

AMENDED IN SENATE JULY 9, 2009

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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includes the existence of a restrictive covenant regardless of whether accompanied by a statement that the covenant is repealed or void.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, 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 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 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 also exempt the county counsel from liability, as specified. The bill would authorize the county recorder, as specified, to charge an additional \$3 fee, as specified, for recording the first page of each 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 county recorder to review and recalculate the fee periodically, as specified, to determine the amount reasonably necessary to recover actual 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, 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:

1 12956.1. (a) As used in this section, “association,” “governing
2 documents,” and “declaration” have the same meanings as set forth
3 in Section 1351 of the Civil Code.

4 (b) (1) A county recorder, title insurance company, escrow
5 company, real estate broker, real estate agent, or association that
6 provides a copy of a declaration, governing document, or deed to
7 any person shall place a cover page or stamp on the first page of
8 the previously recorded document or documents stating, in at least
9 14-point boldface type, the following:

10
11 “If this document contains any restriction based on race, color,
12 religion, sex, sexual orientation, familial status, marital status,
13 disability, national origin, source of income as defined in
14 subdivision (p) of Section 12955, or ancestry, that restriction
15 violates state and federal fair housing laws and is void, and may
16 be removed pursuant to Section 12956.2 of the Government Code.
17 Lawful restrictions under state and federal law on the age of
18 occupants in senior housing or housing for older persons shall not
19 be construed as restrictions based on familial status.”

20
21 (2) The requirements set forth in paragraph (1) shall not apply
22 to documents being submitted for recordation to a county recorder.

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

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

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

39 12956.2. (a) A person who holds an ownership interest of
40 record in property that he or she believes is the subject of an

1 unlawfully restrictive covenant in violation of subdivision (l) of
2 Section 12955 may record a document titled Restrictive Covenant
3 Modification. A title insurance company, escrow company, real
4 estate broker, real estate agent, or other person also may record
5 the modification document provided for in this section. The county
6 recorder may choose to waive the fee prescribed for recording and
7 indexing instruments pursuant to Section 27361 in the case of the
8 modification document. The modification document shall include
9 a complete copy of the original document containing the unlawfully
10 restrictive language with the unlawfully restrictive language
11 stricken.

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

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

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

38 (e) Subject to covenants, conditions, and restrictions that were
39 recorded after the recording of the original document that contains
40 the unlawfully restrictive language and subject to covenants,

1 conditions, and restrictions that will be recorded after the
2 Restrictive Covenant Modification, the restrictions in the
3 Restrictive Covenant Modification, once recorded, are the only
4 restrictions having effect on the property. The effective date of the
5 terms and conditions of the modification document shall be the
6 same as the effective date of the original document.

7 (f) The county recorder shall make available to the public
8 Restrictive Covenant Modification forms onsite in an appropriately
9 designated area, which shall be deemed to satisfy the requirement
10 of paragraph (1) of subdivision (b) of Section 12956.1 to provide
11 a Restrictive Covenant Modification form if the specified
12 procedural information for completion is attached to the form.
13 Those forms shall permit multiple submissions on behalf of
14 different homes and for processing homes in batches with respect
15 to a modification document that affects multiple homes or lots.

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

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

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

33
34 Article 3.6. Unlawfully Restrictive Covenant Redaction
35

36 27310. As used in this article, the following terms have the
37 following meanings:

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

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

7
8 Some archived property documents may contain offensive, illegal
9 language that purports to restrict ownership or occupancy of
10 property. These restrictions are illegal, and have no effect on
11 anyone’s ability to own or occupy the property, but may still appear
12 in property documents as an unlawful restrictive covenant.

13 Sometimes these illegal restrictions appear only in archived
14 documents and may be found only by a review of those documents
15 at the office of the county recorder. You may search those
16 documents for free at the office of the county recorder, which is
17 open to the public. If you discover an illegal restriction, you may
18 obtain a Restrictive Covenant Modification form from the office
19 of the county recorder to request the removal of the illegal
20 restriction.

