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**SUBSTITUTE HOUSE BILL 2514**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Kilduff, Muri, Sawyer, Frame, Jinkins, Gregerson, Valdez, Lovick, Stanford, Pollet, Santos, and Stonier)

AN ACT Relating to discriminatory provisions found in written instruments related to real property; amending RCW 49.60.227 and 64.38.028; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 49.60.227 and 2006 c 58 s 3 are each amended to read as follows:

(1)(a) If a written instrument contains a provision that is void by reason of RCW 49.60.224, the owner, occupant, or tenant of the property which is subject to the provision or the homeowners' association board may cause the provision to be stricken from the public records by bringing an action in the superior court in the county in which the property is located. The action shall be an in rem, declaratory judgment action whose title shall be the description of the property. The necessary party to the action shall be the owner, occupant, or tenant of the property or any portion thereof. The person bringing the action shall pay a fee set under RCW 36.18.012.

(b) If the court finds that any provisions of the written instrument are void under RCW 49.60.224, it shall enter an order striking the void provisions from the public records and eliminating the void provisions from the title or lease of the property described in the complaint.

(2)(a) As an alternative to the judicial procedure set forth in subsection (1) of this section, the owner of property subject to a written instrument that contains a provision that is void by reason of RCW 49.60.224 may record a restrictive covenant modification document with the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records, in the county in which the property is located.

(b) The modification document shall contain a recording reference to the original written instrument.

(c) 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."

(d) The effective date of the modification document shall be the same as the effective date of the original written instrument.

(e) If the owner causes to be recorded a modification document that contains modifications not authorized by this section, the county auditor or recording officer shall not incur liability for recording the document. Any liability that may result is the sole responsibility of the owner who caused the recordation.

(f) No filing or recording fees or otherwise authorized surcharges shall be required for the filing of a modification document pursuant to this section.

(3) For the purposes of this section, "restrictive covenant modification document" or "modification document" means a standard form developed and designed by the Washington state association of county auditors.

**Sec.**  RCW 64.38.028 and 2006 c 58 s 2 are each amended to read as follows:

(1) The association, acting through a simple majority vote of its board, may amend the association's governing documents for the purpose of removing:

(a) Every covenant, condition, or restriction that ((~~purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability~~)) is void by reason of RCW 49.60.224; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of ((~~race, creed, color, sex, national origin; families with children status; the presence of 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 who is blind or deaf~~)) a protected class under chapter 49.60 RCW.

(2) Upon the board's receipt of a written request by a member of the association that the board exercise its amending authority granted under subsection (1) of this section, the board must, within a reasonable time, amend the governing documents, as provided under this section.

(3) Amendments under subsection (1) of this section may be executed by any board officer.

(4) Amendments made under subsection (1) of this section must be recorded in the public records and state the following:

"This amendment strikes from these covenants, conditions, and restrictions those provisions that are void under RCW 49.60.224. Specifically, this amendment strikes:

(a) Those provisions that forbid or restrict use, occupancy, conveyance, encumbrance, or lease of real property to individuals ((~~of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability~~)) on the basis of a protected class under chapter 49.60 RCW; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of ((~~race, creed, color, sex, national origin; families with children status; the presence of 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 who is blind or deaf~~)) a protected class under chapter 49.60 RCW."

(5) Board action under this section does not require the vote or approval of the owners.

(6) As provided in RCW 49.60.227((~~,~~)):

(a) Any owner, occupant, or tenant in the association or board may bring an action in superior court to have any provision of a written instrument that is void pursuant to RCW 49.60.224 stricken from the public records; or

(b) Any owner of property subject to a written instrument that contains a provision that is void pursuant to RCW 49.60.224 may record a restrictive covenant modification as defined in RCW 49.60.227.

(7) Nothing in this section prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this section authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(8) Except as otherwise provided in subsection (2) of this section, (a) nothing in this section creates a duty on the part of owners, occupants, tenants, associations, or boards to amend the governing documents as provided in this section, or to bring an action as authorized under this section and RCW 49.60.227; and (b) an owner, occupant, tenant, association, or board is not liable for failing to amend the governing documents or to pursue an action in court as authorized under this section and RCW 49.60.227.

NEW SECTION. **Sec.**  Section 1 of this act takes effect January 1, 2019.

**--- END ---**