
SUBSTITUTE HOUSE BILL 2514

State of Washington

65th Legislature

2018 Regular Session

By House Judiciary (originally sponsored by Representatives Kilduff, Muri, Sawyer, Frame, Jenkins, Gregerson, Valdez, Lovick, Stanford, Pollet, Santos, and Stonier)

READ FIRST TIME 01/26/18.

1 AN ACT Relating to discriminatory provisions found in written
2 instruments related to real property; amending RCW 49.60.227 and
3 64.38.028; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 49.60.227 and 2006 c 58 s 3 are each amended to read
6 as follows:

7 (1)(a) If a written instrument contains a provision that is void
8 by reason of RCW 49.60.224, the owner, occupant, or tenant of the
9 property which is subject to the provision or the homeowners'
10 association board may cause the provision to be stricken from the
11 public records by bringing an action in the superior court in the
12 county in which the property is located. The action shall be an in
13 rem, declaratory judgment action whose title shall be the description
14 of the property. The necessary party to the action shall be the
15 owner, occupant, or tenant of the property or any portion thereof.
16 The person bringing the action shall pay a fee set under RCW
17 36.18.012.

18 (b) If the court finds that any provisions of the written
19 instrument are void under RCW 49.60.224, it shall enter an order
20 striking the void provisions from the public records and eliminating

1 the void provisions from the title or lease of the property described
2 in the complaint.

3 (2)(a) As an alternative to the judicial procedure set forth in
4 subsection (1) of this section, the owner of property subject to a
5 written instrument that contains a provision that is void by reason
6 of RCW 49.60.224 may record a restrictive covenant modification
7 document with the county auditor, or in charter counties the county
8 official charged with the responsibility for recording instruments in
9 the county records, in the county in which the property is located.

10 (b) The modification document shall contain a recording reference
11 to the original written instrument.

12 (c) The modification document must state, in part:

13 "The referenced original written instrument contains
14 discriminatory provisions that are void and unenforceable under RCW
15 49.60.224 and federal law. This document strikes from the referenced
16 original instrument all provisions that are void and unenforceable
17 under law."

18 (d) The effective date of the modification document shall be the
19 same as the effective date of the original written instrument.

20 (e) If the owner causes to be recorded a modification document
21 that contains modifications not authorized by this section, the
22 county auditor or recording officer shall not incur liability for
23 recording the document. Any liability that may result is the sole
24 responsibility of the owner who caused the recordation.

25 (f) No filing or recording fees or otherwise authorized
26 surcharges shall be required for the filing of a modification
27 document pursuant to this section.

28 (3) For the purposes of this section, "restrictive covenant
29 modification document" or "modification document" means a standard
30 form developed and designed by the Washington state association of
31 county auditors.

32 **Sec. 2.** RCW 64.38.028 and 2006 c 58 s 2 are each amended to read
33 as follows:

34 (1) The association, acting through a simple majority vote of its
35 board, may amend the association's governing documents for the
36 purpose of removing:

37 (a) Every covenant, condition, or restriction that (~~purports to~~
38 ~~forbid or restrict the conveyance, encumbrance, occupancy, or lease~~
39 ~~thereof to individuals of a specified race, creed, color, sex, or~~

1 ~~national origin; families with children status; individuals with any~~
2 ~~sensory, mental, or physical disability; or individuals who use a~~
3 ~~trained dog guide or service animal because they are blind or deaf or~~
4 ~~have a physical disability)) is void by reason of RCW 49.60.224; and~~

5 (b) Every covenant, condition, restriction, or prohibition,
6 including a right of entry or possibility of reverter, that directly
7 or indirectly limits the use or occupancy of real property on the
8 basis of ((~~race, creed, color, sex, national origin; families with~~
9 ~~children status; the presence of any sensory, mental, or physical~~
10 ~~disability; or the use of a trained dog guide or service animal by a~~
11 ~~person with a physical disability or who is blind or deaf)) a
12 protected class under chapter 49.60 RCW.~~

13 (2) Upon the board's receipt of a written request by a member of
14 the association that the board exercise its amending authority
15 granted under subsection (1) of this section, the board must, within
16 a reasonable time, amend the governing documents, as provided under
17 this section.

18 (3) Amendments under subsection (1) of this section may be
19 executed by any board officer.

20 (4) Amendments made under subsection (1) of this section must be
21 recorded in the public records and state the following:

22 "This amendment strikes from these covenants, conditions,
23 and restrictions those provisions that are void under RCW
24 49.60.224. Specifically, this amendment strikes:

25 (a) Those provisions that forbid or restrict use,
26 occupancy, conveyance, encumbrance, or lease of real property
27 to individuals ((~~of a specified race, creed, color, sex, or~~
28 ~~national origin; families with children status; individuals~~
29 ~~with any sensory, mental, or physical disability; or~~
30 ~~individuals who use a trained dog guide or service animal~~
31 ~~because they are blind or deaf or have a physical~~
32 ~~disability)) on the basis of a protected class under chapter
33 49.60 RCW; and~~

34 (b) Every covenant, condition, restriction, or
35 prohibition, including a right of entry or possibility of
36 reverter, that directly or indirectly limits the use or
37 occupancy of real property on the basis of ((~~race, creed,~~
38 ~~color, sex, national origin; families with children status;~~
39 ~~the presence of any sensory, mental, or physical disability;~~

1 ~~or the use of a trained dog guide or service animal by a~~
2 ~~person with a physical disability or who is blind or deaf)) a~~
3 protected class under chapter 49.60 RCW."

4 (5) Board action under this section does not require the vote or
5 approval of the owners.

6 (6) As provided in RCW 49.60.227((7)):

7 (a) Any owner, occupant, or tenant in the association or board
8 may bring an action in superior court to have any provision of a
9 written instrument that is void pursuant to RCW 49.60.224 stricken
10 from the public records; or

11 (b) Any owner of property subject to a written instrument that
12 contains a provision that is void pursuant to RCW 49.60.224 may
13 record a restrictive covenant modification as defined in RCW
14 49.60.227.

15 (7) Nothing in this section prohibiting discrimination based on
16 families with children status applies to housing for older persons as
17 defined by the federal fair housing amendments act of 1988, 42 U.S.C.
18 Sec. 3607(b)(1) through (3), as amended by the housing for older
19 persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.
20 Nothing in this section authorizes requirements for housing for older
21 persons different than the requirements in the federal fair housing
22 amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as
23 amended by the housing for older persons act of 1995, P.L. 104-76, as
24 enacted on December 28, 1995.

25 (8) Except as otherwise provided in subsection (2) of this
26 section, (a) nothing in this section creates a duty on the part of
27 owners, occupants, tenants, associations, or boards to amend the
28 governing documents as provided in this section, or to bring an
29 action as authorized under this section and RCW 49.60.227; and (b) an
30 owner, occupant, tenant, association, or board is not liable for
31 failing to amend the governing documents or to pursue an action in
32 court as authorized under this section and RCW 49.60.227.

33 NEW SECTION. Sec. 3. Section 1 of this act takes effect January
34 1, 2019.

--- END ---