

# SENATE BILL REPORT

## ESB 6169

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As Passed Senate, February 13, 2006

**Title:** An act relating to discriminatory provisions in the governing documents of homeowners' associations.

**Brief Description:** Authorizing removal of discriminatory provisions in the governing documents of homeowners' associations.

**Sponsors:** Senators Kohl-Welles, Fairley, Prentice, Schmidt, Keiser, Benson, Kline, Franklin, Pridemore, Poulsen and Esser.

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Consumer Protection: 1/19/06 [DP].  
Passed Senate: 2/13/06, 47-0.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

**Majority Report:** Do pass.

Signed by Senators Fairley, Chair; Berkey, Vice Chair; Benton, Ranking Minority Member; Benson, Brandland, Finkbeiner, Franklin, Keiser and Spanel.

**Staff:** Jennifer Arnold (786-7471)

**Background:** The Homeowners' Association Act does not address amending the governing documents of a homeowners' association for the purpose of removing unlawful restrictive covenants. Currently, the process for amending covenants is generally controlled by the governing documents of a homeowner's association, which may often require a unanimous vote of all members.

In 1988, the Federal Fair Housing Amendments Act was passed, prohibiting discriminatory housing covenants, conditions, or restrictions. In addition, under Washington State statutes, it is an unfair practice for real property contract provisions to contain statutorily discriminating language. State law provides that the following are protected against discrimination in housing: individuals of a specified race, creed, color, sex, national origin; families with children status; individuals with any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or by a person who is blind or deaf.

There is an existing judicial process for striking discriminating language from the governing documents of a homeowners' association. Under this process, an owner, occupant, or tenant may bring an action in superior court to have any language that is void as statutorily discriminatory stricken from the public record and eliminated from the property title or lease.

In spite of the existence of a judicial remedy, discriminatory covenants, conditions, and restrictions continue to be present in the governing documents of some homeowners' associations. It is believed that the continued existence of such restrictive covenants is against public policy and that, therefore, a simplified process for amending the governing documents is necessary.

**Summary of Bill:** A homeowners' association may amend its governing documents for the purpose of removing a statutorily discriminating covenant, condition, or restriction by a simple majority vote of its board. Any board officer may move for the board to vote on amendments for this purpose. A vote or approval by homeowners' association owners, who are non-board members, is not required.

An association member can submit a written request to the board, asking the board to amend, within a reasonable time, the governing documents for the purpose of removing restrictive covenants. If a written request is made, the board has a duty to make amendments, as provided.

An amendment made under this process must be recorded in the public records with the verbatim language required in the statute, providing that the amendment was removed from the homeowners' association's governing documents as void under state law due to statutorily discriminating provisions.

In addition to any owner, occupant, or tenant being able to bring a superior court action to have statutorily discriminating language stricken from the public records, the association board may also bring such a cause of action.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** It is appalling that we have restrictive covenants still on the books. Homeowners' associations need to be allowed to remove these provisions by a simple majority in order to give them the opportunity to take a proactive step towards amending their covenants to reflect that such language is unlawful. We can't expunge these records from our history, but at least we can give the association boards an easier way to amend their governing documents in the case of discriminatory provisions. This bill creates a way to address the issue without placing an administrative burden on homeowner's associations.

**Testimony Against:** None.

**Testimony Other:** There needs to be a solution to this problem; however, the bill needs to be changed to provide that there is a mandatory re-recording of a replacement document.

**Who Testified:** PRO: Senator Kohl-Welles, prime sponsor; John Garthwaite, homeowner; Michelle Ein, Washington Homeowners Coalition.

OTHER: Dwight Bickel, Washington Land Title Association; Gam Kisseing, Washington Land Title Association.