
THIRD READING

Bill No: AB 1466
Author: McCarty (D), Chiu (D) and Bonta (D), et al.
Amended: 9/3/21 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 10-0, 6/29/21
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,
Wieckowski, Wiener
NO VOTE RECORDED: Jones

SENATE INSURANCE COMMITTEE: 10-0, 7/8/21
AYES: Rubio, Jones, Archuleta, Bates, Borgeas, Glazer, Hueso, Hurtado,
Portantino, Roth
NO VOTE RECORDED: Dodd, Melendez

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 58-1, 6/3/21 - See last page for vote

SUBJECT: Real property: discriminatory restrictions

SOURCE: Author

DIGEST: This bill requires each county recorder's office to establish a program to proactively identify, catalog, and redact any unlawfully discriminatory restrictive covenants in that county's property records and authorizes the imposition, if approved by the respective county board of supervisors, of a fee to fund the program. This bill also modifies the procedures for redacting such covenants to facilitate greater use of those procedures.

Senate Floor Amendments of 9/3/21 modify the rights and duties of parties involved in redaction of unlawfully restrictive covenants on real property. Specifically, the amendments: (1) add a definition of the term "redacted"; (2) relieve county recorders of the duty to provide a Restrictive Covenant Modification (RCM) form together with all documents delivered to property owners; (3)

empower county recorders to record RCMs; (4) relieve county recorders of the duty to notify an owner about the presence of an unlawfully restrictive covenant even if the county recorder has actual knowledge of the covenant; (5) provide that there is no presumption that a party having possession of a document has read it or has actual knowledge of an unlawfully restrictive covenant within it; (6) clarify that only the title company directly involved in the pending real estate transaction has a duty to assist with an RCM upon request; (7) clarify that a designee of county counsel may carry out specified roles in the RCM process in place of the county counsel; (8) add age to the list in the notice identifying potentially unlawfully restrictive covenants; (9) clarify that the county recorders must assist in, rather than carry out RCMs; (10) replace the requirement for county recorders to make specified data about unlawfully restrictive covenants online with a requirement that the county recorders maintain an index of the covenants; (11) relieve county recorders of the duty to notify owners of the existence of unlawfully restrictive covenants in property records and the county recorders intent to redact those covenants; (12) extend the time that county recorders have to convene a best practices meeting by 16 days; (13) permit county recorders to charge or increase fees to pay for redaction of unlawfully restrictive covenants; (14) provide that county recorders are not liable for failure to redact an unlawfully restrictive covenant; (15) specify what real estate documents can be subjected to the two dollar fee to support the programs to redact unlawfully restrictive covenants; (16) provide that any reauthorization of the imposition of the fee to support the programs to redact unlawfully restrictive covenants is limited to five years.

ANALYSIS:

Existing law:

- 1) Prohibits, generally, discrimination in housing accommodations, as specified, and declares as void and unenforceable any provision in any deed or other written document relating to title to property that purports to condition the right to sell, lease, rent, use, or occupy the property to any person based upon that person having specified characteristics, including race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, source of income, or sexual orientation. (Gov. Code §§ 12955 - 12956.1; *Shelley v Kramer* (1948) 334 U.S. 1; *Hurd v Hodge* (1948) 334 U.S. 24.)
- 2) Requires county recorders, title insurance companies, escrow companies, real estate brokers, real estate agents, and homeowner associations, when providing a deed or other written documents relating to title to property, to include a cover sheet which states that unlawfully discriminatory covenants, conditions,

or restrictions are void and unenforceable and also notifies the recipient how the recipient may go about redacting the void and unenforceable covenant, condition, or restriction from the property records. (Gov. Code § 12956.1(b).)

- 3) Permits a person with an ownership interest in a property to file a “Restrictive Covenant Modification” (RCM) form in order to remove any void or unenforceable covenant, condition, or restriction, as specified, and permits, but does not require, the County Recorder to waive any fees for filing the RCM. (Gov. Code § 12956.2.)

This bill:

- 1) Requires a county recorder, title company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person to provide specified notice to that person about the procedure for redacting unlawfully discriminatory covenants from those property records and how to obtain the required forms.
- 2) Requires a title company, escrow company, or association that delivers a copy of a declaration, governing document, or deed directly to a person who holds an ownership interest of record in property to provide that person with the form and processing information for redacting unlawfully discriminatory covenants from those property records.
- 3) Extends authority to request the redaction of unlawfully discriminatory covenants from just the owner to those acquiring an ownership interest, a title company, an escrow company, a real estate broker, a real estate agent, or any other person.
- 4) Requires, beginning July 1, 2022, that if a title company, escrow company, real estate broker, or real estate agent has actual knowledge that a declaration, governing document, or deed that is being directly delivered to a person who holds or is acquiring an ownership interest in property includes a possible unlawfully discriminatory covenant, they shall notify the person who holds or is acquiring the ownership interest in the property of the existence of that covenant and their ability to have it removed through the RCM process. Specifies that providing a document does not create a presumption that the provider has read the document or has actual knowledge of its content.
- 5) Requires, beginning July 1, 2022, that if requested before the close of escrow, the title company directly involved in the transaction or the escrow company shall process the redaction of an unlawfully discriminatory covenant, and

provides that the title company or escrow company shall have no liability if the resulting redaction contains modification other than a redaction of any unlawfully discriminatory covenant.

