

AMENDED IN SENATE JULY 1, 2009

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 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includes the existence of a restrictive covenant regardless of whether accompanied by a statement that the covenant is repealed or void.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 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~~ *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~~ *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 the restriction is void and may be removed by recording a restrictive covenant modification~~ *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~~ *a person who holds an ownership interest of record in property* to also provide a ~~restrictive covenant modification~~ *Restrictive Covenant Modification* form with ~~instructions~~ *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~~ *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 to provide a return address in order for the county recorder to notify the interested party of the action taken on that request by county counsel on the respective property.~~ 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~~ 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 require the county recorder also to convert the official record into an electronic format at that time.* 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 authorize the county recorder ~~may~~, upon authorization of the board of supervisors, *as specified*, to charge an additional \$3 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 the county recorder for the performance of any activity related to the redaction of an unlawfully restrictive covenant pursuant to these provisions or those described in (1) above.~~ *The bill would authorize the board of supervisors to increase or decrease that fee to recover the costs of providing any product or service or enforcing any regulation for which the fee described above is levied.* *The bill would also provide that if any person disputes whether the fee levied is reasonable, the board may request the county auditor to conduct a study to determine whether the fee is reasonable.* 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: yes.
State-mandated local program: yes.

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

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

3 12956.1. (a) As used in this section, “association,” “governing
4 documents,” and “declaration” have the same meanings as set forth
5 in Section 1351 of the Civil Code.

6 (b) (1) A county recorder, title insurance company, escrow
7 company, real estate broker, real estate agent, or association that
8 provides a copy of a declaration, governing document, or deed to
9 any person shall also provide a Restrictive Covenant Modification
10 form with instructions and any person shall place a cover page or
11 stamp on the first page of the previously recorded document or
12 documents stating, in at least 14-point boldface type, the following:
13

14 “If this document contains any restriction based on race, color,
15 religion, sex, sexual orientation, familial status, marital status,
16 disability, national origin, source of income as defined in
17 subdivision (p) of Section 12955, or ancestry, that restriction
18 violates state and federal fair housing laws and is void, and may
19 be removed pursuant to Section 12956.2 of the Government Code.
20 Lawful restrictions under state and federal law on the age of
21 occupants in senior housing or housing for older persons shall not
22 be construed as restrictions based on familial status.”
23

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

26 (3) A county recorder, title insurance company, escrow
27 company, real estate broker, real estate agent, or association that
28 provides a copy of a declaration, governing document, or deed
29 directly to a person who holds an ownership interest of record in
30 property shall also provide a Restrictive Covenant Modification
31 form with procedural information, as defined subdivision (b) of
32 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 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 ~~county~~

1 recorder shall notify each person who holds an ownership interest
2 of record in the property of that request and the action taken. The
3 requestor also shall be notified as to the action taken on the request;
4 however, that notice shall not include the name of any owner of
5 record or any confidential information regarding the property. The
6 notices required pursuant to this section may be *requester shall*
7 *provide a return address in order for the county recorder to notify*
8 *the interested party of the action taken by county counsel on the*
9 *respective property. The notice required pursuant to this*
10 *subdivision may be made on a postcard mailed by first-class mail.*

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

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

24 (f) The county recorder shall make available to the public
25 Restrictive Covenant Modification forms. ~~Those forms shall~~
26 ~~include instructions for completion and shall permit submissions~~
27 ~~on behalf of several homes or in lots for processing in batches.~~
28 *forms onsite in an appropriately designated area, which shall be*
29 *deemed to satisfy the requirement of paragraph (1) of subdivision*
30 *(b) of Section 12956.1 to provide a Restrictive Covenant*
31 *Modification form if the specified procedural information for*
32 *completion is attached to the form. Those forms shall permit*
33 *multiple submissions on behalf of different homes and for*
34 *processing homes in batches with respect to a modification*
35 *document that affects multiple homes or lots.*

36 (g) If the holder of an ownership interest of record in property
37 or a third party causes to be recorded a modified document
38 pursuant to this section that contains modifications not authorized
39 by this section, the county recorder shall not incur liability for
40 recording the document. The liability that may result from the

1 unauthorized recordation is the sole responsibility of the holder of
2 the ownership interest of record *or third party* who caused the
3 modified recordation.

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

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

13
14 Article 3.6. Unlawfully Restrictive Covenant Redaction

15
16 27310. As used in this article, the following terms have the
17 following meanings:

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

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

27
28 *Some archived property documents may contain offensive, illegal*
29 *language that purports to restrict ownership or occupancy of*
30 *property. These restrictions are illegal, and have no effect on*
31 *anyone's ability to own or occupy the property, but may still appear*
32 *in property documents as an unlawful restrictive covenant.*

33 *Sometimes these illegal restrictions appear only in archived*
34 *documents and may be found only by a review of those documents*
35 *at the office of the county recorder. You may search those*
36 *documents for free at the office of the county recorder, which is*
37 *open to the public. If you discover an illegal restriction, you may*
38 *obtain a Restrictive Covenant Modification form from the office*
39 *of the county recorder to request the removal of the illegal*
40 *restriction.*

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

9
10 (b)

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

18 (e)

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

23 27311. (a) The county recorder of each county shall create a
24 public record version of each official record for which a Restrictive
25 Covenant Modification is recorded pursuant to Section 12956.2
26 on or after January 1, 2010. The public record shall be in an
27 electronic format and an exact copy of the official record, except
28 that any unlawfully restrictive covenant contained in the official
29 record shall be redacted. *The official record also shall be converted*
30 *into an electronic format at that time.*

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

39 ~~(c) Notwithstanding subdivision (a), a county recorder shall not~~
40 ~~be required to create a public record version of an official record~~

1 if the fee authorized in Section 27314 is determined by the recorder
2 to be insufficient to meet the cost of creating the public record
3 version.

