
Senate Committee on Judiciary

This measure may be considered for action during today's work session.

SENATE BILL 368

Revises provisions relating to real property. (BDR 10-989)

Sponsored By: Senators Harris, Spearman, Doñate, and Neal, et al.
Date Heard: April 4, 2023
Fiscal Notes: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

Senate Bill 368 revises provisions governing the means by which a property owner may record a declaration of removal of void and unenforceable language in any written instrument related to real property that includes restrictions or prohibitions based on discriminatory factors including, but not limited to, race, gender, color, disability, and religion. The bill removes provisions relating the filing of a declaration of removal and instead provides that an owner may petition the district court for an order directing the county recorder to redact the void and unenforceable language from the original document or documents in question.

Amendments: Senator Harris proposed a conceptual amendment at the initial hearing that is attached on the following page. The amendment revises the procedure for redacting a restriction or prohibition prescribed by section 1 of the bill as follows:

Remove any requirements concerning redacting an original written instrument.

Revise the requirements prescribed by subsections 3 and 6 of section 1 of the bill to instead require a district court that determines that a restriction or prohibition is void and unenforceable to issue an order directing the county recorder of the county in which the real property is located to:

- Record, at no fee, a Restrictive Covenant Modification form; and
- Redact the restriction or prohibition from all future versions of the written instrument.

Provide that a certified copy of any such court order must be made available to an interested person free of charge.

Require an interested person to file a Restrictive Covenant Modification form along with a certified copy of the court order with the office of the county recorder of the county in which the real property is located.

Require the Real Estate Division of the Department of Business and Industry to:

- Solicit recommendations from the county recorder of each county concerning the design and contents of a Restrictive Covenant Modification form; and
- Prescribe such a form.

Require the Real Estate Division and the county recorder of each county to make the Restrictive Covenant Modification form available in-person and online, free of charge.

Require the county recorder to maintain the original instrument as a public record for historical purposes.

Provide that the filing of a petition does not constitute grounds for delaying any probate proceeding, divorce proceeding or bankruptcy proceeding to which an owner is a party.

SB 368 – Revised Proposed Conceptual Amendment
Proposed by Senator Harris
April 7, 2023

Revise the procedure for redacting a restriction or prohibition prescribed by section 1 of the bill in the following ways:

- Remove any requirements concerning redacting an original written instrument.
- Revise the requirements prescribed by subsections 3 and 6 of section 1 of the bill to instead require a district court that determines that a restriction or prohibition is void and unenforceable to issue an order directing the county recorder of the county in which the real property is located to:
 - Record, at no fee, a Restrictive Covenant Modification form; and
 - Redact the restriction or prohibition from all future versions of the written instrument.
- Provide that a certified copy of any such court order must be made available to an interested person free of charge.
- Require an interested person to file a Restrictive Covenant Modification form along with a certified copy of the court order with the office of the county recorder of the county in which the real property is located.

Additionally:

- Require the Real Estate Division of the Department of Business and Industry to:
 - Solicit recommendations from the county recorder of each county concerning the design and contents of a Restrictive Covenant Modification form; and
 - Prescribe such a form.
- Require the Real Estate Division and the county recorder of each county to make the Restrictive Covenant Modification form available in-person and online, free of charge.
- Require the county recorder to maintain the original instrument as a public record for historical purposes.
- Provide that the filing of a petition does not constitute grounds for delaying any probate proceeding, divorce proceeding or bankruptcy proceeding to which an owner is a party.