

HOUSE BILL NO. 4416

March 02, 2021, Introduced by Reps. Anthony, Brixie, Bolden, Puri, Steckloff, Camilleri, Rogers, Hammoud, Sowerby, Brabec, Hood, Weiss, Manoogian, Pohutsky, Breen, Cavanagh, O'Neal, Neeley, Cherry, Stone, Witwer, Rabhi, Hope, Yaroch, Young, Whitsett and Aiyash and referred to the Committee on Local Government and Municipal Finance.

A bill to prohibit the recording of deeds or other instruments relating to real property that contain certain restrictive covenants or conditions; to make such restrictions unenforceable; and to provide remedies with respect to those instruments.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "prohibited restrictive covenants act".

3 Sec. 2. As used in this act:

1 (a) "Condominium documents" means that term as defined in
2 section 3 of the condominium act, 1978 PA 59, MCL 559.103.

3 (b) "Governing documents" means the articles of incorporation,
4 declaration of covenants, conditions, and restrictions, or bylaws
5 of a homeowners' or property owners' association.

6 (c) "Person" means an individual or a partnership,
7 corporation, limited liability company, association, governmental
8 entity, or other legal entity.

9 (d) "Prohibited restriction" means a restriction, covenant, or
10 condition, including a right of entry or possibility of reverter,
11 that violates the fair housing act, title VIII of the civil rights
12 act of 1968, Public Law 90-284.

13 Sec. 3. (1) A person shall not record in the records of the
14 register of deeds a deed or other instrument that contains a
15 prohibited restriction.

16 (2) This act does not impose a duty on a register of deeds or
17 employee of a register of deeds to inspect a deed or other
18 instrument to determine whether recording the deed or instrument
19 would violate subsection (1).

20 Sec. 4. (1) A prohibited restriction is void and has no legal
21 effect.

22 (2) A court or other person shall not enforce a prohibited
23 restriction.

24 Sec. 5. (1) A homeowners' or property owners' association,
25 acting through a simple majority vote of its board, may amend the
26 association's governing documents for the purpose of removing any
27 prohibited restriction.

28 (2) If the board of a homeowners' or property owners'
29 association receives a written request by a member of the

1 association that the board exercise its amending authority under
2 subsection (1), the board shall, within a reasonable time, prepare
3 amended governing documents, as provided under subsection (1), this
4 subsection, and subsections (3) and (4).

5 (3) Board action under subsection (1) or (2) does not require
6 the vote or approval of the property owners.

7 (4) An amended document under subsection (1) or (2) may be
8 executed by any board officer.

9 (5) The board of directors of an association of co-owners of a
10 condominium, acting through a simple majority vote of the board,
11 may amend the condominium documents for the purpose of removing any
12 prohibited restriction.

13 (6) If the board of directors of an association of co-owners
14 of a condominium receives a written request by a co-owner that the
15 board exercise its amending authority under subsection (5), the
16 board shall, within a reasonable time, prepare amended condominium
17 documents, as provided in subsection (5).

18 (7) An amended document under this section must be recorded
19 with the register of deeds for the county where the property is
20 located and state the following:

21 "This amended document strikes from an original document
22 restrictions, covenants, and conditions that are prohibited under
23 the prohibited restrictive covenants act."

24 (8) An amended document prepared under this section and
25 recorded or left to be recorded by the register of deeds must
26 identify and refer to the original document being amended and give
27 the liber and page or other unique identifying number where the
28 original document is recorded.

29 Sec. 6. (1) A property owner may record in the records of the

1 register of deeds for the county where the property is located an
2 amended deed or other instrument to remove any prohibited
3 restriction.

4 (2) An amended deed or other instrument under this section may
5 be executed solely by the property owner. The deed or instrument
6 must be executed and acknowledged in the manner required by law.

7 (3) An amended deed or other instrument under this section
8 must state the following:

9 "This amended deed or instrument strikes from an original deed
10 or instrument restrictions, covenants, or conditions that are
11 prohibited under the prohibited restrictive covenants act."

12 (4) An amended deed or other instrument prepared under this
13 section and recorded or left to be recorded by the register of
14 deeds must identify and refer to the original deed or other
15 instrument being amended and give the liber and page or other
16 unique identifying number where the original deed or other
17 instrument is recorded.

18 Sec. 7. (1) If a deed or other instrument contains a provision
19 that is prohibited under this act, the owner, occupant, or tenant
20 of the property that is subject to the provision or any member of
21 the board of a homeowners' or property owners' association or of
22 the board of directors of an association of co-owners of a
23 condominium that would have a right to enforce such a provision may
24 bring an action in the circuit court in the county in which the
25 property is located to have the provision stricken from the records
26 of the register of deeds.

27 (2) An action under this section must be brought as an in rem,
28 declaratory judgment action and the title of the action must be the
29 description of the property. The owners, occupants, or tenants of

1 the property or any part of the property are necessary parties to
2 the action.

3 (3) In an action under this section, if the court finds that
4 any provisions of the deed or instrument are prohibited under this
5 act, it shall enter an order striking the provisions from the
6 records of the register of deeds and eliminating the provisions
7 from the deed or other instrument for the property described in the
8 complaint.

9 Sec. 8. (1) An amended document, deed, or other instrument
10 that is prepared and recorded under section 5 or 6 must only amend
11 the document, deed, or other instrument as to the prohibited
12 restriction. The document, deed, or other instrument as amended
13 relates back to the times and dates that the document, deed, or
14 other instrument being amended was executed and recorded.

15 (2) As provided in 1937 PA 103, MCL 565.201 to 565.203, the
16 recording requirements of that act apply to a document, deed, or
17 other instrument prepared and recorded under this act.

18 (3) As provided in section 2567 of the revised judicature act
19 of 1961, 1961 PA 236, MCL 600.2567, a register of deeds is entitled
20 to the fees under that section for recording a document, deed, or
21 other instrument prepared and recorded under this act.

22 Sec. 9. (1) A person that refuses, before recording, to remove
23 from a deed or other instrument a prohibited restriction is liable
24 for any damage sustained by another person because of the refusal.

25 (2) This section does not apply to a register of deeds or an
26 employee of a register of deeds.

27 Sec. 10. (1) Except as otherwise provided in section 5(2),
28 this act does not create a duty on the part of an owner, occupant,
29 tenant, association, board, or member or officer of a board to

1 amend a recorded deed or instrument or a governing document as
2 provided in this act, or to bring an action as authorized under
3 this act.

4 (2) An owner, occupant, tenant, association, board, or member
5 or officer of a board is not liable for failing to amend a recorded
6 deed or instrument or a governing document or to pursue an action
7 in court as authorized under this act.

8 (3) This act does not limit any right or remedy under the
9 Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to
10 37.2804, or any other law of this state.