

(CORRECTED COPY)
P.L. 2021, CHAPTER 274, *approved November 8, 2021*
Senate, No. 2861 (*Second Reprint*)

1 **AN ACT** concerning discriminatory restrictive covenants in deeds
2 and supplementing Title 46 of the Revised Statutes.
3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*
6
7 ²1. The Legislature finds and declares:
8 a. Restrictive covenants in deeds for real property that establish
9 certain restrictions on the ownership or use of real property are
10 prohibited by sections 4 and 11 of the “Law Against
11 Discrimination,” P.L.1945, c.169 (C.10:5-4 and C.10:5-12),
12 including restrictions on the basis of race, creed, color, national
13 origin, ancestry, age, marital status, affectional or sexual
14 orientation, familial status, disability, liability for service in the
15 Armed Forces of the United States, nationality, sex, gender identity
16 or expression, or source of lawful income used for rental or
17 mortgage payments.
18 b. While these forms of restrictive covenants are unlawful and
19 therefore unenforceable, no State law currently exists that would
20 require an unlawful and unenforceable restrictive covenant that
21 currently exists in a deed for real property to be removed.
22 Unsuspecting homeowners or potential home buyers who encounter
23 restrictive language in a deed and do not understand the intricacies
24 of the “Law Against Discrimination” may be discouraged from
25 buying a home or continuing to reside in a home for which the
26 ownership document, the deed, contains this language.
27 Furthermore, a person who has purchased a home without realizing
28 that such language is contained in the deed may feel shocked and
29 upset after reading the deed.
30 c. Allowing this type of language to continue to be contained
31 in a legal document recorded by a governmental entity of the State
32 of New Jersey, either the county clerk or the county register of
33 deeds and mortgages, is a reminder of a hurtful and shameful
34 national legacy that has been outlawed by the United States
35 Congress, and by the New Jersey Legislature through the “Law
36 Against Discrimination.”
37 d. The Virginia Legislature recently enacted a law prohibiting
38 the recording of a deed after July 1, 2020 that references the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
¹Senate floor amendments adopted October 29, 2020.
²Assembly AHO committee amendments adopted June 2, 2021.

1 specific portion of a restrictive covenant purporting to restrict the
2 ownership or use of the property as prohibited under the Virginia
3 Fair Housing Law. The Virginia law also provides a property
4 owner the ability to legally remove such an unenforceable
5 restrictive covenant from their deed.

6 e. The New Jersey Legislature has reviewed this Virginia law
7 and has determined that such a law shall be enacted in this State in
8 furtherance of the Legislature's continuing efforts to ensure that the
9 hateful and hurtful legacy embodied in many land transactions is
10 forever removed from State land deeds.²

11
12 ²[1.] 2.² A deed recorded on or after January 1, ²[2021]
13 2022² shall not contain a reference to the specific portion of a
14 restrictive covenant purporting to restrict the ownership or use of
15 real property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-
16 4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12). A
17 county clerk or a register of deeds and mortgages shall refuse to
18 accept any deed submitted for recordation that references the
19 specific portion of any such restrictive covenant. An attorney or
20 title company preparing or submitting a deed for recordation shall
21 ensure that the specific portion of such a restrictive covenant is not
22 specifically referenced in the deed prior to the deed being submitted
23 for recordation. A deed may include a general provision that states
24 that the deed is subject to any and all covenants of record; however,
25 such provisions shall not apply to the specific portion of a
26 restrictive covenant purporting to restrict the ownership or use of
27 the property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-
28 4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12).

29 Any deed that is recorded in the land records on or after January
30 1, ²[2021] 2022² that mistakenly contains such a restrictive
31 covenant shall nevertheless constitute a valid transfer of real
32 property.

