

HOUSE BILL REPORT

E2SHB 1335

As Passed Legislature

Title: An act relating to review and property owner notification of recorded documents with unlawful racial restrictions.

Brief Description: Concerning review and property owner notification of recorded documents with unlawful racial restrictions.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Valdez, Rude, Berry, Fitzgibbon, Morgan, Santos, Shewmake, Davis, Berg, Gilday, Bergquist, Fey, Bateman, Lekanoff, Lovick, Callan, Riccelli, Rule, Pollet, Senn and Harris-Talley).

Brief History:

Committee Activity:

Local Government: 2/2/21, 2/3/21, 2/5/21 [DPS];
Appropriations: 2/18/21, 2/19/21 [DP2S(w/o sub LG)].

Floor Activity:

Passed House: 3/4/21, 97-1.
Senate Amended.
Passed Senate: 4/7/21, 49-0.
House Concurred.
Passed House: 4/15/21, 95-1.
Passed Legislature.

Brief Summary of Engrossed Second Substitute Bill

- Requires the University of Washington and Eastern Washington University to review existing deeds and covenants for unlawful racial or other discriminatory restrictions and provide notice of such restrictions to property owners and county auditors.
- Adds to the seller disclosure statement a notice to the buyer of real property that covenant or deed restrictions based on race or other

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protected classes are unlawful and provides the methods by which such restrictions can be struck.

- Provides a process for striking and removing unlawful provisions from the record and chain of title after a property owner files an action in superior court.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Berg, Robertson and Senn.

Staff: Elizabeth Allison (786-7129).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 33 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Staff: Jessica Van Horne (786-7288).

Background:

Washington Law Against Discrimination.

The Washington Law Against Discrimination (WLAD) prohibits discriminatory practices in employment; places of public resort, accommodation, or amusement; real estate transactions; and credit and insurance. The law protects persons from discrimination based on their race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veterans, or military status. The law also protects persons from discrimination based on 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.

The WLAD declares void any provision in a written instrument relating to real property that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease of the property to individuals within a protected class. If a written instrument contains a provision void under the 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 struck from the public records, or may record a restrictive covenant modification document with the county auditor. If a property owner, occupant, or tenant of the property or the homeowners' association board brings an action in superior court to cause unlawful provisions to be stricken, the court must enter an order striking the void provisions from the public records and eliminating them from the title or lease of the property described in the complaint.

Seller's Disclosures.

A seller of residential real property must provide a buyer with a disclosure statement about the property within five business days after mutual acceptance of a written purchase agreement. The disclosure statement requires the seller to answer (1) "yes," (2) "no," or (3) "don't know" on a list of items, with space provided for more information if necessary. The seller disclosure statement includes the following categories:

- title;
- water;
- sewer or on-site sewage system;
- structural;
- systems and fixtures;
- homeowners' association or common interests;
- environmental;
- manufactured and mobile homes; and
- full disclosure by sellers.

Within three business days of receipt of the disclosure statement, the buyer may approve and accept the disclosure statement or rescind the purchase agreement. If the disclosure statement is delivered late or not delivered, the buyer's right to rescind expires the earlier of three days after receipt of the disclosure statement or the date the transfer closes.

Summary of Engrossed Second Substitute Bill:

Washington Law Against Discrimination.

Subject to appropriations, the University of Washington and Eastern Washington University must review existing recorded covenants and deed restrictions to identify recorded documents that include racial or other restrictions on property ownership or use against protected classes that are unlawful under the WLAD. For properties subject to such unlawful restrictions, the universities must notify property owners and the county auditor of the county in which the property is located and must provide information on how such unlawful restrictions may be struck.

When an action to strike unlawful provisions is brought in superior court and an order

striking the void provision is entered by the court, a complete copy of any document affected by the order must be made an exhibit to the order. The order must identify each document and set forth verbatim the void provisions to be struck, and must include a certified copy of each document, upon which the court has physically redacted the void provisions. The person bringing the action may obtain and deliver a certified copy of the order to the county auditor or official charged with recording instruments in the county records, and the auditor or official shall record the documents prepared by the court. An image of the corrected document must be placed in the public records and must contain certain specified information. The auditor is required to update the index of each original document referenced in the court order with the auditor's file number of the corrected document, and the index must note that the original record is no longer the primary official public record and is removed from the chain of title. The original document or image and subsequent records must be separately maintained in the county's records and, at the auditor or official's discretion, the original document or image may also be transferred to the Secretary of State archives division to be preserved for historical or archival purposes.

