ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2861

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 2, 2021

The Assembly Housing Committee reports favorably Senate Bill No. 2861 (1R), with committee amendments.

As amended by the committee, 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), which include 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.

The bill would require that a deed recorded on or after January 1, 2022 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 form would be promulgated by the Department of Community Affairs, and would be available at the county office, or on the Internet website, of the county clerk or county register of deeds and mortgages, as appropriate to the county in which the property is located, and also on the Internet website of the Department of Community Affairs.

The bill would also require the governing board of a homeowners' or property owners' association, cooperative corporation, condominium association, or planned community acting through a majority vote of its full board membership to 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 or subsection g. of section 11 of the State "Law Against Discrimination," P.L.1945, c.169 (C.10:5-4 & C.10:5-12), and to amend the documents to remove the offending restriction, covenant, or condition. The removal of such a restriction, covenant, or condition would not require approval of the members of the association, notwithstanding any provision of the governing documents to the contrary.

The bill would also provide that if, after the review and amendment of the governing documents 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 or subsection g. of section 11 of the State "Law Against Discrimination," P.L.1945, c.169 (C.10:5-4 & C.10:5-12), the board would have to immediately undertake a review of the document or documents, to be completed within 30 days of the member's written request. If the board determines that the member is correct, the board would be required to amend the document or documents to remove the restriction, covenant, or condition within 30 days of its determination.

The bill also prohibits 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.

As amended by the committee, the bill is identical to Assembly Bill No. 5390 (1R), as that bill was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee made the following amendments to the bill:

- the addition of a findings and declarations section to more fully explain the purpose and intent of the bill;
- a technical correction to the date on which the requirements of the bill would first be effective;
- a provision requiring that the "Certificate of Release of Certain Prohibited Covenants" be promulgated by the Department of Community Affairs rather than the Administrative Office of the Courts, and be made available to the public on the Internet website of the Department of Community Affairs; and

- prohibiting 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.