

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1466 (McCarty) – As Amended April 5, 2021

Policy Committee: Judiciary

Vote: 9 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

**SUMMARY:**

This bill requires a title insurance company involved in any transfer of real property that provides a deed or other documents related to the transfer of real property, to identify whether any of the documents contain unlawfully restrictive covenants and, if found, record a modification document with the county recorder. Specifically, this bill:

- 1) Requires a title insurance company involved in any transfer of real property that provides a copy of a deed or other written instrument, including any covenants, conditions and restrictions (CC&Rs), to identify whether any of the documents contain an unlawfully restrictive covenant and if so, record a modification document.
- 2) Requires the county recorder to record the modification of an unlawful restrictive covenant within a period not to exceed 30 days from the date the request for recordation is made.
- 3) Requires the county recorder to make available all restrictive covenant modification forms on site in an appropriately designated area, or online on the county recorder's website.
- 4) Specifies the modification forms shall permit multiple submissions on behalf of different homes and for processing homes in batches with respect to a modification document that affects multiple homes or lots.
- 5) Provides that any modification document, instrument, paper or notice executed or recorded to remove an unlawful and discriminatory restrictive covenant shall not be subject to a recording fee.

**FISCAL EFFECT:**

Costs (General Fund (GF)), possibly in the millions of dollars, in increased staff workload and resources for county recorder offices to record any modification to unlawfully restrictive covenants within 30 days and post modification forms on-line. Additional possibly significant loss of revenue to counties given this bill prohibits requiring any recording fee. County recorders may assess a fee of up to \$225 unless otherwise exempted from assessing any recording fee. GF costs will depend on whether the Commission on State Mandates determines this bill imposes local reimbursable costs.

**COMMENTS:****1) Purpose and Background.** According to the author:

AB 1466 will take proactive steps in removing the egregious language [of racially restrictive covenants] from housing documents once and for all. This bill will make it easier to remove racially restrictive language for homeowners across the state by removing fees associated with the removal process, streamlining the process, and expanding who can file removal requests.

Existing law has long prohibited any restrictions in the sale or transfer of property based on membership in a protected classification, for example, race. However, for decades, property recording instruments included language specifying that property may not be purchased by specific communities. Notwithstanding the unlawfulness and unenforceability of these provisions, these exclusionary restrictions may still appear in existing CC&Rs that are transferred from property sellers to buyers, unless the restrictions have been previously stricken, modified or recorded over. Existing law does not prevent buyers from seeing offensive language in deeds and CC&Rs. Recent news reports describe unsuspecting buyers encountering offensive language in these documents at some point in the buying process, including when they are signing final documents as part of the escrow process. For buyers of color, this language is a particularly offensive and painful reminder of a history of racial hostility and exclusion. AB 985 (De La Torre) was similar to this bill and was vetoed by Governor Arnold Schwarzenegger, in part, for cost concerns, given the bill would have reduced or capped the fees recorders could assess to file modifications.

**2) Prior Legislation.**

- a) AB 2204 (De La Torre), of the 2007-2008 Legislative Session, would have required the county recorder to record any modification document and inform the legal owner of the property of the filing of any restrictive covenant modification form. AB 2204 was held on the Senate Appropriations Suspense File.
- b) AB 985 (De La Torre), of the 2009-10 Legislative Session, would have required a county recorder, title insurance company or other entity transferring a deed or other written instrument relating to title in real property to provide the recipient with a document that will allow the recipient to remove the unlawful restrictive covenants. AB 985 was vetoed.

**Analysis Prepared by:** Kimberly Horiuchi / APPR. / (916) 319-2081