisions of the plan relating to the use of land and the location of common open space shall run in favor of the county or municipality and shall be enforceable at law or in equity by the county or municipality without limitation on any power or regulation otherwise granted by law.

(2) All provisions of the plan shall run in favor of the residents, occupants, and owners of the planned unit development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and, to that extent, said provisions, whether recorded by plat, covenant, easement, or otherwise, may be enforced at law or in equity by residents, occupants, or owners acting individually, jointly, or through an organization designated in the plan to act on their behalf. However, no provisions of the plan shall be implied to exist in favor of residents, occupants, and owners except as to those portions of the plan which have been finally approved.

(3) All those provisions of the plan authorized to be enforced by the county or municipality may be modified, removed, or released by the county or municipality, subject to the following:

(a) No modification, removal, or release of the provisions of the plan by the county or municipality shall affect the rights of the residents, occupants, and owners of the planned unit development to maintain and enforce those provisions at law or in equity as provided in subsection (1) of this section.

(b) Except as otherwise provided in paragraph (b.5) of this subsection (3), no substantial modification, removal, or release of the provisions of the plan by the county or municipality shall be permitted except upon a finding by the county or municipality, following a public hearing called and held in accordance with the provisions of section [24-67-104](#) (1) (e) that the modification, removal, or release is consistent with the efficient development and preservation of the entire planned unit development, does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across a street from the planned unit development or the public interest, and is not granted solely to confer a special benefit upon any person.

(b.5) (I) Subject to the requirements of subparagraph (II) of this paragraph (b.5), in the case of any land located within a planned unit development that has been set aside for a governmental use or purpose as specified in the plan, the plan agreement, or related documents, a governmental entity that holds legal title to the land may, with the approval of the county or municipality in which the land is located, as applicable, and following a public hearing called for and held in accordance with the provisions of section [24-67-104](#) (1) (e), do any of the following, singularly or in combination:

(A) Subdivide all or any portion of the land;

(B) Remove or release all or any portion of the land from any limitations on its use or purpose by the governmental entity as specified in the plan, the plan agreement, or related documents; or

(C) Sell or otherwise dispose of all or any portion of the land.

(II) Any action authorized in accordance with the requirements of subparagraph (I) of this paragraph (b.5) shall only be undertaken upon a finding by the county or municipality, as applicable, following the public hearing required pursuant to subparagraph (I) of this paragraph (b.5) that all or any portion of the land is not reasonably expected to be necessary for a governmental use or purpose or that the governmental use or purpose will be

furthered by disposal of the land. Notwithstanding any other provision of this paragraph (b.5), where action has been undertaken in accordance with the requirements of this paragraph (b.5), the future use of all or any portion of the land shall in all other respects be consistent with the efficient development and preservation of the entire planned unit development and with the plan.

(c) Residents and owners of the planned unit development may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove, or release their rights to enforce the provisions of the plan, but no such action shall affect the right of the county or municipality to enforce the provisions of the plan.

Source: L. 72: p. 512, § 1. C.R.S. 1963: § 106-6-6. L. 2005: (3)(b) amended and (3)(b.5) added, p. 695, § 1, effective June 1.

Editor's note: Section 2 of chapter 200, Session Laws of Colorado 2005, provides that the act amending subsection (3)(b) and enacting subsection (3)(b.5) applies to any planned unit development approved prior to, on, or after June 1, 2005.

ANNOTATION

Notice of restrictive provisions. Where a deed by which plaintiff obtained property mentioned specifically a planned unit development (PUD), plaintiff was on notice and should have read the plan to determine its exact provisions. *South Creek Associates v. Bixby*, 753 P.2d 785 (Colo. App. 1987), aff'd, 781 P.2d 1027 (Colo. 1989).

A setback requirement contained within a duly adopted planned unit development plat is a building restriction concerning real property as contemplated by § [38-41-119](#). *McDowell v. U.S.*, 870 P.2d 656 (Colo. App. 1994).

Equitable relief and money damages barred. The word "enforce", as used in § [38-41-119](#) in relation to contractual obligations, embraces a remedy of money damages as well as equitable relief. Section [38-41-119](#) was meant to apply to any action to enforce a building restriction, regardless of the nature of the relief requested. The nature of the right that plaintiff seeks to exercise controls the applicability of the statute of limitations. Therefore, plaintiff's tardy claim for equitable relief, in the form of removal of encroaching improvements that violate the PUD setback area requirement, and money damages is barred by the statute of limitations of § [38-41-119](#). *McDowell v. U.S.*, 870 P.2d 656 (Colo. App. 1994).

This section requires notice and a public hearing, but not consent of the landowners, to modify an existing PUD. *Whatley v. Summit County Bd. of County Comm'rs*, 77 P.3d 793 (Colo. App. 2003).