

HOUSE BILL REPORT

ESB 6169

As Passed House:

March 1, 2006

Title: An act relating to discriminatory provisions in the governing documents of homeowners' associations.

Brief Description: Authorizing removal of discriminatory provisions in the governing documents of homeowners' associations.

Sponsors: By Senators Kohl-Welles, Fairley, Prentice, Schmidt, Keiser, Benson, Kline, Franklin, Pridemore, Poulsen and Esser.

Brief History:

Committee Activity:

Judiciary: 2/22/06 [DP].

Floor Activity:

Passed House: 3/1/06, 98-0.

Brief Summary of Engrossed Bill

- Authorizes homeowner's associations, through a simple majority vote of its board, to amend the association's governing documents to remove discriminatory restrictive covenants.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Serben, Springer and Wood.

Staff: Trudes Tango (786-7384).

Background:

A. Restrictive covenants

Under Washington's Law Against Discrimination, a provision in a written instrument relating to real property is void if it forbids or restricts the sale or occupancy to a person based on the person's race, creed, color, sex, national origin, families with children status, or any sensory, mental or physical disability or the use of a trained dog guide or service animal.

In 1987, the Legislature created a judicial process to have provisions that are statutorily discriminatory stricken from public records. Under this process, an owner, occupant, or

tenant of the property may bring an action in superior court (court). If the court finds the provision is void, the court enters an order to strike the void provision from the public records and eliminate it from the title or lease of the property described in the complaint.

B. Homeowner's Associations

The Homeowner's Association Act (Act) regulates the operation of homeowners' associations in a number of ways, including requirements with respect to duties of the association's board of directors. The governing documents of the association must specify the number and qualifications of directors, their powers and duties, and the manner of their election and removal.

The governing documents may specify which, if any, of its board members may execute and record amendments to the governing documents on behalf of the association. The board may not act on behalf of the association to take any action that requires the vote or approval of the owners.

The Act does not specify procedures for an association to amend the association's declarations of covenants, conditions, and restrictions. The process for amending covenants is generally controlled by the governing documents of the association.

Summary of Bill:

A homeowners' association, by a simple majority vote of its board, may amend its governing documents to remove covenants, conditions, and restrictions that forbid or restrict the conveyance or occupancy of property to persons based on their race, creed, color, sex, national origin, families with children status, any sensory, mental or physical disability, or use of a trained dog guide or service animal. If a homeowner member submits a written request, the board must amend the governing documents within a reasonable time. Absent a written request by a homeowner, the board has no duty to amend its governing documents and is not liable for failing to act.

An amendment may be executed by any board officer. The board's action does not require the vote or approval of the owners. Amendments must be recorded in the public records and contain a statement that the amendment strikes void provisions.

The judicial process for striking void discriminatory covenants is expanded to allow an association to file a court action.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Although racially restrictive covenants are unenforceable they still show up on homeowners' documents. This bill provides a means for homeowner associations to amend their documents. There is a judicial procedure already, but that is not often used.

Testimony Against: None.

Persons Testifying: Senator Kohl-Welles, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.