

DISCHARGE OF PROHIBITED RESTRICTIVE COVENANTS ACT

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

House Bill 4416 (H-3) as passed by the House
Sponsor: Rep. Sarah Anthony
Committee: Local Government and Municipal Finance
Complete to 6-20-22

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

SUMMARY:

House Bill 4416 would create a new act, the Discharge of Prohibited Restrictive Covenants Act, to prohibit the recording of deeds or other instruments that contain certain restrictive covenants or conditions, to make those prohibited restrictions unenforceable, and to provide a process through which prohibited restrictions can be removed from an original document already recorded with the register of deeds.

Prohibited restrictions

The act would do all of the following:

- Provide that a *prohibited restriction* is void and has no legal effect.
- Prohibit a court or other *person* from enforcing a prohibited restriction.
- Prohibit a person from recording in the records of the register of deeds a deed or other instrument that contains a prohibited restriction.

Prohibited restriction would mean a restriction, covenant, or condition in a deed or other instrument, including a right of entry or possibility of reverter, that purports to restrict occupancy or ownership of property on the basis of race, color, religion, sex, familial status, national origin, or other class protected by the federal Fair Housing Act.¹

Person would mean an individual or a partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

Discharge of a prohibited restriction form

A discharge of a prohibited restriction form (also called a “discharge form”) could be recorded with the register of deeds for the county where the property is located. As prescribed by the bill, a discharge form would have to state that the specified recorded document contains language that violates the Discharge of Prohibited Restrictive Covenants Act and would have to provide that the discharge form removes and abolishes from the original document restrictions, covenants, or conditions, including a right of entry or possibility of reverter, that violate the federal Fair Housing Act and the Discharge of Prohibited Restrictive Covenants Act. In certain cases, a transcription or copy of the original document, with language redacted or removed, would have to be attached to the form. The discharge form would have to be signed by the legal owner of the property (or an officer of the applicable homeowners’, property owners’, or condominium association) and notarized.

¹ See <https://www.justice.gov/crt/fair-housing-act-1>

A register of deeds would be entitled to the usual fees under the Revised Judicature Act for recording a discharge form prepared and recorded under the new act.²

Property owners

A property owner could record in the records of the register of deeds for the county where the property is located a discharge form to remove any prohibited restriction. A discharge form recorded under this provision could be executed solely by the property owner.

Homeowners', property owners', and condominium associations

The board of a homeowners' or property owners' association or the board of directors of a condominium association, acting through a simple majority vote, could record a discharge form to remove any prohibited restriction in a deed or other instrument that affects a property governed by it.

If the board of a homeowners' or property owners' association or board of directors of a condominium association received a written request by a member of the association or by a co-owner, as applicable, that the board exercise the authority described above, the board would have to determine in a reasonable time whether a prohibited restriction is present in a deed or other instrument and, if so, would have to record a discharge form as provided under the act.

Action of a board as described above would not require the vote or approval of the property owners.

A discharge form prepared as above could be executed by any officer authorized by the board. It would have to be recorded with the register of deeds for the county where the property is located.

Action to record discharge form

If a recorded deed or other recorded instrument contained a provision prohibited by the act, the owner, occupant, or tenant of the property subject to the provision—or any member of the board of a homeowners' or property owners' association or of the board of directors of an association of co-owners of a condominium that would have a right to enforce such a provision—could bring an action in the circuit court in the county where the property is located to have a discharge form recorded with the register of deeds.

The action would have to be brought as an *in rem*, declaratory judgment action, and the title of the action would have to be the description of the property. The owners, occupants, and tenants of the property or any part of the property would be necessary parties to the action. In such an action, if the court finds that any provisions of the deed or instrument are prohibited under the act, it would have to enter an order requiring a discharge form to be recorded with the register of deeds in accordance with the act.

Duties, liabilities, and scope of act

Except for a register of deeds or an employee of a register of deeds, a person that refused to remove a prohibited restriction from a deed, condominium document, or governing document before recording it would be liable for all actual court costs and reasonable attorney fees incurred in an action before a court of competent jurisdiction to enforce the act.

² See <http://legislature.mi.gov/doc.aspx?mcl-600-2567>

Except for a written request made as described above to the board of a homeowners' or property owners' association or the board of directors of a condominium association, the act would not impose a duty on an owner, occupant, tenant, association, board, or member or officer of a board to record a discharge form or bring an action under the act, and those persons would not be liable for failing to do either of those things.

The act would not require a title insurance company or title insurance agency (or its officers, directors, shareholders, employees, or contractors) to inspect a deed or other instrument to determine whether recording it would violate the act. The act would expressly exclude those entities and individuals from any liability or cause of action that may be brought under the act.

The act would not impose a duty on a register of deeds or an employee of a register of deeds to inspect a deed or other instrument to determine whether recording it would violate the act.

Finally, the act would not limit any right or remedy under the Elliott-Larsen Civil Rights Act or any other Michigan law.

FISCAL IMPACT:

The bill could have a fiscal impact on local circuit courts. The fiscal impact would depend on how provisions of the bill affected court caseloads and associated administrative costs.

POSITIONS:

Representatives of the following entities testified in support of the bill (12-8-21):

- ACLU
- Civil Rights Litigation Initiative

The following entities indicated support for the bill:

- Rental Property Owners of America (12-8-21)
- Michigan League for Public Policy (12-8-21)
- Michigan Association of Registers of Deeds (5-4-22)
- Ingham County Register of Deeds (12-8-21)
- City of East Lansing (5-4-22)
- Greater Lansing Association of Realtors (12-6-21)

The Real Property Law Section of the State Bar of Michigan indicated opposition to the bill as introduced and expressed concerns regarding the H-2 substitute. (12-8-21)

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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.