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

8 27313. If a public record version of an official record exists,
9 both of the following shall apply:

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

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

17 27314. (a) Each county may use funds generated by fees
18 authorized by subdivision (e) of Section 27361 to implement this
19 article.

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

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

29 27317. A county recorder is authorized to take all actions
30 required by this article notwithstanding subdivision (d) of Section
31 27203 or any other provision of law.

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

34 27361. (a) The fee for recording and indexing every
35 instrument, paper, or notice required or permitted by law to be
36 recorded is four dollars (\$4) for recording the first page and three
37 dollars (\$3) for each additional page, except the recorder may
38 charge additional fees as follows:

39 (1) If the printing on printed forms is spaced more than nine
40 lines per vertical inch or more than 22 characters and spaces per

1 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

1 anticipation loan, or other outside source of funding, for the
2 implementation of a social security number truncation program,
3 may be authorized to charge the fee described in paragraph (1) for
4 a period not to exceed the term of repayment of the loan or other
5 outside source of funding.

6 (4) A county board of supervisors that authorizes the fee
7 described in this subdivision shall require the county auditor to
8 conduct two reviews to verify that the funds generated by this fee
9 are used only for the purpose of the program, as described in Article
10 3.5 (commencing with Section 27300) and for conducting these
11 reviews. The reviews shall state the progress of the county recorder
12 in truncating recorded documents pursuant to subdivision (a) of
13 Section 27301, and shall estimate any ongoing costs to the county
14 recorder of complying with subdivisions (a) and (b) of Section
15 27301. The board shall require that the first review be completed
16 not before June 1, 2012, or after December 31, 2013, and that the
17 second review be completed not before June 1, 2017, or after
18 December 31, 2017. The reviews shall adhere to generally accepted
19 accounting standards, and the review results shall be made available
20 to the public.

21 (e) (1) In addition to all other fees authorized by this section,
22 a county recorder may charge a fee of ~~___~~ dollars (\$~~___~~) *of no*
23 *more than three dollars (\$3)* for recording the first page of every
24 instrument, paper, or notice required or permitted by law to be
25 recorded, as authorized by each county's board of supervisors.
26 The funds generated by this fee shall be used only by the county
27 recorder collecting the fee for the purpose of ~~implementing~~
28 *performing any activity related to the redaction of an unlawfully*
29 *restrictive covenant pursuant to Sections 12956.1 and 12956.2,*
30 *and Article 3.6 (commencing with Section 27310).*

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

37 ~~(3) A county board of supervisors that authorizes the fee~~
38 ~~described in this subdivision shall require the county auditor to~~
39 ~~conduct two reviews to verify that the funds generated by this fee~~
40 ~~are used only for the purpose of implementing Article 3.6~~

1 ~~(commencing with Section 27310) and for conducting these~~
2 ~~reviews. The reviews shall estimate any ongoing costs to the county~~
3 ~~recorder of complying with subdivision (a) of Section 27311. The~~
4 ~~board shall require that the first review be completed not before~~
5 ~~June 1, 2014, or after December 31, 2015, and that the second~~
6 ~~review be completed not before June 1, 2019, or after December~~
7 ~~31, 2019. The reviews shall adhere to generally accepted~~
8 ~~accounting standards, and the review results shall be made available~~
9 ~~to the public.~~

10 *(2) The fee described in paragraph (1) shall be reauthorized by*
11 *the county board of supervisors every five years.*

12 *(3) The county recorder shall fulfill the requirements of Sections*
13 *12956.1 and 12956.2, and Article 3.6 (commencing with Section*
14 *27310), regardless of whether the county board of supervisors*
15 *authorizes the fee described in paragraph (1).*

16 *(4) Notwithstanding paragraph (1), a county board of*
17 *supervisors shall have the authority to increase or decrease the*
18 *fee described in paragraph (1) in an amount reasonably necessary*
19 *to recover the cost of providing any product or service or the cost*
20 *of enforcing any regulation for which the fee is levied. The fee may*
21 *reflect the average cost of providing any product or service or of*
22 *enforcing any regulation. Indirect costs that may be reflected in*
23 *the cost of providing any product or service or the cost of enforcing*
24 *any regulation shall be limited to those items that are included in*
25 *the federal Office of Management and Budget Circular A-87 on*
26 *January 1, 1984.*

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

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

34 SEC. 5. The Legislature finds and declares that Section 3 of
35 this act imposes a limitation on the public's right of access to the
36 meetings of public bodies or the writings of public officials and
37 agencies within the meaning of Section 3 of Article I of the
38 California Constitution. Pursuant to that constitutional provision,
39 the Legislature makes the following finding to demonstrate the

1 interest protected by this limitation and the need for protecting
2 that interest:

3 In order to protect against the risk of discrimination when
4 government documents maintained by county recorders contain
5 unlawfully restrictive covenants, it is necessary to enact legislation
6 that minimizes the existence of unlawfully restrictive covenants
7 in those government documents.

8 SEC. 6. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.