

SENATE BILL REPORT

E2SHB 1335

As Reported by Senate Committee On:
Business, Financial Services & Trade, March 25, 2021
Ways & Means, April 2, 2021

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: Passed House: 3/4/21, 97-1.

Committee Activity: Business, Financial Services & Trade: 3/18/21, 3/25/21 [DP-WM].
Ways & Means: 3/31/21, 4/02/21 [DPA, w/oRec].

Brief Summary of Amended 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 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Mullet, Chair; Hasegawa, Vice Chair; Dozier, Ranking Member; Brown, Frockt, Hobbs and Wilson, L.

Staff: Clinton McCarthy (786-7319)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Lias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford, Assistant Ranking Member, Capital.

Staff: Trevor Press (786-7446)

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.

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 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.

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 yes, no, or 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 Amended Bill: 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 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.

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.

A process for striking and removing unlawful restrictions from the record and chain of title after a property owner files an action in superior court is provided.

The original document or image containing the unlawful restrictions may be preserved for historical or archival purposes and may be transferred to the Secretary of State Archives Division to be preserved for historical or archival purposes.

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

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

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

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on January 1, 2022.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Business, Financial Services & Trade): PRO: Racial covenants are some of the most racist records we have. These records still exist and they are racist. If people knew that the covenants were placed on their homes, they would want them removed. The cost is likely to be approximately \$250,000 per year. These racist property covenants are both part of our history and a stain on the character of our state. Eastern Washington University (EWU) is uniquely positioned to find and analyze these records. They have the researchers and expertise to do this project. There are 20 counties east of the Cascades. EWU will create an index of these covenants. Many of these records are not digitized, and cover a land mass the size of Portugal. Segregation intensified during the early part of the 20th century, and the restrictions from the covenants enforced this segregation. This is one more step in the right direction. This bill provides tools for identifying the covenants and a procedure for removing them. EWU has the experience, the passion, and expertise to see this project through. There will be significant fieldwork for this bill, and students will be paid for this meaningful work. This is a better, more feasible bill after having worked with stakeholders. The amendment to the disclosure that lets people know how to remove the covenants. This was written to be practical, and provides a valuable learning opportunity for students.

OTHER: With appropriate funding, this bill can be successful. In 27 counties, the records to be analyzed are paper and make this an onerous process. This bill clarifies the process for removing the offensive covenants. This bill is a collaboration between a broad set of stakeholders.

Persons Testifying (Business, Financial Services & Trade): PRO: Representative Javier Valdez, Prime Sponsor; Larry Cebula, Eastern Washington University; Logan Camporeale, Local Historian; Jacob Vigdor, University of Washington; Nora Burnes, Building Industry Association of Washington; Sean Holland, Washington Land Title Association; Sam Ligon, Eastern Washington University; Bill Clarke, Washington Realtors; Katherine Touff, Seattle University School of Law.

OTHER: Vicky Dalton, Spokane County Auditor, Washington State Association of County Auditors.

Persons Signed In To Testify But Not Testifying (Business, Financial Services & Trade): No one.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill

(Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We have compiled an archive of deed restrictions. The work of discovering deed restrictions is complicated and costly. This bill will allow discovery of deed restrictions across the states. The law allows a process where the property owner files a restrictive covenant modification form and that then becomes part of the property record and in that process the landlord repudiates, it does not remove the property record. This is a great opportunity for UW students and will impact neighborhoods by allowing them to acknowledge historic segregation. Most county records are not digitized which means most of the research will have to be looking through paper files. Would like funding for digitization of files as a part of this work—additional \$5 surcharge for three years for this funding. This bill would provide critical funding to find restrictive covenants throughout the state and will be a great project for university students. This bill with adequate funding can be carried out. There are over 16 million pages that are still not digitalized. Current law has deficiencies, the state auditors have crafted language that clarifies the court process so that it clears the chain of title without damaging the chain of title. A project to identify records in small counties would be very difficult. It would be nearly impossible to find and fix covenant records without making the records digital. Auditors want the goals of this bill to be successful and require additional funding for digitalizing documents to be edited. Current surcharges barely cover fees for existing software. It would take 20 years to make enough money to digitalize documents. Imaging, indexing, and verifying documents requires state funding beyond what counties can afford. This bill will demonstrate that housing opportunities are available for all people.

Persons Testifying (Ways & Means): PRO: James Gregory, professor, Department of History at University of Washington; Mellani McAleenan, Washington State Association of Counties; Logan Camporeale; Vicky Dalton, Spokane County and Washington State Association of County Auditors; Heidi Hunt, Adams County and Washington State Association of County Auditors; Paul Andrews, Kitsap County and Washington State Association of County Auditors; Jon Scherer, King County and Washington Association of County Auditors; Jan Himebaugh, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.