- 6) Requires county counsels or their designees to determine whether a requested redaction pertains to an unlawfully discriminatory covenant within a period not to exceed 30 days from the date of the request, absent extraordinary circumstances.
- 7) Requires anyone requesting the redaction of an unlawfully discriminatory covenant to provide the county recorder with a return address in order for the county recorder to notify this person of the action taken by the county counsel on the respective property. Authorizes that notice to be made on a postcard mailed by first-class mail.
- 8) Provides a model template for submission of requests for redaction of unlawfully discriminatory covenants.
- 9) Requires county recorders to make the form and procedures for requesting modification of unlawfully discriminatory covenants available onsite in an appropriately designated area, or online on the county recorder's internet website.
- 10) Requires the forms and procedures for requesting redaction of unlawfully discriminatory covenants to permit:
 - a) 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; and
 - b) The submission of a RCM form for a homeowners' association or a common interest development to modify covenants, conditions, and restrictions that will correct unlawfully restrictive covenants for multiple dwellings within a subdivision.
- 11) Specifies that lawful redaction of an unlawfully discriminatory covenant removes the illegal covenant from all property affected by the original covenant regardless of who submits the request for redaction.
- 12) Requires the county recorder of each county to establish a "restrictive covenant program" to assist in the redaction of unlawfully discriminatory covenants, including:

- a) Preparing, by July 1, 2022, a publicly available implementation plan with specified content;
 - b) Identifying all unlawfully restrictive covenants in the records of the county recorder's office;
 - c) Maintaining an index, updated at least biannually, of the location of all unlawfully restrictive covenants that the county recorder has identified, and making this index available to the public, as specified; and
 - d) Redacting unlawfully restrictive covenants in the records of the respective county recorder's office.
- 13) Specifies that the failure of a county recorder to identify or redact illegal restrictive covenants, or the county recorder's identification or redaction of any restrictive covenants that are later determined not to be illegal, shall not result in any liability against the county recorder or the county.
- 14) Authorizes a county recorder, subject to approval by each county's board of supervisors and in accordance with applicable constitutional requirements, to charge a \$2 fee on each single transaction per parcel of real property, for recording the first page of every real estate instrument, paper, or notice, as defined, that is required or permitted by law to be recorded, with specified exceptions, for the purpose of funding implementation of the a restrictive covenants program described in 12) above. Prohibits a county recorder from charging any other new fee or increase any existing fees to fund the redaction of restrictive covenants, with specified exceptions.
- 15) Prohibits county recorders from charging the fee described in 13) above, after December 31, 2027, unless the county recorder has received reauthorization, not to exceed five years, by the county's board of supervisors. Specifies that a county recorder shall not seek reauthorization of the fee by the board before June 1, 2027, or after December 31, 2027.
- 16) Instructs county recorders to retain each nonredacted property record for future reference and public requests.
- 17) Requires the County Recorders Association of California to:
- a) Submit status reports to the Legislature on the progress of each county's restrictive covenant program by January 1, 2023, and January 1, 2025; and

- b) Convene a best practices meeting to share concepts on implementation of this section no later than December 31, 2022, with all California county recorder offices and meet annually thereafter until December 31, 2027.
- 18) Provides that a modification document, instrument, paper, or notice to remove an unlawfully discriminatory restrictive covenant may be recorded without acknowledgment, certificate of acknowledgment, or further proof.

Comments

Unlawfully discriminatory restrictive property covenants and their ongoing harm

Unlawfully discriminatory restrictive property covenants are provisions written into property records that prohibit ownership, occupation, and use of the property based on characteristics such as race and religion. Until they were ruled unlawful in the late 1960s, such covenants were primarily used to exclude African-Americans, Asian-Americans, and Jewish people. Although frequently associated in the public mind with southern, Jim Crow segregation, such discriminatory covenants are actually and disturbingly quite common in California property records.

Although racially exclusionary covenants are now unenforceable, their enduring consequences still inflict profound harm. First, this government-backed housing segregation restricted access to opportunity in ways that originated from the laws, but ultimately became baked into financial, social, and geographic disparities that reproduce themselves independently of the law. As a result, a significant amount of the racial inequality that characterizes the United States today can be directly traced to residential racial covenants and the deliberate, government-backed policies that encouraged their proliferation. Second, the actual racial covenants themselves – their offensive words and hateful message – remain etched in property records throughout California. As a result, Californians examining property records are frequently subjected to stumbling upon these covenants, most commonly right as they are on the cusp of purchasing that property to be their home. The experience can be jarring for anyone, but it is especially painful and traumatic for many homebuyers of color.

