

E2SHB 1335 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/07/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the existence
4 of racial, religious, or ethnic-based property restrictions or
5 covenants on a deed or chain of title for real property is like
6 having a monument to racism on that property and is repugnant to the
7 tenets of equality. Furthermore, such restrictions and covenants may
8 cause mental anguish and tarnish a property owner's sense of
9 ownership in the property because the owner feels as though they have
10 participated in a racist act themselves.

11 It is the intent of the legislature that the owner, occupant, or
12 tenant or homeowners' association board of the property which is
13 subject to an unlawful deed restriction or covenant pursuant to RCW
14 49.60.224 is entitled to have discriminatory covenants and
15 restrictions that are contrary to public policy struck from their
16 chain of title. The legislature has presented two ways this can be
17 accomplished through RCW 49.60.227(1) (a) and (b). If the owner,
18 occupant, or tenant or homeowners' association board of the property
19 elects to pursue a judicial remedy, the legislature intends that the
20 court issue a declaratory judgment ordering the county auditor, or in
21 charter counties the county official charged with the responsibility
22 for recording instruments in the county records, to entirely strike
23 the racist or otherwise discriminatory covenants from the chain of
24 title. Striking the language does not prevent preservation of the
25 original record, outside of the chain of title, for historical or
26 archival purposes.

27 The legislature finds that striking racist, religious, and ethnic
28 restrictions or covenants from the chain of title is no different
29 than having an offensive statutory monument which the owner may
30 entirely remove. So too should the owner be able to entirely remove
31 the offensive written monument to racism or other unconstitutional
32 discrimination.

1 ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.
2 SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR
3 MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE
4 PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT.
5 UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE
6 BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS
7 DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A
8 SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR
9 SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED
10 DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR
11 TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

12 THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE
13 REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS
14 INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART
15 OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

16 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF
17 THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF
18 QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT
19 LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS,
20 ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER
21 TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE
22 BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR
23 INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A
24 CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS
25 OR WARRANTIES.

26 Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your
answer and attach documents, if available and not otherwise publicly recorded. If
necessary, use an attached sheet.

1. TITLE

Yes No Don't know A. Do you have legal authority to sell
the property? If no, please explain.

Yes No Don't know *B. Is title to the property subject to
any of the following?

- (1) First right of refusal
- (2) Option

1				(3) Lease or rental agreement
2				(4) Life estate?
3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*C. Are there any encroachments,
4				boundary agreements, or boundary
5				disputes?
6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*D. Is there a private road or easement
7				agreement for access to the property?
8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*E. Are there any rights-of-way,
9				easements, or access limitations that
10				may affect the Buyer's use of the
11				property?
12	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*F. Are there any written agreements
13				for joint maintenance of an easement
14				or right-of-way?
15	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*G. Is there any study, survey project,
16				or notice that would adversely affect
17				the property?
18	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*H. Are there any pending or existing
19				assessments against the property?
20	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*I. Are there any zoning violations,
21				nonconforming uses, or any unusual
22				restrictions on the property that would
23				affect future construction or
24				remodeling?
25	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*J. Is there a boundary survey for the
26				property?

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Yes No Don't know *(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?

(2) When was it last pumped?
.....

Yes No Don't know *(3) Are there any defects in the operation of the on-site sewage system?

Don't know (4) When was it last inspected?
.....

By whom:

Don't know (5) For how many bedrooms was the on-site sewage system approved?

..... bedrooms

Yes No Don't know E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

Yes No Don't know *F. Have there been any changes or repairs to the on-site sewage system?

Yes No Don't know G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

.....

Yes No Don't know *H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

.....

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

[] Yes [] No [] Don't know *A. Has the roof leaked within the last five years?

[] Yes [] No [] Don't know *B. Has the basement flooded or leaked?

[] Yes [] No [] Don't know *C. Have there been any conversions, additions, or remodeling?

[] Yes [] No [] Don't know *(1) If yes, were all building permits obtained?

[] Yes [] No [] Don't know *(2) If yes, were all final inspections obtained?

[] Yes [] No [] Don't know D. Do you know the age of the house? If yes, year of original construction:

[] Yes [] No [] Don't know *E. Has there been any settling, slippage, or sliding of the property or its improvements?

[] Yes [] No [] Don't know *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Foundations Decks Exterior Walls
Chimneys Interior Walls Fire Alarm
Doors Windows Patio
Ceilings Slab Floors Driveways
Pools Hot Tub Sauna
Sidewalks Outbuildings Fireplaces
Garage Floors Walkways Siding
Other Woodstoves Elevators
Incline Elevators Stairway Chair Wheelchair Lifts
Lifts

[] Yes [] No [] Don't know *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?

[] Yes [] No [] Don't know H. During your ownership, has the property had any wood destroying organism or pest infestation?

[] Yes [] No [] Don't know I. Is the attic insulated?