33
34 ²[2.] 3.² A restrictive covenant prohibited by section 4 of
35 P.L.1945, c.169 (C.10:5-4) or subsection g. of section 11 of
36 P.L.1945, c.169 (C.10:5-12) may be released by the owner of the
37 real property subject to the restrictive covenant by recording a
38 "Certificate of Release of Certain Prohibited Covenants." The real
39 property owner may record such a certificate prior to recordation of
40 a deed conveying real property to a purchaser, or when a real
41 property owner discovers that such a prohibited covenant exists and
42 chooses to affirmatively release it. The form of the certificate shall
43 be promulgated by the ²[Administrative Office of the Courts],
44 Department of Community Affairs² and shall be available at the
45 county office, or on the ²Internet² website, of the county clerk or
46 register of deeds and mortgages, as appropriate to the county in
47 which the real property is located ², and shall also be available on

1 the Internet website of the Department of Community Affairs².
2 There shall be no filing fee, or any other fee, charged to the owner
3 of a real property for the filing of this certificate.

4 The certificate promulgated by the ²【Administrative Office of
5 the Courts】 Department of Community Affairs² shall conform
6 substantially to the following “Certificate of Release of Certain
7 Prohibited Covenants” format:

8 CERTIFICATE OF RELEASE OF CERTAIN PROHIBITED
9 COVENANTS

10

11 County of Record: _____

12

13 Date of Deed Containing Prohibited Covenant: _____

14

15 Deed Book: _____ Page: _____

16

17 Name(s) of Grantor(s): _____

18

19 Name(s) of Current Owner(s): _____

20

21 Real Property Description: _____

22

23 Brief Description of Prohibited Covenant: _____

24

25 The covenant contained in the above-mentioned deed is released
26 from the above-described real property to the extent that it contains
27 terms purporting to restrict the ownership or use of the property as
28 prohibited in section 4 of P.L.1945, c.169 (C.10:5-4).

29

30 The undersigned is/are the legal owners of the property described
31 herein.

32

33 Given under my/our hand(s) this _____ day of _____,
34 20__.

35

36 _____

37

38 _____

39 (Current Owners)

40

41 State of New Jersey

42 County of _____

43

44 Subscribed, sworn to, and acknowledged before me this _____ day
45 of _____, 20__.

46

47 _____

48 Notary Public

1 Notary Registration Number: _____

2

3 My Commission Expires: _____

4

5 ²[¹3.] 4.² a. As used in this section:

6 “Association” shall mean a homeowners’ or property owners’
7 association, cooperative corporation, condominium association, or
8 planned community acting through a majority vote of its full board
9 membership; and

10 “Board” shall mean the governing board of an association.

11 b. Within 90 days of the enactment of
12 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
13 bill), each board shall review the association’s governing
14 documents to determine whether those documents contain any
15 restriction, covenant, or condition, that prohibits or limits the
16 conveyance, encumbrance, rental, occupancy, or use of real
17 property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-4) or
18 subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12). If an
19 association finds such an unlawful restriction, covenant, or
20 condition in any of those documents, it shall amend the document or
21 documents to remove the restriction, covenant, or condition.
22 Removal of such a restriction, covenant, or condition shall not
23 require approval of the members of the association, notwithstanding
24 any provision of the governing documents to the contrary.

25 c. If, after the review and amendment of governing documents
26 pursuant to subsection b. of this section has been completed, a
27 board receives a written request from a member of the association
28 to remove from those documents language that the member believes
29 to be an unlawful restriction, covenant, or condition that prohibits
30 or limits the conveyance, encumbrance, rental, occupancy, or use of
31 real property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-
32 4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12), the
33 board shall immediately undertake a review of the document or
34 documents, which review shall be completed within 30 days of the
35 member’s written request. If the board determines that the member
36 is correct, the board shall amend the document or documents to
37 remove the restriction, covenant, or condition within 30 days of its
38 determination.

39 ²d. Nothing in this act shall give rise to a private cause of action
40 by or against an association, a board, a member, or the public for
41 acting or not acting to remove or not remove an unlawful
42 restriction, covenant, or condition^{2.1}.

43

44 ¹[3.] ²[4.1] 5.² This act shall take effect immediately.

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46

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49

Concerns certain restrictive covenants on real property.