Existing mechanisms for addressing the presence of racial covenants

Existing California law enables property owners to seek to have unlawfully discriminatory covenants redacted out of their property records. That procedure is generally referred to as restrictive covenant modification, or “RCM,” and it is set forth in the Government Code at Section 12956.2. The property owner initiates the

process by presenting the county recorder for the county in which the property is located with two versions of the document containing the covenant that the owner wants redacted: a copy of the original document and a copy of the original document with the offending covenant stricken out. Upon receipt of these documents, the county recorder transmits them to the county counsel's office for review. If the county counsel's office determines that the covenant in question is not, in fact, unlawful, then the county recorder makes no changes to the property records. If, by contrast, the county counsel's office confirms that the covenant in question is indeed unlawfully discriminatory, the county recorder records the modified version of the document with the covenant stricken out. That modified document then becomes the applicable set of covenants and restrictions for the property. While this process does provide a method for property owners to have discriminatory covenants redacted from their property records, it has a number of shortcomings. Most obviously – and of particular relevance to this bill – it provides little to no protection against the possibility that homebuyers will be confronted with the content of these discriminatory covenants. Homebuyers will only be protected against that experience if the current property owner, or one of the previous owners, has voluntarily taken the initiative to go through the RCM process.

How this bill proposes to address racial covenants differently

This bill proposed a series of modifications to the RCM process to facilitate greater redaction of unlawfully discriminatory covenants while maintaining accessible records of their prior existence for future historical and public policy purposes. In broad strokes, this bill proposes to: (1) require each county recorder's office to undertake a program to proactively identify, catalog, and redact all of the unlawfully discriminatory covenants in its property records; (2) authorize the imposition of a \$2 fee on recording documents, subject to specified approvals and limitations, to fund the proactive redaction programs; (3) enable anyone to request redaction of unlawfully discriminatory covenants; existing law limits this authority to the current property owner; (4) increase awareness of the option to redact unlawfully discriminatory covenants through expanded notification requirements; and (5) streamline aspects of the redaction process.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- *County recorders:* Unknown, potentially-major costs in the aggregate to establish and operate a program to seek and carry out the redaction of unlawfully restrictive covenants. This bill allows recorders to charge a \$2

recording fee on documents, except as specified, to offset the costs of performing the duties that would be imposed by AB 1466. The fee (and its reauthorization after 2027), however, would need to be authorized by the local board of supervisors. County recorders still would be required to perform the duties assigned under this measure even if their respective board of supervisors does not authorize the fee. In those situations, it is likely that the costs to operate the program would be subject to a reimbursement by the state, the amount of which would be determined by the Commission on State Mandates. (General Fund, local funds)

- *Department of Insurance*: The department reports costs of approximately \$4,000 in FY 2021-2022 and \$14,000 in FY 2022-2023 to review rate filings. (Special fund)
- *University of California*: The university indicates minor and absorbable costs.

SUPPORT: (Verified 9/6/21)

ACLU California Action

All Home

Black Leadership Council

Black Women Organized for Political Action PAC

California Association of Realtors

California Escrow Association

California Land Title Association

City of Mountain View

Consumer Attorneys of California

Facebook

Habitat for Humanity California

Initiate Justice

Japanese American Citizens League

League of Women Voters of California

Method Commercial

MidPen Housing Corporation

National Association of Social Workers, California Chapter

National Housing Law Project

OPPOSITION: (Verified 9/6/21)

County Recorders Association of California

ARGUMENTS IN SUPPORT: According to the author:

AB 1466 will take proactive steps in removing Jim-Crow Era, racist language from housing documents throughout the state of California. Specifically, this bill will create a systematic approach to identifying and redacting racially restrictive language. Furthermore, this bill will make it easier to redact racially restrictive language for homeowners by waiving fees, streamlining the recording process, and expanding who can file requests. Eliminating these racist covenants is a moral right and an important step in bringing racial justice to Californians.

In support, Method Commercial writes:

[A]ction is needed to address the great offense to owners, buyers, investors, tenants, lenders, and all in the real estate ecosystem that not removing racially restrictive covenants creates. These covenants, already illegal, are left on title due to the cumbersome removal process, and as such they continue to inflict their goal of pain and exclusion. As a commercial brokerage firm in Los Angeles, we personally experience the horrible language of these covenants and are left in the position to explain to prospective buyers that while they don't apply anymore, they are still part of the title record. It is beyond time to be more proactive in their removal.

ARGUMENTS IN OPPOSITION: According to the County Recorders Association of California:

As the stewards of California's property recorders, the County Recorders' Association of California, appreciates the amendments that insert Recorders into the role of proactively searching and correcting the illegal and offensive historical restrictive covenants. However, the regressive nature of the \$2 fee places the burden on the backs of backs of some (child support liens, affidavits of death), but it not applied when a multi-million dollar commercial property is purchased or sold. The fee should be on all documents. We are opposed until the fee is amended to be equitably applied.

ASSEMBLY FLOOR: 58-1, 6/3/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cunningham, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi,

Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Reyes, Luz Rivas,
Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting,
Villapudua, Voepel, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Smith

NO VOTE RECORDED: Bigelow, Chen, Choi, Cooper, Megan Dahle, Daly,
Davies, Flora, Fong, Frazier, Gallagher, Gray, Mathis, Mayes, Nguyen,
Patterson, Ramos, Seyarto, Valladares, Waldron

Prepared by: Timothy Griffiths / JUD. / (916) 651-4113

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**** END ****