

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4416**

A bill to prohibit the recording of deeds or other instruments relating to real property that contain certain restrictive covenants or conditions; to make such restrictions unenforceable; and to provide remedies with respect to those instruments.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "discharge of prohibited
2 restrictive covenants act".

3 Sec. 2. As used in this act:

4 (a) "Discharge form" means the discharge of a prohibited
5 restriction form described in section 5.

6 (b) "Person" means an individual or a partnership,
7 corporation, limited liability company, association, governmental
8 entity, or other legal entity.

1 (c) "Prohibited restriction" means a restriction, covenant, or
2 condition, including a right of entry or possibility of reverter,
3 that purports to restrict occupancy or ownership of property on the
4 basis of race, color, religion, sex, familial status, national
5 origin, or other class protected by the fair housing act, title
6 VIII of the civil rights act of 1968, Public Law 90-284, in a deed
7 or other instrument.

8 Sec. 3. A person shall not record in the records of the
9 register of deeds a deed or other instrument that contains a
10 prohibited restriction.

11 Sec. 4. (1) A prohibited restriction is void and has no legal
12 effect.

13 (2) A court or other person shall not enforce a prohibited
14 restriction.

15 Sec. 5. A discharge of prohibited restriction form may be
16 recorded with the register of deeds for the county where the
17 property is located. A discharge form recorded under this section
18 must substantially conform to the following form:

19 "DISCHARGE OF PROHIBITED RESTRICTION

20 The document recorded at Liber ____ Page ____ or Instrument
21 number ____ contains language that violates the discharge of
22 prohibited restrictive covenants act.

1 This document removes and abolishes from the original document
2 any restriction, covenant, or condition, including a right of entry
3 or possibility of reverter, that purports to restrict occupancy or
4 ownership of property on the basis of race, color, religion, sex,
5 familial status, national origin, or other class protected by the
6 fair housing act, title VIII of the civil rights act of 1968,
7 Public Law 90-284, and the discharge of prohibited restrictive
8 covenants act.

9 A transcription or copy of the original document with language
10 redacted or removed must be attached to this form.

11 The undersigned is/are the legal owner(s) of the property
12 described in the document referenced above or an officer of the
13 homeowners' or property owners' association, or the association of
14 co-owners of the condominium, for the property described in the
15 document referenced above.

16 Property description: _____

17 _____

18 (Signature)

19 _____

20 (Typed or printed name)

21 STATE OF MICHIGAN

22 _____ COUNTY

23 Acknowledged before me in _____ County, Michigan, (or)
24 before me using an electronic notarization system under MCL 55.286a
25 in _____ County, Michigan, (or) before me using a remote
26 electronic notarization platform under MCL 55.286b on (date), by
27 (name of person acknowledged).

28 _____

29 (Notary's signature)

1 _____
2 (Notary public's name, typed, as it appears on application for
3 commission)

4 Notary public, State of Michigan, County of _____.

5 My commission expires _____.

6 (Or, if acting in county other than county of commission)

7 Acting in the County of _____.

8 Prepared by: _____ (Name and address of preparer).".

9 Sec. 6. (1) A homeowners' or property owners' association,
10 acting through a simple majority vote of its board, may record a
11 discharge form to remove any prohibited restriction in a deed or
12 other instrument that affects a property governed by the
13 homeowners' or property owners' association.

14 (2) If the board of a homeowners' or property owners'
15 association receives a written request by a member of the
16 association that the board exercise its authority under subsection
17 (1), the board shall determine within a reasonable time whether a
18 prohibited restriction is present in a deed or other instrument. If
19 the board determines that a prohibited restriction is present in a
20 deed or other instrument, the board shall record a discharge form,
21 as provided under this subsection and subsections (1), (3), (4),
22 and (9).

23 (3) Board action under subsection (1) or (2) does not require
24 the vote or approval of the property owners.

25 (4) A discharge form prepared under subsection (1) or (2) may
26 be executed by any officer authorized by the board.

27 (5) The board of directors of an association of co-owners of a
28 condominium, acting through a simple majority vote of the board,
29 may record a discharge form to remove any prohibited restriction in

1 a deed or other instrument that affects a property governed by the
2 board.

