
SECOND SUBSTITUTE HOUSE BILL 1335

State of Washington

67th Legislature

2021 Regular Session

By House Appropriations (originally sponsored by Representatives Valdez, Rude, Berry, Fitzgibbon, Morgan, Santos, Shewmake, Davis, Berg, Gilday, Bergquist, Fey, Bateman, Lekanoff, Lovick, Callan, Riccelli, Rule, Pollet, Senn, and Harris-Talley)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to review and property owner notification of
2 recorded documents with unlawful racial restrictions; amending RCW
3 64.06.020 and 49.60.227; adding a new section to chapter 43.330 RCW;
4 creating new sections; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the existence
7 of racial, religious, or ethnic-based property restrictions or
8 covenants on a deed or chain of title for real property is like
9 having a monument to racism on that property and is repugnant to the
10 tenets of equality. Furthermore, such restrictions and covenants may
11 cause mental anguish and tarnish a property owner's sense of
12 ownership in the property because the owner feels as though they have
13 participated in a racist act themselves.

14 It is the intent of the legislature that the owner, occupant, or
15 tenant or homeowners' association board of the property which is
16 subject to an unlawful deed restriction or covenant pursuant to RCW
17 49.60.224 is entitled to have discriminatory covenants and
18 restrictions that are contrary to public policy struck from their
19 chain of title. The legislature has presented two ways this can be
20 accomplished through RCW 49.60.227(1) (a) and (b). If the owner,
21 occupant, or tenant or homeowners' association board of the property

1 elects to pursue a judicial remedy, the legislature intends that the
2 court issue a declaratory judgment ordering the county auditor, or in
3 charter counties the county official charged with the responsibility
4 for recording instruments in the county records, to entirely strike
5 the racist or otherwise discriminatory covenants from the chain of
6 title. Striking the language does not prevent preservation of the
7 original record, outside of the chain of title, for historical or
8 archival purposes.

9 The legislature finds that striking racist, religious, and ethnic
10 restrictions or covenants from the chain of title is no different
11 than having an offensive statutory monument which the owner may
12 entirely remove. So too should the owner be able to entirely remove
13 the offensive written monument to racism or other unconstitutional
14 discrimination.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.330
16 RCW to read as follows:

17 (1) Subject to the availability of amounts appropriated for this
18 specific purpose, the department shall establish and administer a
19 grant program to review existing recorded covenants and deed
20 restrictions to identify those recorded documents that include racial
21 or other restrictions unlawful under RCW 49.60.224 and provide notice
22 to property owners of such restrictions.

23 (2) The department shall establish a process for accepting grant
24 applications from public and private not-for-profit higher education
25 institutions that are regionally accredited, including application
26 guidelines and deadlines. The department shall begin awarding grants
27 no later than January 1, 2022.

28 (3) The higher education institutions selected to participate in
29 the grant program shall review existing recorded covenants and deed
30 restrictions to identify those recorded documents that include racial
31 or other restrictions on property ownership or use against protected
32 classes that are unlawful under RCW 49.60.224. Higher education
33 institutions shall provide notification to each property owner who
34 owns property subject to such racial or other unlawful restrictions
35 and the county auditor of the county within which the restrictions
36 were found. Selected higher education institutions are encouraged to
37 utilize students, including law and graduate students, to complete
38 the requirements of the grant program as part of educational and
39 training programs.

1 (4) This section expires July 1, 2027.

2 **Sec. 3.** RCW 64.06.020 and 2019 c 455 s 3 are each amended to
3 read as follows:

4 (1) In a transaction for the sale of improved residential real
5 property, the seller shall, unless the buyer has expressly waived the
6 right to receive the disclosure statement under RCW 64.06.010, or
7 unless the transfer is otherwise exempt under RCW 64.06.010, deliver
8 to the buyer a completed seller disclosure statement in the following
9 format and that contains, at a minimum, the following information:

10 INSTRUCTIONS TO THE SELLER

11 Please complete the following form. Do not leave any spaces blank. If
12 the question clearly does not apply to the property write "NA." If
13 the answer is "yes" to any * items, please explain on attached
14 sheets. Please refer to the line number(s) of the question(s) when
15 you provide your explanation(s). For your protection you must date
16 and sign each page of this disclosure statement and each attachment.
17 Delivery of the disclosure statement must occur not later than five
18 business days, unless otherwise agreed, after mutual acceptance of a
19 written contract to purchase between a buyer and a seller.

20 NOTICE TO THE BUYER

21 THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF
22 THE PROPERTY LOCATED AT.

23 ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

24 SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR
25 MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE
26 PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT.
27 UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE
28 BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS
29 DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A
30 SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR
31 SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED
32 DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR
33 TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

34 THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE
35 REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS
36 INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART
37 OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

1 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF
2 THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF
3 QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT
4 LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS,
5 ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER
6 TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE
7 BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR
8 INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A
9 CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS
10 OR WARRANTIES.

11 Seller is/ is not occupying the property.

12 **I. SELLER'S DISCLOSURES:**

13 *If you answer "Yes" to a question with an asterisk (*), please explain your
14 answer and attach documents, if available and not otherwise publicly recorded. If
15 necessary, use an attached sheet.

16 **1. TITLE**

17 Yes No Don't know A. Do you have legal authority to sell
18 the property? If no, please explain.

19 Yes No Don't know *B. Is title to the property subject to
20 any of the following?

21 (1) First right of refusal

22 (2) Option

23 (3) Lease or rental agreement

24 (4) Life estate?

