

Assembly Bill No. 985

Passed the Assembly September 12, 2009

Chief Clerk of the Assembly

Passed the Senate September 11, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 12956.1 and 12956.2 of, to add Section 27361.05 to, and to add Article 3.6 (commencing with Section 27310) to Chapter 6 of Part 3 of Division 2 of Title 3 of, the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, De La Torre. Real property: discriminatory restrictions.

(1) Existing law prohibits discrimination in housing through restrictive covenants based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry and provides that discrimination in housing through a restrictive covenant includes the existence of a restrictive covenant regardless of whether accompanied by a statement that the covenant is repealed or void.

Existing law similarly declares that any provision in any deed of real property in California that purports to restrict the right of any person to sell, lease, rent, use, or occupy the property to persons having any specified characteristic, including, but not limited to, race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, source of income, or sexual orientation, by providing for payment of a penalty, forfeiture, reverter, or otherwise, is void, except as specified.

Existing law provides that any deed or other written instrument that relates to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, any deed or instrument, that contains any provision that purports to forbid, restrict, or condition the right of any person or persons to sell, buy, lease, rent, use, or occupy the property on account of any of the above-specified characteristics, shall be deemed to be revised to omit that provision.

Existing law also authorizes a person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry, to record a Restrictive Covenant Modification, which would include a copy

of the original document with the illegal language stricken. Before recording the modification document, the county recorder is required to submit the modification document and the original document to the county counsel who is required to determine whether the original document contains an unlawful restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry. The county recorder is required to make Restrictive Covenant Modification forms available to the public. Under existing law, a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person is required to place a cover page or stamp on the previously recorded document stating that if the document contains an unlawful restriction, that restriction is void and may be removed by recording a Restrictive Covenant Modification.

This bill would require a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to a person who holds an ownership interest of record in property to also provide a Restrictive Covenant Modification form with specified procedural information to that person. The bill would authorize a title insurance company, escrow company, real estate broker, real estate agent, or other person to record a Restrictive Covenant Modification, in addition to the owner of record, and would require the requester to provide a return address in order for the county recorder to notify the interested party of the action taken by county counsel on the respective property. The bill would require the county counsel to make a determination whether the language identified by the requester in the original document contains an unlawful restriction within a reasonable period of time, not to exceed 3 months, as specified, and would authorize the county counsel to compile a list of phrases identified as unlawfully restrictive language for the purpose of expediting that determination. The bill would require the county recorder to make Restrictive Covenant Modification forms available to the public onsite in an appropriately designated area, and would permit multiple submissions on behalf of different homes and for processing homes in batches with respect to a modification document that affects multiple homes or lots. These

new duties would impose a state-mandated local program on the county recorder and county counsel.

(2) Existing law requires the recorder of each county to establish a social security number truncation program in order to create a public record version of each official record so that the public record is in an electronic format and is an exact copy of the official record, except that any social security number contained in the official record shall be truncated by redacting the first 5 digits of that number. These provisions apply to any document recorded since January 1, 1980, as specified. If a public record version of an official record exists, and upon a request of any person to inspect, copy, or to otherwise publicly disclose that record, the recorder shall make available only the public record version of that record, and publicly disclose the official record only in response to a subpoena or court order. The county recorder may, upon authorization of the board of supervisors, charge an additional fee of \$1 for recording the first page of each document to be used to implement a social security number truncation program pursuant to these provisions. The county auditor is required, at the request of the county board of supervisors, to verify that these fees are used only for the purpose of the program.

This bill would require the recorder of each county to create a public record version of each official record for which a Restrictive Covenant Modification is recorded on or after January 1, 2010, so that the public record is in an electronic format and is an exact copy of the official record, except that any unlawfully restrictive covenant contained in the official record shall be redacted. The bill would specify that an electronic version of the unredacted record, for which a Restrictive Covenant Modification is recorded, would become the official record for the purposes of these provisions. If a public record version of an official record exists, and upon request of any person to inspect, copy, or to otherwise publicly disclose that record, the recorder shall make available only the public record version of that record, and publicly disclose the official record only in response to a subpoena or court order. The bill would provide that the county recorder shall not incur any liability for a procedural, clerical, or administrative error in the recording of a modification document or any other activity related to the redaction of an unlawfully restrictive covenant pursuant to these provisions. The bill would also exempt the county counsel

from liability, as specified. The bill would require the county recorder to charge an initial fee of not more than \$2, as specified, for recording the first page of each property-related document to be used by the county for the sole purpose of performing activities related to the redaction of an unlawfully restrictive covenant pursuant to these provisions or those described in (1) above. The bill would require the board of supervisors to adjust the fee to a whole dollar amount reasonably sufficient to recover costs. By creating new duties for county recorders, this bill would impose a state-mandated local program.

