

SENATE BILL REPORT

SHB 2514

As of February 16, 2018

Title: An act relating to discriminatory provisions found in written instruments related to real property.

Brief Description: Regarding discriminatory provisions found in written instruments related to real property.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Kilduff, Muri, Sawyer, Frame, Jinkins, Gregerson, Valdez, Lovick, Stanford, Pollet, Santos and Stonier).

Brief History: Passed House: 2/08/18, 97-0.

Committee Activity: Law & Justice: 2/15/18.

Brief Summary of First Substitute Bill

- Authorizes an alternative to bringing a legal action in superior court for the purposes of striking discriminatory language from real property written instruments.
- Permits the owner of real property to record a restrictive covenant modification document with the county auditor for purposes of striking provisions that are void and unenforceable under the Washington Law Against Discrimination (WLAD).
- Prohibits the requirement of charging fees or surcharges for the filing or recording of modification documents.
- Updates the list of basis for prohibited discrimination in homeowners associations governing documents to conform with WLAD.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: WLAD. WLAD protects civil rights and ensures that everyone is free from discrimination in employment, real estate transactions, public accommodations, or when seeking credit and insurance. Anti-discrimination laws prohibit employment discrimination

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based on race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

Any provision in a written instrument relating to real property that violates the WLAD is void. These void provisions typically forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals on the basis of any one of several protected characteristics.

If a written instrument contains a provision that is void under WLAD, the owner, occupant, or tenant of the property or the homeowners association board may bring an action in superior court to have the provision stricken from the public records. Additionally, homeowners association boards may amend the association's governing documents for the purpose of removing any void covenant, condition, or restriction that violates WLAD. Upon receiving a written request to remove such a provision from a member of the association, the board must amend the governing documents within a reasonable time. Any such amendment must be recorded in the public records.

Recording. Recording officer means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records. The auditor must file and record deeds, grants, and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he or she is recorder. The county auditor in the capacity of recorder of deeds is sole custodian of all books in which are recorded deeds, mortgages, judgments, liens, encumbrances, and other instruments. All such records and files are, and shall be, matters of public information, free of charge to any and all persons demanding to inspect or to examine the same, or to search the same for titles of property.

Summary of Bill: The owner of real property may record a restrictive covenant modification document with the county auditor in the county where the property is located as an alternative to the judicial procedure for striking discriminatory language from written real property agreements. In charter counties, the modification document may be filed with the county official charged with the responsibility for recording instruments in the county records. No filing or recording charges, or other surcharges may be collected for filing modification documents.

The Washington State Association of County Auditors will develop a standard form for use in filing or recording modification documents. The modification document must state in part:

"The referenced original written instrument contains discriminatory provisions that are void and unenforceable under RCW 49.60.224 and federal law. This document strikes from the referenced original instrument all provisions that are void and unenforceable."

The county auditor is not liable for any recording containing modifications not authorized by this law.

The list of unlawful provisions that homeowners association boards may remove from their governing documents includes all provisions that would be void by reason of WLAD.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Section 1 takes effect January 1, 2019. Section 2 takes effect ninety days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony: PRO: A constituent was at a closing to buy a home in Tacoma, and discovered a discriminatory covenant prohibiting the sale of the property to anyone who is not a Caucasian. They were flabbergasted and particularly because the husband was Japanese-American. These covenants are void and unenforceable but they have a very dark history and are on the books. This bill makes it more efficient and less expensive to take these covenants off the books.

Persons Testifying: PRO: Representative Christine Kilduff, Prime Sponsor.

Persons Signed In To Testify But Not Testifying: No one.