

RESTRICTIVE COVENANT MODIFICATION

Removal of Unlawful Discriminatory Covenants from Property Documents:

Prior to 1/1/2022, a person who held ownership interest of record in a property was eligible to submit a Restrictive Covenant Modification form to the County Recorder with the unlawfully restrictive covenant language stricken (strike-through).

Beginning 7/1/2022, Assembly Bill 1466 authorizes any person including those who do not have an ownership interest of record in the property, including County Recorders, who believe is the subject of an unlawfully restrictive covenant in violation of Government Code Section 12955(1) to record a Restrictive Covenant Modification document to have the illegal language reacted (blacked-out). Unlawful restrictions include those restrictions based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, veteran or military status, or ancestry.

How to Record a Restrictive Covenant Modification:

- Complete a Restrictive Covenant Modification form.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language redacted (blacked out).
- Submit the completed document to the County Recorder. **There is no fee to record this document.**

Upon receiving the Restrictive Covenant Modification form, the County Recorder will submit the documents to County Counsel who will determine whether the original document contains any lawful restrictions, as defined in Government Code Section 12956.2(b). Only those determined to be in violation of the law will be recorded and those that are not will be returned to the submitter unrecorded.

Removal of Restrictions Related to Affordable Housing Developments:

Beginning 1/1/2022, Assembly Bill 721 authorizes an owner of an Affordable Housing Development(s) to submit a copy of the original restrictive covenant and a Restrictive Covenant Modification-Affordable Housing document pursuant to Government Code Section 12956.2 that modifies or removes any existing restrictive covenant language that restricts the number, size, or location of the residences that may be built on the property, or that restricts the number of persons or families that may reside on the property, to the extent necessary to allow the affordable housing development to proceed under the existing declaration of restrictive covenants.

- Submitter must be the owner of the affordable housing development.
- Complete a Restrictive Covenant Modification-Affordable Housing form; this must be signed in front of a notary public.
- Submit a copy of the original restrictive covenant, a copy of any notice the owner believes is required pursuant to paragraph (3) of subdivision (g), and any documents the owner

believes necessary to establish that the property qualifies as an affordable housing development under Civil Code Section 714.6 prior to, or simultaneously with, the submission of the request for recordation of the restrictive covenant modification document.

- The County Recorder shall, within five (5) business days of receipt, submit the documentation provided to County Counsel for review.
- County Counsel shall determine whether the original restrictive covenant document restricts the property in a manner prohibited by subdivision (a), whether the owner has submitted documents sufficient to establish that the property qualifies as an affordable housing development under this section, whether any notice required under this section has been provided, whether any exemption provided in subdivision (g) or (h) applies, and whether the restriction may no longer be enforced against the owner of the affordable housing development and that the owner may record a modification document pursuant to this section.
- County Counsel shall return the documents and inform the County Recorder of their decision within fifteen (15) days of submission to County Counsel.
- The fee to record this document will be \$14 for the first page and \$3 for each additional page. The document is exempt from the \$75 Senate Bill 2 (SB2) Building Homes and Jobs Act Fee.

Forms:

Restrictive Covenant Modification – Discriminatory Restrictions (AB1466)

Restrictive Covenant Modification – Affordable Housing (AB721)

Additional Information:

Assembly Bill 1466

Assembly Bill 721

Government Code Section: 12955(1)

Government Code Section: 12956.2

Civil Code Section: 714.6