(3) This bill would make legislative findings that any limitation on the public's right of access to the writings of public officials and agencies made by its provisions is necessary to protect against the risk of discrimination.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 12956.1 of the Government Code is amended to read:

12956.1. (a) As used in this section, "association," "governing documents," and "declaration" have the same meanings as set forth in Section 1351 of the Civil Code.

(b) (1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

"If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status,

disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(3) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed directly to a person who holds an ownership interest of record in property shall also provide a Restrictive Covenant Modification form with procedural information, as defined subdivision (b) of Section 27310, along with the document.

(c) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

SEC. 2. Section 12956.2 of the Government Code is amended to read:

12956.2. (a) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record a document titled Restrictive Covenant Modification. A title insurance company, escrow company, real estate broker, real estate agent, or other person also may record the modification document provided for in this section. The county recorder may choose to waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of the modification document. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the language identified by the requester in the original document contains an unlawful restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination within a reasonable period of time, not to exceed three months unless extraordinary circumstances apply. The county recorder shall refuse to record the modification document if the county counsel finds that the original document does not contain an unlawful restriction as specified in this subdivision. For the purpose of expediting the determination required pursuant to this subdivision, the county counsel may compile a list of phrases identified as unlawfully restrictive language.

(c) If a title insurance company, escrow agent, realtor, or other person requests to record a modification document, the requester shall provide a return address in order for the county recorder to notify the interested party of the action taken by county counsel on the respective property. The notice required pursuant to this subdivision may be made on a postcard mailed by first-class mail.

(d) The modification document shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number, and date of the recording.

(e) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(f) The county recorder shall make available to the public Restrictive Covenant Modification forms onsite in an appropriately designated area, which shall be deemed to satisfy the requirement of paragraphs (1) and (2) of subdivision (b) of Section 12956.1 to

provide a Restrictive Covenant Modification form if the specified procedural information for completion is attached to the form. Those forms shall permit multiple submissions on behalf of different homes and for processing homes in batches with respect to a modification document that affects multiple homes or lots.

(g) If the holder of an ownership interest of record in property or a third party causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the holder of the ownership interest of record or third party who caused the modified recordation.

(h) This section does not apply to persons holding an ownership interest in property that is part of a common interest development as defined in subdivision (c) of Section 1351 of the Civil Code if the board of directors of that common interest development is subject to the requirements of subdivision (b) of Section 1352.5 of the Civil Code.

SEC. 3. Article 3.6 (commencing with Section 27310) is added to Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code, to read:

Article 3.6. Unlawfully Restrictive Covenant Redaction

27310. As used in this article, the following terms have the following meanings:

(a) “Official record” means the permanent archival record of all instruments, papers, and notices as accepted for recording by a county recorder.

(b) “Procedural information,” as it relates to a Restrictive Covenant Modification, means the description of how to locate potentially unlawful restrictive covenants and how to submit the Restrictive Covenant Modification document to the county recorder for appropriate processing. This description may, but is not required to, use the following language:

Some archived property documents may contain offensive, illegal language that purports to restrict ownership or occupancy of property. These restrictions are illegal, and have no effect on

anyone's ability to own or occupy the property, but may still appear in property documents as an unlawful restrictive covenant.

Sometimes these illegal restrictions appear only in archived documents and may be found only by a review of those documents at the office of the county recorder. You may search those documents for free at the office of the county recorder, which is open to the public. If you discover an illegal restriction, you may obtain a Restrictive Covenant Modification form from the office of the county recorder to request the removal of the illegal restriction. You must submit a modification document that includes a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

After you complete the form and submit it to the office of the county recorder, the county counsel will make a legal determination whether the language is indeed unlawful and should be removed. If an illegal restriction is found to exist, state law contains a procedure for the creation of a replacement document that does not contain the offensive language. This procedure may be used to remove illegal restrictions from a declaration, governing document, or deed, even if you are not the owner.