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\$. . . per Month Year

Other

Yes No Don't know *C. Are there any pending special assessments?

Yes No Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. ENVIRONMENTAL

Yes No Don't know *A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

Yes No Don't know *B. Does any part of the property contain fill dirt, waste, or other fill material?

Yes No Don't know *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

Yes No Don't know D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

Yes No Don't know *E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

Yes No Don't know *F. Has the property been used for commercial or industrial purposes?

Yes No Don't know *G. Is there any soil or groundwater contamination?

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

1 DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY
2 SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME
3 SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER
4 OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM
5 THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT
6 TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN
7 STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE
8 THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE
9 AGREEMENT.

10 BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE
11 STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE
12 OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER
13 PARTY.

14 DATE BUYER BUYER.

15 (2) If the disclosure statement is being completed for new
16 construction which has never been occupied, the disclosure statement
17 is not required to contain and the seller is not required to complete
18 the questions listed in item 4. Structural or item 5. Systems and
19 Fixtures.

20 (3) The seller disclosure statement shall be for disclosure only,
21 and shall not be considered part of any written agreement between the
22 buyer and seller of residential property. The seller disclosure
23 statement shall be only a disclosure made by the seller, and not any
24 real estate licensee involved in the transaction, and shall not be
25 construed as a warranty of any kind by the seller or any real estate
26 licensee involved in the transaction.

27 **Sec. 4.** RCW 49.60.227 and 2018 c 65 s 1 are each amended to read
28 as follows:

29 (1)(a) If a written instrument contains a provision that is void
30 by reason of RCW 49.60.224, the owner, occupant, or tenant of the
31 property which is subject to the provision or the homeowners'
32 association board may cause the provision to be stricken from the
33 public records by bringing an action in the superior court in the
34 county in which the property is located. The action shall be an in
35 rem, declaratory judgment action whose title shall be the description
36 of the property. The necessary party to the action shall be the
37 owner, occupant, or tenant of the property or any portion thereof.

1 The person bringing the action shall pay a fee set under RCW
2 36.18.012.

3 (b) If the court finds that any provisions of the written
4 instrument are void under RCW 49.60.224, it shall enter an order
5 striking the void provisions from the public records and eliminating
6 the void provisions from the title or lease of the property described
7 in the complaint.

8 (i) A complete copy of any document affected by the order shall
9 be made an exhibit to the order and the order shall identify each
10 document by recording number and date of recordation and set forth
11 verbatim the void provisions to be struck from such document. The
12 order shall include a certified copy of each document, upon which the
13 court has physically redacted the void provisions.

14 (ii) The person bringing the action may obtain and deliver a
15 certified copy of the order to the office of the county auditor or,
16 in charter counties, the county official charged with the
17 responsibility for recording instruments in the county records, in
18 the county where the property is located.

19 (iii) The auditor shall record the documents prepared by the
20 court. An image of each document so corrected shall be placed in the
21 public records. Each corrected document shall contain the following
22 information on the first page or a cover page prepared pursuant to
23 RCW 65.04.047: The auditor's file number or book and page of the
24 original document, a notation that the original document was
25 corrected pursuant to this section, the cause number of the court
26 action, and the date the order was entered.

27 (iv) The auditor or official shall update the index of each
28 original document referenced in the order with the auditor's file
29 number of the corrected document. Further, the index will note that
30 the original record is no longer the primary official public record
31 and is removed from the chain of title pursuant to the court order.

32 (v) The original document or image and subsequent records of such
33 actions shall be separately maintained in the county's records and,
34 at the auditor's or official's discretion, the original document or
35 image may also be transferred to the secretary of state archives
36 division to be preserved for historical or archival purposes.

37 (2) (a) As an alternative to the judicial procedure set forth in
38 subsection (1) of this section, the owner of property subject to a
39 written instrument that contains a provision that is void by reason
40 of RCW 49.60.224 may record a restrictive covenant modification

1 document with the county auditor, or in charter counties the county
2 official charged with the responsibility for recording instruments in
3 the county records, in the county in which the property is located.

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

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

7 "The referenced original written instrument contains
8 discriminatory provisions that are void and unenforceable under RCW
9 49.60.224 and federal law. This document strikes from the referenced
10 original instrument all provisions that are void and unenforceable
11 under law."

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

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

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

22 (3) For the purposes of this section, "restrictive covenant
23 modification document" or "modification document" means a standard
24 form developed and designed by the Washington state association of
25 county auditors.

26 NEW SECTION. **Sec. 5.** This act applies to real estate
27 transactions entered into on or after January 1, 2022."

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28 On page 1, line 2 of the title, after "restrictions;" strike the
29 remainder of the title and insert "amending RCW 64.06.020 and
30 49.60.227; adding a new section to chapter 49.60 RCW; creating new
31 sections; and providing an expiration date."

EFFECT: Requires the original document or image and subsequent records of void provisions to be separately maintained in county records.

--- END ---