

PROHIBITED RESTRICTIVE COVENANTS ACT

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<http://www.house.mi.gov/hfa>

House Bill 4676 as introduced
Sponsor: Rep. Sarah Anthony
Committee: Local Government and Municipal Finance
Complete to 12-2-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4676 would create a Prohibited Restrictive Covenants Act that would ban restrictions on conveyance of a property if those restrictions targeted a protected class of people or a category of people listed in the act.

Historically, restrictive covenants could be used to keep a group of people from living in a certain area—most notably, racial restrictive covenants that would allow transfer of property only to white people.¹

The bill would prohibit a person from recording with a register of deeds a deed or other instrument that contains a restriction, covenant, or condition that directly or indirectly prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property for any of the following reasons:

- Race
- Sex
- National origin
- Familial status
- Sexual orientation
- Gender identity
- Having a sensory, mental, or physical disability
- Using a trained guide dog or service animal because the individual is blind or deaf or has a physical disability

Additionally, the bill would bar a register of deeds from recording such a deed or instrument.

A restriction, covenant, or condition described above would be void and have no legal effect. A court could not enforce such a restriction, covenant, or condition.

Under the bill, a homeowners' or property owners' association, acting through a simple majority vote of its board, could amend its governing documents to remove any such restriction, covenant, or condition. If the board received a written request by an association member that it exercise this authority, it would have to amend the governing documents within a reasonable time. (However, the act does not create any other duty to amend a recorded deed, instrument, or governing document, or to bring an action, and an owner,

¹ https://www.michbar.org/programs/milestone/milestones_strikingracialcovenants

occupant, tenant, association, board, or member or officer of a board would not be liable for failure to do so.) The amendment could be executed by any board member, would have to be recorded with the county register of deeds, and would have to state the prohibition described above.

A property owner could record with the county register of deeds an amended deed or other instrument to remove any prohibited restriction, covenant, or condition. This amended deed or instrument would have to be executed and acknowledged as required by law but could be executed solely by the property owner.

If a deed or other instrument contained a provision that is prohibited under the act, the owner, occupant, or tenant of the property or any member of the board of a homeowners' or property owners' association that would have a right to enforce such a provision could bring an action in circuit court to have the provision stricken. The bill specifies the requirements of the action and states that, if the court finds that the provisions are indeed prohibited, it would have to enter an order striking them from the register of deeds' records and eliminating them from the deed or other instrument.

Under the bill, a person that refused, before recording, to remove such a restriction, covenant, or condition would be liable for any damage sustained by another person because of the refusal.

The act would not limit any right or remedy under the Elliott-Larsen Civil Rights Act or any other state law.

FISCAL IMPACT:

The bill would have no discernible fiscal impact on state or local government

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.