3 (6) If the board of directors of an association of co-owners
4 of a condominium receives a written request by a co-owner that the
5 board exercise its authority under subsection (5), the board shall
6 determine within a reasonable time whether a prohibited restriction
7 is present in a deed or other instrument. If the board determines
8 that a prohibited restriction is present in a deed or other
9 instrument, the board shall record a discharge form, as provided
10 under this subsection and subsections (5), (7), (8), and (9).

11 (7) Notwithstanding sections 90 and 90a of the condominium
12 act, 1978 PA 59, MCL 559.190 and 559.190a, board action under
13 subsection (5) or (6) does not require the vote or approval of the
14 condominium co-owners or mortgagees.

15 (8) A discharge form prepared under subsection (5) or (6) may
16 be executed by any officer authorized by the board.

17 (9) A discharge form prepared under this section must be
18 recorded with the register of deeds for the county where the
19 property is located.

20 Sec. 7. (1) A property owner may record in the records of the
21 register of deeds for the county where the property is located a
22 discharge form to remove any prohibited restriction.

23 (2) A discharge form recorded under this section may be
24 executed solely by the property owner.

25 Sec. 8. (1) If a recorded deed or other recorded instrument
26 contains a provision that is prohibited under this act, the owner,
27 occupant, or tenant of the property that is subject to the
28 provision or any member of the board of a homeowners' or property
29 owners' association or of the board of directors of an association

1 of co-owners of a condominium that would have a right to enforce
2 the provision may bring an action in the circuit court in the
3 county in which the property is located to have a discharge form
4 recorded with the register of deeds.

5 (2) An action under this section must be brought as an in rem,
6 declaratory judgment action and the title of the action must be the
7 description of the property. The owners, occupants, and tenants of
8 the property or any part of the property are necessary parties to
9 the action.

10 (3) In an action under this section, if the court finds that
11 any provisions of the deed or instrument are prohibited under this
12 act, it shall enter an order requiring a discharge form to be
13 recorded with the register of deeds in accordance with this act.

14 Sec. 9. As provided in section 2567 of the revised judicature
15 act of 1961, 1961 PA 236, MCL 600.2567, a register of deeds is
16 entitled to the fees under that section for recording a discharge
17 form prepared and recorded under this act.

18 Sec. 10. (1) A person that refuses, before recording, to
19 remove from a deed or other instrument a prohibited restriction is
20 liable for all actual court costs and reasonable attorney fees
21 incurred in an action before a court of competent jurisdiction to
22 enforce the provisions of this act.

23 (2) Subsection (1) does not apply to a register of deeds or an
24 employee of a register of deeds.

25 Sec. 11. (1) Except as otherwise provided in section 6(2) and
26 (6), this act does not create a duty on the part of an owner,
27 occupant, tenant, association, board, or member or officer of a
28 board to do any of the following as authorized under this act:

29 (a) Record a discharge form.

1 (b) Bring an action under this act.

2 (2) An owner, occupant, tenant, association, board, or member
3 or officer of a board is not liable for failing to do any of the
4 following as authorized under this act:

5 (a) Record a discharge form.

6 (b) Bring an action in court under this act.

7 (3) This act does not limit any right or remedy under the
8 Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to
9 37.2804, or any other law of this state.

10 Sec. 12. This act does not do either of the following:

11 (a) Impose a duty on a register of deeds or employee of a
12 register of deeds to inspect a deed or other instrument to
13 determine whether recording the deed or instrument would violate
14 this act.

15 (b) Create a duty, a responsibility, a requirement, or an
16 obligation on the part of a title insurance company or title
17 insurance agency, or the officers, directors, shareholders,
18 employees, or contractors of a title insurance company or title
19 insurance agency, to inspect a deed or other instrument to
20 determine whether recording the deed or instrument would violate
21 this act. A title insurance company or title insurance agency, or
22 the officers, directors, shareholders, employees, or contractors of
23 the title insurance company or title insurance agency, are
24 expressly excluded from any liability or cause of action that may
25 be brought by any person under this act.