

HOUSE BILL REPORT

HB 2514

As Reported by House Committee On: Judiciary

Title: An act relating to discriminatory provisions found in written instruments related to real property.

Brief Description: Regarding discriminatory provisions found in written instruments related to real property.

Sponsors: Representatives Kilduff, Muri, Sawyer, Frame, Jinkins, Gregerson, Valdez, Lovick, Stanford, Pollet, Santos and Stonier.

Brief History:

Committee Activity:

Judiciary: 1/17/18, 1/24/18 [DPS].

Brief Summary of Substitute Bill

- Authorizes an owner of property subject to a written instrument containing provisions void by reason of Washington's Law Against Discrimination to record with the county auditor or recording official a restrictive covenant modification document.
- Changes the list of unlawful provisions that homeowners association boards may (and in some cases, must) remove from their governing documents by majority vote to include all provisions that are void by reason of Washington's Law Against Discrimination.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Shea and Valdez.

Staff: Nate Hickner (786-7290) and Cece Clynch (786-7195).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Striking Unlawful Discriminatory Provisions from Written Instruments Relating to Real Property.

Under Washington's Law Against Discrimination, any provision in a written instrument relating to real property that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals on the basis of any one of several protected characteristics is void. These protected characteristics are:

- race;
- creed;
- color;
- sex;
- national origin;
- *sexual orientation*;
- families with children status;
- *honorably discharged veteran or military status*;
- any sensory, mental, or physical disability;
- or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled.

Italics represent protected classes added to Washington's Law Against Discrimination in 2006 and after.

If a written instrument contains a provision that is void under Washington's Law Against Discrimination, the owner, occupant, or tenant of the property or the homeowners association board may bring an action in superior court to have the provision stricken from the public records. Additionally, homeowners association boards may, by simple majority vote, amend the association's governing documents for the purpose of removing any covenant, condition, or restriction that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease to individuals on the basis of any protected characteristic as reflected in Washington's Law Against Discrimination prior to 2006. Upon receiving a written request to remove such a provision from a member of the association, the board must amend the governing documents within a reasonable time. Any such amendment must be recorded in the public records.

County Auditors and Recording Officers.

County auditors are county officials charged with maintaining documents and records that must be officially filed or recorded, including real property records, marriage licenses, and vital statistics documents. In charter counties, the responsibility for recording documents in the county records may be vested in another county official.

Summary of Substitute Bill:

The owner of property subject to a written instrument that contains a discriminatory provision void by reason of Washington's Law Against Discrimination may record a restrictive covenant modification document with the county auditor, or in charter counties the official charged with recording documents in the county records, in the county in which the property is located.

The modification document is a standard form created by the Washington State Association of State Auditors. The modification document must state, in part:

The referenced original written instrument contains discriminatory provisions that are void and unenforceable under RCW 49.60.224 and federal law. This document strikes from the referenced original instrument all provisions that are void and unenforceable under law.

The modification document must contain a recording reference to the original written instrument, and the effective date of the modification document must be the same as the effective date of the original written instrument. No filing or recording fees or otherwise authorized surcharges may be required for filing the modification document.

Any liability that may result from recording a document not authorized by this section is the sole responsibility of the owner who caused the document to be recorded.

The list of discriminatory provisions that homeowners association boards may, through simple majority vote, remove from governing documents is changed to include the protected characteristics added to Washington's Law Against Discrimination in 2006 and after.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) provides that, in charter counties, the modification document may be filed with the county official charged with the responsibility for recording instruments in the county records; (2) removes a provision requiring the county auditor to determine whether the original written instrument contains restrictions that are void by reason of Washington's Law Against Discrimination before recording the modification document; (3) removes a provision specifying how the modification document is indexed; (4) provides that, in addition to filing or recording fees, no otherwise authorized surcharges may be collected for a modification document filed pursuant to this section; (5) makes a correction to refer to the Washington State Association of County, rather than state, auditors; (6) removes the requirement that the modification document include a complete copy of the original written instrument containing the void provision; and (7) prescribes certain language to be included in modification document forms.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to registering title modification documents with the county auditor, which takes effect January 1, 2019.

Staff Summary of Public Testimony:

(In support) Discriminatory covenants have a dark and ugly history. Such covenants were meant to perpetuate racial and ethnic segregation, and they remain on the books in Washington. In one example from Pierce County, a family of mixed ancestry sought to close on a house and discovered that the title, in part, said that there can be no sale of the property to persons of any race other than whites or Caucasians—except that it can house domestic servants of another race. This is something that is fairly common. In fact, this example is somewhat tame—often these deeds contain racial slurs or are more specific in listing the types of people that are not wanted.

Obviously these provisions are already unenforceable and illegal. But the effects of these covenants are still there—a person does not have to be spat on to be made to feel different. In some places in Washington, there is still a 20-year difference in life expectancy associated with historically redlined districts. Changing these deeds is not a panacea, but it is important to take a look at these seeds of discrimination and lingering inequality.

There is already a judicial process in place in which landowners can file an in rem action to strike such a covenant. But this is a burden, and it is important for landowners to have as many tools available as possible to remove these provisions. By simplifying this process, it could help push forward healing and reconciliation.

The bill also updates provisions relating to homeowners associations to track the Washington Law Against Discrimination. If a homeowners association discovers a restrictive covenant, they can go ahead and remove it with respect to military or LGBTQ discrimination that could exist on their books as well.

(Opposed) None.

(Other) The original bill had some technical issues, but it appears that the substitute bill addresses those concerns.

Persons Testifying: (In support) Representative Kilduff, prime sponsor; Jamie Clausen, Phinney Estate Law; and Anders Ibsen, Tacoma City Council.

(Other) Jill Munns, Pierce County Auditor's Office; and Sean Holland, Washington Land Title Association.

Persons Signed In To Testify But Not Testifying: None.