

CHAPTER 274

AN ACT concerning discriminatory restrictive covenants in deeds and supplementing Title 46 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.46:15-15 Findings, declarations regarding discriminatory restrictive covenants in deeds.

1. The Legislature finds and declares:

a. Restrictive covenants in deeds for real property that establish certain restrictions on the ownership or use of real property are prohibited by sections 4 and 11 of the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-4 and C.10:5-12), including restrictions on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression, or source of lawful income used for rental or mortgage payments.

b. While these forms of restrictive covenants are unlawful and therefore unenforceable, no State law currently exists that would require an unlawful and unenforceable restrictive covenant that currently exists in a deed for real property to be removed. Unsuspecting homeowners or potential home buyers who encounter restrictive language in a deed and do not understand the intricacies of the “Law Against Discrimination” may be discouraged from buying a home or continuing to reside in a home for which the ownership document, the deed, contains this language. Furthermore, a person who has purchased a home without realizing that such language is contained in the deed may feel shocked and upset after reading the deed.

c. Allowing this type of language to continue to be contained in a legal document recorded by a governmental entity of the State of New Jersey, either the county clerk or the county register of deeds and mortgages, is a reminder of a hurtful and shameful national legacy that has been outlawed by the United States Congress, and by the New Jersey Legislature through the “Law Against Discrimination.”

d. The Virginia Legislature recently enacted a law prohibiting the recording of a deed after July 1, 2020 that references the specific portion of a restrictive covenant purporting to restrict the ownership or use of the property as prohibited under the Virginia Fair Housing Law. The Virginia law also provides a property owner the ability to legally remove such an unenforceable restrictive covenant from their deed.

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

C.46:15-16 Actions regarding certain deeds with restrictive covenant references.

2. A deed recorded on or after January 1, 2022 shall not contain a reference to the specific portion of a restrictive covenant purporting to restrict the ownership or use of real property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12). A county clerk or a register of deeds and mortgages shall refuse to accept any deed submitted for recordation that references the specific portion of any such restrictive covenant. An attorney or title company preparing or submitting a deed for recordation shall ensure that the specific portion of such a restrictive covenant is not specifically referenced in the deed prior to the deed being submitted for recordation. A deed may include a general provision that states that the deed is subject to any and all covenants of record; however, such provisions shall not apply to the specific portion of a restrictive covenant purporting to restrict the ownership or use of the property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12).

Any deed that is recorded in the land records on or after January 1, 2022 that mistakenly contains such a restrictive covenant shall nevertheless constitute a valid transfer of real property.

C.46:15-17 “Certificate of Release of Certain Prohibited Covenants”.

3. A restrictive covenant prohibited by section 4 of P.L.1945, c.169 (C.10:5-4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12) may be released by the owner of the real property subject to the restrictive covenant by recording a “Certificate of Release of Certain Prohibited Covenants.” The real property owner may record such a certificate prior to recordation of a deed conveying real property to a purchaser, or when a real property owner discovers that such a prohibited covenant exists and chooses to affirmatively release it. The form of the certificate shall be promulgated by the Department of Community Affairs and shall be available at the county office, or on the Internet website, of the county clerk or register of deeds and mortgages, as appropriate to the county in which the real property is located, and shall also be available on the Internet website of the Department of Community Affairs. There shall be no filing fee, or any other fee, charged to the owner of a real property for the filing of this certificate.

The certificate promulgated by the Department of Community Affairs shall conform substantially to the following “Certificate of Release of Certain Prohibited Covenants” format:

CERTIFICATE OF RELEASE OF CERTAIN PROHIBITED COVENANTS

County of Record: _____

Date of Deed Containing Prohibited Covenant: _____

Deed Book: _____ Page: _____

Name(s) of Grantor(s): _____

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

Real Property Description: _____

Brief Description of Prohibited Covenant: _____

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

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

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

(Current Owners)

State of New Jersey County of _____

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

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

C.46:15-18 Definitions; amendment of governing documents.

4. a. As used in this section:

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

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

b. Within 90 days of the enactment of P.L.2021, c.274 (C.46:15-15 et seq.), each board shall review the association’s governing documents to determine whether those documents contain any restriction, covenant, or condition, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12). If an association finds such an unlawful restriction, covenant, or condition in any of those documents, it shall amend the document or documents to remove the restriction, covenant, or condition. Removal of such a restriction, covenant, or condition shall not require approval of the members of the association, notwithstanding any provision of the governing documents to the contrary.

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

d. Nothing in this act shall give rise to a private cause of action by or against an association, a board, a member, or the public for acting or not acting to remove or not remove an unlawful restriction, covenant, or condition.

5. This act shall take effect immediately.

Approved November 8, 2021.