25 Yes No Don't know *C. Are there any encroachments,
26 boundary agreements, or boundary
27 disputes?

28 Yes No Don't know *D. Is there a private road or easement
29 agreement for access to the property?

30 Yes No Don't know *E. Are there any rights-of-way,
31 easements, or access limitations that
32 may affect the Buyer's use of the
33 property?

34 Yes No Don't know *F. Are there any written agreements
35 for joint maintenance of an easement
36 or right-of-way?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

Yes No Don't know *H. Does the on-site sewage system
require monitoring and maintenance
services more frequently than once a
year?

.....

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE
STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH
HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO
COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR
ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

Yes No Don't know *A. Has the roof leaked within the last
five years?

Yes No Don't know *B. Has the basement flooded or
leaked?

Yes No Don't know *C. Have there been any conversions,
additions, or remodeling?

Yes No Don't know *(1) If yes, were all building
permits obtained?

Yes No Don't know *(2) If yes, were all final
inspections obtained?

Yes No Don't know D. Do you know the age of the house?
If yes, year of original construction:

Yes No Don't know *E. Has there been any settling,
slippage, or sliding of the property or
its improvements?

Yes No Don't know *F. Are there any defects with the
following: (If yes, please check
applicable items and explain.)

- | | | |
|--|---|---|
| <input type="checkbox"/> Foundations | <input type="checkbox"/> Decks | <input type="checkbox"/> Exterior Walls |
| <input type="checkbox"/> Chimneys | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Fire Alarm |
| <input type="checkbox"/> Doors | <input type="checkbox"/> Windows | <input type="checkbox"/> Patio |
| <input type="checkbox"/> Ceilings | <input type="checkbox"/> Slab Floors | <input type="checkbox"/> Driveways |
| <input type="checkbox"/> Pools | <input type="checkbox"/> Hot Tub | <input type="checkbox"/> Sauna |
| <input type="checkbox"/> Sidewalks | <input type="checkbox"/> Outbuildings | <input type="checkbox"/> Fireplaces |
| <input type="checkbox"/> Garage Floors | <input type="checkbox"/> Walkways | <input type="checkbox"/> Siding |
| <input type="checkbox"/> Other | <input type="checkbox"/> Woodstoves | <input type="checkbox"/> Elevators |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

Incline Elevators Stairway Chair Wheelchair Lifts

Lifts

Yes No Don't know *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?

Yes No Don't know H. During your ownership, has the property had any wood destroying organism or pest infestation?

Yes No Don't know I. Is the attic insulated?

Yes No Don't know J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

Yes No Don't know Electrical system, including wiring, switches, outlets, and service

Yes No Don't know Plumbing system, including pipes, faucets, fixtures, and toilets

Yes No Don't know Hot water tank

Yes No Don't know Garbage disposal

Yes No Don't know Appliances

Yes No Don't know Sump pump

Yes No Don't know Heating and cooling systems

Yes No Don't know Security system

Owned Leased

Other

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

Yes No Don't know Security system

Yes No Don't know Tanks (type):

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

Yes No Don't know *E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

Yes No Don't know *F. Has the property been used for commercial or industrial purposes?

Yes No Don't know *G. Is there any soil or groundwater contamination?

Yes No Don't know *H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?

Yes No Don't know *I. Has the property been used as a legal or illegal dumping site?

Yes No Don't know *J. Has the property been used as an illegal drug manufacturing site?

Yes No Don't know *K. Are there any radio towers in the area that cause interference with cellular telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

Yes No Don't know *A. Did you make any alterations to the home? If yes, please describe the alterations:

Yes No Don't know *B. Did any previous owner make any alterations to the home?

Yes No Don't know *C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

Yes No Don't know *Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.

E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER.

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

Sec. 4. RCW 49.60.227 and 2018 c 65 s 1 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

1 rem, declaratory judgment action whose title shall be the description
2 of the property. The necessary party to the action shall be the
3 owner, occupant, or tenant of the property or any portion thereof.
4 The person bringing the action shall pay a fee set under RCW
5 36.18.012.

6 (b) If the court finds that any provisions of the written
7 instrument are void under RCW 49.60.224, it shall enter an order
8 striking the void provisions from the public records and eliminating
9 the void provisions from the title or lease of the property described
10 in the complaint. The person bringing the action shall deliver the
11 order by email, certified United States mail, or personally to the
12 office of the county auditor, or in charter counties the county
13 official charged with the responsibility for recording instruments in
14 the county records, in the county in which the property is located.
15 The auditor or official shall remove the void provisions entirely
16 from the chain of title by removing the record from the chain of
17 title if feasible, or by striking it through and including the order
18 in the chain of title. A record removed from the chain of title may
19 be preserved for historical or archival purposes.

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

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

29 (c) The modification document must state, in part:

30 "The referenced original written instrument contains
31 discriminatory provisions that are void and unenforceable under RCW
32 49.60.224 and federal law. This document strikes from the referenced
33 original instrument all provisions that are void and unenforceable
34 under law."

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

37 (e) If the owner causes to be recorded a modification document
38 that contains modifications not authorized by this section, the
39 county auditor or recording officer shall not incur liability for

1 recording the document. Any liability that may result is the sole
2 responsibility of the owner who caused the recordation.

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

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

10 NEW SECTION. **Sec. 5.** This act applies to real estate
11 transactions entered into on or after January 1, 2022.

--- END ---