Seller's Disclosures.

The seller disclosure statement is amended to include a notice to the buyer that covenants or deed restrictions based on race, creed, sexual orientation, or other protected class are void and unenforceable, and provides information on how such illegal restrictions can be struck.

The provisions of the bill apply to real estate transactions entered into on or after January 1, 2022.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Local Government):

(In support) The use of racial covenants or deed restrictions to prevent ownership of property are some of the most explicit examples of racism that we have had in our housing system. They have been ruled unconstitutional but still exist on many titles and are very offensive. The Legislature created an administrative process to allow homeowners to file a document to repudiate the racial covenants without the need to use an attorney, however, most property owners will never know if their property has a racial covenant. If property owners knew, they would likely be deeply troubled, and the bill is trying to address that by providing a review of existing records and documents where these restrictions exist and notify owners so they can have the provisions stricken and removed. Diversity, equity, and inclusion efforts are a priority of Washington realtors, and Washington is a leader in diversity, equity, and inclusion. Living with restrictive covenants has led to racism and

obstacles to education, food, and jobs, and has manifested in ways that hold people back. Offensive language in deeds still exists today, and it's unimaginable how it has made people feel. The language is a legacy of the racist past, serves no purpose today, and is unenforceable. There has been a long history of discrimination in real estate, and the industry is currently going through a reckoning with gaining awareness of this activity. People have come to realize that this issue will not be addressed with a silver-bullet solution and will require a long-term effort. The bill focuses on raising awareness of this racist history. Many states, like Washington, have an existing process for removing restrictive language, but many people are not aware of the language in property records. There is a need for a statewide process to bring this information forward.

(Opposed) None.

(Other) There is no opposition to the goal of the bill. Racially discriminatory covenants are an ugly piece of history that should be rectified. These covenants are not enforceable, and there is already an existing process to remove them that was put in place in 2018. This existing process has not had time to work yet. There is an advertisement problem because people do not know about the existing program. The task that would be given to counties in this bill is daunting. Many of the deeds and covenants are old, hand-written documents that must be fished through and read one at a time. The funding in the bill just loosens what existing revenue can be used for, it does not provide additional funding. There are also concerns about Growth Management Act implications. Maybe the solution is a combination advertising the existing process and having a process that is less onerous. It is heartening to hear talk about shared responsibility for creating this racist history. Cities have a very large difference of populations and this bill would require a considerable use of staff time and pull staff away from their comprehensive plan duties. The timing in the bill requires it to be done before the comprehensive plan, and there is no provision on what happens if something is missed.

Staff Summary of Public Testimony (Appropriations):

(In support) The building industry and realtors support this bill, as it will help address a historical wrong. Legislation passed previously sets out a process for removing potentially discriminatory covenants and restrictions from recorded documents. Identifying these discriminatory covenants and alerting current property owners makes the process more proactive. Realtors would support an amendment to require the notice of potentially discriminatory covenants as part of the existing seller disclosure form.

There is a current collaboration between historians and Gonzaga University to help property owners identify these covenants and access the existing legal remedy to remove them. Including college students in assisting with the outreach program is supported. There have been legal conflicts around implementing large-scale, blanket removals of discriminatory restrictions from recorded documents, and a case is currently pending on this subject. An amendment to strengthen the current legal remedy is supported.

(Opposed) None.

(Other) County auditors contributed to the legislation that established the current legal remedy to remove discriminatory covenants. County auditors support a state-funded program where institutions of higher education will conduct outreach to inform property owners of the legal remedy. Institutions of higher education employ trained individuals who are better able to identify and verify potentially discriminatory covenants than county employees, and who will be more effective than counties. County auditors look forward to working with institutions of higher education to provide access to records to enable this process.

Persons Testifying (Local Government): (In support) Jerry Martin and Bill Clarke, Washington REALTORS; Phil McBride, John L. Scott Real Estate; and Nick Maki, Windermere Real Estate.

(Other) Mellani McAleenan, Washington State Association of Counties; and Carl Schroeder, Association of Washington Cities.

Persons Testifying (Appropriations): (In support) Logan Camporeale; Bill Clarke, Washington REALTORS; and Nora Burnes, Building Industry Association of Washington.

(Other) Vicky Dalton, Washington State Association of County Auditors.

Persons Signed In To Testify But Not Testifying (Local Government): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.