



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4416 (Substitute H-3 as passed by the House)
Sponsor: Representative Sarah Anthony
House Committee: Local Government and Municipal Finance
Senate Committee: Local Government

Date Completed: 11-9-22

CONTENT

The bill would enact the "Discharge of Prohibited Restrictive Covenants Act" to do the following:

- **Prohibit a person from recording with the register of deeds a deed or other instrument that contained a prohibited restriction.**
- **Prohibit a court or other person from enforcing a prohibited restriction.**
- **Allow a discharge of prohibited restriction form to be recorded with the register of deeds for the county where the property was located.**
- **Allow a homeowners' or property owners' association to record a discharge form to remove a prohibited restriction in a deed or other instrument that affected a property governed by the association.**
- **Allow the owner, occupant or tenant of a property or a specified member of a board of a homeowners' or property owners' association to bring an action in the circuit court in the county in which the property was location to have a discharge form recorded with the register of deeds, if the recorded deed or other instrument contained a prohibited restriction.**
- **Specify that a person who refused, before recording, to remove from a deed or other instrument a prohibited restriction would be liable for all actual court costs and reasonable attorney fees incurred in an action to remove the restriction.**

Definitions

"Discharge form" would mean the discharge of a prohibited restriction form described in the bill.

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

"Prohibited restriction" would mean a restriction, covenant, or condition, 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 Fair Housing Act, in a deed or other instrument.

Discharge of a Prohibited Restriction

The bill would prohibit a person from recording in the records of the register of deeds a deed or other instrument that contains a prohibited restriction. A prohibited restriction would be

void and would have no legal effect. The bill also would prohibit a court or other person from enforcing a prohibited restriction.

A property owner could record in the records of the register of deeds for the country where the property is located a discharge form to remove a prohibited restriction. A discharge form could be executed solely by the property owner. A discharge form would have to conform substantially to the form contained in the bill.

Discharge of a Prohibited Restriction; Associations

Under the bill, a homeowners' or property owners' association, or a board of directors of an association of co-owners of a condominium, acting through a simple majority vote of its board, could record a discharge form to remove a prohibited restriction in a deed or other instrument that affected a property governed by the association or board. Board action to do so would not require the vote or approval of the property owners.

If the board of a homeowners' or property owners' association, or a board of directors of an association of co-owners of a condominium, received a written request by a member of the association, or co-owner, as applicable, that the board exercise its authority to remove a prohibited restriction in a deed or other instrument, the board would have to determine within a reasonable time whether a prohibited restriction was present. If the board determined that a prohibited restriction was present in a deed or other instrument, the board would have to record a discharge form. A discharge form could be executed by an officer authorized by the board but would have to be recorded with the register of deeds for the county where the property was located.

Legal Action

If a recorded deed or other recorded instrument contained a provision that was prohibited under the bill, the owner, occupant, or tenant of the property that was subject to the provision or a 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 the provision could bring an action in the circuit court in the county in which the property was located to have a discharge form recorded with the register of deeds.

An 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, occupant, and tenants of the property or any part of the property would be necessary parties to the action.

In an action, if the court found that provisions of the deed or instrument were prohibited under the bill, it would have to enter an order requiring a discharge form to be recorded with the register of deeds. The register of deeds would be entitled to the fees under Section 2567 of the Revised Judicature Act for recording a discharge form prepared and recorded under the bill. (Under Section 2567 of the Revised Judicature Act, a register of deeds is entitled to the fees specified in the Act. For entering and recording a document, the fee is \$30. If the document discharges more than one instrument, there is an additional \$3 fee per additional instrument discharged.)

A person who refused, before recording, to remove from a deed or other instrument a prohibited restriction 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 bill's provisions. This would not apply to a register of deeds or an employee of a register of deeds.

Exceptions

The bill would not create a duty on the part of an owner, occupant, tenant, association, board or member or officer of a board to record a discharge form or bring an action under the bill. An owner, occupant, tenant, association, board or member or officer of a board would not be liable for failing to record a discharge form or to bring an action in court under the bill.

The bill would not limit any right or remedy under the Elliot-Larsen Civil Rights Act or any other law of the State. The bill also would not do either of the following:

- Impose a duty on a register of deeds or employee of a register of deeds to inspect a deed or other instrument to determine whether recording the deed or instrument would violate the bill.
- Create a duty, a responsibility, a requirement, or an obligation on the part of a title insurance company or title insurance agency, or the officers, directors, shareholders, employees, or contractors of a title insurance company or title insurance agency, to inspect a deed or other instrument to determine whether recording the deed or instrument would violate the bill.

Legislative Analyst: Olivia Ponte

FISCAL IMPACT

The bill would have no fiscal impact on State government but could have an impact on local circuit courts. The impact would depend upon the number of declaratory judgments sought and any increased administrative costs associated with those filings. Any additional costs likely would be absorbed by the local court system.

Fiscal Analyst: Michael Siracuse

SAS\S2122\s4416sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.