AMENDED IN SENATE JUNE 9, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 985

Introduced by Assembly Member De La Torre
(Coauthor: Assembly Member Krekorian)

February 27, 2009

An act to ~~add Section 782.6 to the Civil~~ *amend Sections 12956.1, 12956.2, and 27361 of, 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, as amended, 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includes the existence of a restrictive covenant regardless of whether accompanied by a statement that the covenant is repealed or void.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 ~~also~~ 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.

~~This bill would require a title insurance company involved in any transfer of real property that provides a copy of any deed or other written instrument relating to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, the 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, with respect to any person or persons, to cause that provision to be stricken from the deed or other instrument before the property is transferred, except as specified.~~

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 available to the public restrictive covenant modification forms. 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 the 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 any person to also provide a restrictive covenant modification form with instructions 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 county recorder to notify each owner of record and the requester of the action taken on that request. The bill would require the county counsel to make its determination whether 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 restrictive covenant modification forms to include instructions for completion and would permit submissions on behalf of several homes or in 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. 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 county recorder may, upon authorization of the board of supervisors, charge an additional fee in an unspecified amount for recording the first page of each document to be used to implement 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 that purpose. By creating new duties for county recorders and auditors, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

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 *also provide a Restrictive Covenant Modification* *form with instructions and* 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.

(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 ~~provided for in this section~~. 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 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 ~~paragraph~~ *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 county recorder shall notify each person who holds an ownership interest of record in the property of that request and the action taken. The requestor also shall be notified as to the action taken on the request; however, that notice shall not include the name of any owner of record or any confidential information regarding the property. The notices required pursuant to this section may be made on a postcard mailed by first-class mail.

~~(c)~~

(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.

~~(d)~~

(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.

~~(e)~~

(f) The county recorder shall make available to the public Restrictive Covenant Modification forms. *Those forms shall include instructions for completion and shall permit submissions on behalf of several homes or in lots for processing in batches.*

~~(f)~~

(g) If the holder of an ownership interest of record in property 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 who caused the modified recordation.

~~(g)~~

(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) "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. The public record shall have the same legal force and effect as the official record.

(c) "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.

(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) Notwithstanding subdivision (a), a county recorder shall not be required to create a public record version of an official record if the fee authorized in Section 27314 is determined by the recorder to be insufficient to meet the cost of creating the public record version.

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) No later than June 1, 2010, the county recorder of each county shall petition the board of supervisors in that county for the authority to levy the fee authorized by subdivision (e) of Section 27361.

(c) 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.

SEC. 4. Section 27361 of the Government Code is amended to read:

27361. (a) The fee for recording and indexing every instrument, paper, or notice required or permitted by law to be recorded is four dollars ($4) for recording the first page and three dollars ($3) for each additional page, except the recorder may charge additional fees as follows:

(1) If the printing on printed forms is spaced more than nine lines per vertical inch or more than 22 characters and spaces per inch measured horizontally for not less than three inches in one sentence, the recorder shall charge one dollar ($1) extra for each page or sheet on which printing appears, except, however, the extra charge shall not apply to printed words which are directive or explanatory in nature for completion of the form or on vital statistics forms. Fees collected under this paragraph are not subject to subdivision (b) or (c).

(2) If a page or sheet does not conform with the dimensions described in subdivision (a) of Section 27361.5, the recorder shall charge three dollars ($3) extra per page or sheet of the document. The funds generated by the extra charge authorized under this paragraph shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents. Fees collected under this paragraph are not subject to subdivision (b) or (c).

(b) One dollar ($1) of each three dollar ($3) fee for each additional page shall be deposited in the county general fund.

(c) Notwithstanding Section 68085, one dollar ($1) for recording the first page and one dollar ($1) for each additional page shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents.

(d) (1) In addition to all other fees authorized by this section, a county recorder may charge a fee of one dollar ($1) for recording the first page of every instrument, paper, or notice required or permitted by law to be recorded, as authorized by each county's board of supervisors. The funds generated by this fee shall be used only by the county recorder collecting the fee for the purpose of implementing a social security number truncation program pursuant to Article 3.5 (commencing with Section 27300).

(2) A county recorder shall not charge the fee described in paragraph (1) after December 31, 2017, unless the county recorder has received reauthorization by the county's board of supervisors. A county recorder shall not seek reauthorization of the fee by the board before June 1, 2017, or after December 31, 2017. In determining the additional period of authorization, the board shall consider the review described in paragraph (4).

(3) Notwithstanding paragraph (2), a county recorder who, pursuant to subdivision (c) of Section 27304, secures a revenue anticipation loan, or other outside source of funding, for the implementation of a social security number truncation program, may be authorized to charge the fee described in paragraph (1) for a period not to exceed the term of repayment of the loan or other outside source of funding.

(4) A county board of supervisors that authorizes the fee described in this subdivision shall require the county auditor to conduct two reviews to verify that the funds generated by this fee are used only for the purpose of the program, as described in Article 3.5 (commencing with Section 27300) and for conducting these reviews. The reviews shall state the progress of the county recorder in truncating recorded documents pursuant to subdivision (a) of Section 27301, and shall estimate any ongoing costs to the county recorder of complying with subdivisions (a) and (b) of Section 27301. The board shall require that the first review be completed not before June 1, 2012, or after December 31, 2013, and that the second review be completed not before June 1, 2017, or after December 31, 2017. The reviews shall adhere to generally accepted accounting standards, and the review results shall be made available to the public.

(e) (1) In addition to all other fees authorized by this section, a county recorder may charge a fee of ___ dollars ($___) for recording the first page of every instrument, paper, or notice required or permitted by law to be recorded, as authorized by each county's board of supervisors. The funds generated by this fee shall be used only by the county recorder collecting the fee for the

purpose of implementing Article 3.6 (commencing with Section 27310).

(2) A county recorder who, pursuant to subdivision (c) of Section 27314, secures a revenue anticipation loan, or other outside source of funding, for the implementation of Article 3.6 (commencing with Section 27310), may be authorized to charge the fee described in paragraph (1) for a period not to exceed the term of repayment of the loan or other outside source of funding.

(3) A county board of supervisors that authorizes the fee described in this subdivision shall require the county auditor to conduct two reviews to verify that the funds generated by this fee are used only for the purpose of implementing Article 3.6 (commencing with Section 27310) and for conducting these reviews. The reviews shall estimate any ongoing costs to the county recorder of complying with subdivision (a) of Section 27311. The board shall require that the first review be completed not before June 1, 2014, or after December 31, 2015, and that the second review be completed not before June 1, 2019, or after December 31, 2019. The reviews shall adhere to generally accepted accounting standards, and the review results shall be made available to the public.

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. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 782.6 is added to the Civil Code, to read:~~

~~782.6. (a) A title insurance company involved in any transfer of real property that provides a copy of a deed or other written instrument relating to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, the 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 basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926 and 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, with respect to any person or persons, shall cause that provision to be stricken from the deed or other instrument before the property is transferred.~~

~~(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).~~

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