SENATE, No. 2861

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED AUGUST 27, 2020

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)
Senator DAWN MARIE ADDIEGO
District 8 (Atlantic, Burlington and Camden)

SYNOPSIS

Concerns certain restrictive covenants on real property.

CURRENT VERSION OF TEXT

As introduced.

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:*

1. A deed recorded on or after January 1, 2021 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, 2021 that mistakenly contains such a restrictive covenant shall nevertheless constitute a valid transfer of real property.

2. 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 Administrative Office of the Courts, and shall be available at the county office, or on the website, of the county clerk or register of deeds and mortgages, as appropriate to the county in which the real property is located. 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 Administrative Office of the Courts 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: _____

3. This act shall take effect immediately.

STATEMENT

This bill concerns the use of restrictive covenants in deeds for real property that would restrict the ownership or use of real property as prohibited by sections 4 and 11 of the "Law Against Discrimination," (LAD) P.L.1945, c.169 (C.10:5-4 and C.10:5-12).

Section 4 of the LAD provides that:

> *All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because 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, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right*.

Subsection g. of section 11 of the LAD provides that it shall be an unlawful discrimination:

> *g. For any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any real property or part or portion thereof, or any agent or employee of any of these:*
>
> *(1) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments.*

This bill would require that a deed recorded on or after January 1, 2021 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 the LAD. The bill also requires a county clerk or a register of deeds and mortgages to refuse to accept any deed submitted for recordation that references the specific portion of any such restrictive covenant.

The bill also provides a property owner the opportunity to release such a restrictive covenant by recording a "Certificate of Release of Certain Prohibited Covenants" with the county clerk, or register of deeds and mortgages, as appropriate, in the county wherein the real property is located. 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 provisions of this bill are based on a recently-enacted Virginia statute (Chapter 788, Laws of 2020, enacted April 6, 2020).