(c) "Public record" means a record that is in an electronic format and is an exact copy of an official record except that any unlawfully restrictive covenant contained in the copied record is redacted and any social security number contained in the copied record is truncated pursuant to Article 3.5 (commencing with Section 27300). The public record shall have the same legal force and effect as the official record.

(d) "Unlawfully restrictive covenant" means any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, a deed or other instrument in violation of subdivision (l) of Section 12955.

27311. (a) The county recorder of each county shall create a public record version of each official record for which a Restrictive Covenant Modification is recorded pursuant to Section 12956.2 on or after January 1, 2010. The public record shall be in an electronic format and an exact copy of the official record, except that any unlawfully restrictive covenant contained in the official record shall be redacted. An electronic version of the unredacted

record, for which a Restrictive Covenant Modification is recorded, shall become the official record for purposes of this section.

(b) Nothing in this article shall be construed to restrict, delay, or modify access to any official record, or modify any existing agreements regarding access to any official record, prior to the creation and availability of a public record version of that official record. A county recorder shall not charge any new fee or increase any existing fees in order to fund the redaction of unlawfully restrictive covenants pursuant to this article, except as provided in subdivision (e) of Section 27361.

(c) The county recorder shall not incur any liability for a procedural, clerical, or administrative error in the recording of a modification document or any other activity related to the redaction of an unlawfully restrictive covenant pursuant to this article.

27313. If a public record version of an official record exists, both of the following shall apply:

(a) Upon a request for inspection, copying, or any other public disclosure of an official record that is not exempt from disclosure, a county recorder shall make available only the public record version of that record.

(b) A county recorder shall publicly disclose an official record only in response to a subpoena or order of a court of competent jurisdiction.

27314. (a) Each county may use funds generated by fees authorized by subdivision (e) of Section 27361 to implement this article.

(b) It is the intent of the Legislature that counties be permitted to seek revenue anticipation loans or other outside funding sources for the implementation of this article to be secured by the anticipated revenue from the fee authorized by subdivision (e) of Section 27361.

27317. A county recorder is authorized to take all actions required by this article notwithstanding subdivision (d) of Section 27203 or any other provision of law.

27318. The county counsel shall not incur liability for the failure to strike unlawfully restrictive language from a document if that language was not identified on the Restrictive Covenant Modification form as an illegal restriction.

SEC. 4. Section 27361.05 is added to the Government Code, to read:

27361.05. (a) (1) In addition to all other fees authorized by Section 27361, for recording the first page of every property related instrument, paper, or notice required or permitted by law to be recorded, a county recorder shall charge an initial fee of not more than two dollars (\$2) and the board of supervisors shall adjust the fee to a whole dollar amount reasonably sufficient to recover costs for performing activities related to the redaction of an unlawfully restrictive covenant pursuant to Sections 12956.1 and 12956.2, and Article 3.6 (commencing with Section 27310). The funds generated by this fee shall be used only by the county collecting the fee for the sole purpose of performing activities related to the redaction of an unlawfully restrictive covenant pursuant to Sections 12956.1 and 12956.2, and Article 3.6 (commencing with Section 27310).

(2) The fee described in paragraph (1) may be included in an extended multiyear funding plan if that plan also sets forth the funds allocated to the county recorder for equipment and training in order to implement the requirements of Article 3.6. Pursuant to that plan, the fee may be allocated over more than one year.

(3) If any person disputes whether a fee levied pursuant to paragraph (1) is reasonable, the board of supervisors may request the county auditor to conduct a study to determine whether the fee is reasonable.

(4) Nothing in this subdivision shall be construed to mean that the county shall not continue to be subject to fee review procedures required by Article XIII B of the California Constitution.

(b) Paragraph (b) of Section 27361 does not apply to the fee described in this section.

SEC. 5. The Legislature finds and declares that Section 3 of this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following finding to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect against the risk of discrimination when government documents maintained by county recorders contain unlawfully restrictive covenants, it is necessary to enact legislation

that minimizes the existence of unlawfully restrictive covenants in those government documents.

SEC. 6. The Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2009

Governor