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

29
30 (c) “Public record” means a record that is in an electronic format
31 and is an exact copy of an official record except that any unlawfully
32 restrictive covenant contained in the copied record is redacted and
33 any social security number contained in the copied record is
34 truncated pursuant to Article 3.5 (commencing with Section
35 27300). The public record shall have the same legal force and
36 effect as the official record.

37 (d) “Unlawfully restrictive covenant” means any written
38 covenant, condition, or restriction annexed or made a part of, by
39 reference or otherwise, a deed or other instrument in violation of
40 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. The official record also shall be converted into an electronic format at that time.

(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.

(d) The county recorder is not required to perform the duties required pursuant to this article if ~~the board of supervisors has authorized~~ *he or she has implemented* the maximum three dollar (\$3) fee pursuant to paragraph (1) of subdivision (e) of Section 27361, and ~~both the board and the county recorder have~~ *has* determined that the fee is insufficient to satisfy the costs incurred by the recorder in complying with this article. In that case, the recorder shall determine whether the fee is sufficient to satisfy the costs of partial compliance with the requirements of this article. If the county recorder determines that the fee is sufficient to satisfy the costs of partial compliance with the requirements of this article, the recorder shall comply with those requirements the recorder determines the fee is sufficient to satisfy.

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.

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

4 27314. (a) Each county may use funds generated by fees
5 authorized by subdivision (e) of Section 27361 to implement this
6 article.

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

11 (e)

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

17 27317. A county recorder is authorized to take all actions
18 required by this article notwithstanding subdivision (d) of Section
19 27203 or any other provision of law.

20 27318. The county counsel shall not incur liability for the
21 failure to strike unlawfully restrictive language from a document
22 if that language was not identified on the Restrictive Covenant
23 Modification form as an illegal restriction.

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

26 27361. (a) The fee for recording and indexing every
27 instrument, paper, or notice required or permitted by law to be
28 recorded is four dollars (\$4) for recording the first page and three
29 dollars (\$3) for each additional page, except the recorder may
30 charge additional fees as follows:

31 (1) If the printing on printed forms is spaced more than nine
32 lines per vertical inch or more than 22 characters and spaces per
33 inch measured horizontally for not less than three inches in one
34 sentence, the recorder shall charge one dollar (\$1) extra for each
35 page or sheet on which printing appears, except, however, the extra
36 charge shall not apply to printed words which are directive or
37 explanatory in nature for completion of the form or on vital
38 statistics forms. Fees collected under this paragraph are not subject
39 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. This subdivision does not apply to the fee described in subdivision (e).

(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 no more than three dollars (\$3), and only in an amount reasonably necessary to recover actual costs, for recording the first page of every instrument, paper, or notice required or permitted by law to be recorded. 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) shall be reviewed and recalculated every year for at least the first five years by the county recorder in order to determine the amount reasonably necessary to recover actual costs. After the first five years, the county recorder may thereafter review and recalculate the fee as necessary to determine the amount reasonably necessary to recover actual costs.

(3) Except as otherwise provided in subdivision (d) of Section 27311, the county recorder shall fulfill the requirements of Sections 12956.1 and 12956.2, and Article 3.6 (commencing with Section 27310) to the same extent that would have been required had the fee been authorized, regardless of whether the county board of supervisors authorizes the fee described in paragraph (1): *implemented.*

(4) The fee ~~authorized~~ *described* in paragraph (1) may be included in an extended multiyear funding plan if that plan also

1 sets forth the funds allocated to the county recorder for equipment
2 and training in order to implement the requirements of Article 3.6.
3 Pursuant to that plan, the fee may be allocated over more than one
4 year.

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

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

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

20 In order to protect against the risk of discrimination when
21 government documents maintained by county recorders contain
22 unlawfully restrictive covenants, it is necessary to enact legislation
23 that minimizes the existence of unlawfully restrictive covenants
24 in those government documents.

25 SEC. 6. If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.