

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To clarify that prohibited restrictive covenants are unlawful, to allow property owners and boards of common interest communities to release prohibited restrictive covenants from a deed, and to allow the Recorder of Deeds to refuse to record a document containing a prohibited restriction.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Releasing Restrictive Covenants in Deeds Act of 2023”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Amending instrument” means an affidavit, deed, form, or other recorded document issued for the purpose of amending, modifying, or releasing a prohibited restriction under this act.

(2) "Common interest community" means a residential condominium, residential cooperative, or other residential real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay a share of property taxes, insurance premiums, maintenance costs, or costs of improvement of other real property described in a recorded covenant that creates the common interest community.

35 (3) “Document” shall have the same meaning as provided in section 2(2) of the
36 Uniform Real Property Electronic Recording Act of 2005, effective October 18, 2005 (D.C. Law
37 16-25; D.C. Official Code § 42–1231(2)).

38 (4) “Governing documents” means the declaration of covenants, conditions, and
39 restrictions and other recorded documents relating to the administration of a common interest
40 community.

41 (5) “Prohibited restriction” means a prohibition, restriction, covenant, or condition
42 that directly or indirectly interferes with or limits the transfer, use, or occupancy of real property
43 on the basis of race, color, religion, national origin, sex, age, marital status, sexual orientation,
44 gender identity or expression, disability, or discrimination on other status or condition in
45 violation of Section 221 of the Human Rights Act of 1977, effective December 13, 1977 (D.C.
46 Law 2-38; D.C. Official Code § 2-1402.21(a)).

47 Sec. 3. Prohibited restrictions void and unenforceable.

48 (a) Prohibited restrictions are unlawful. Any attempt to enforce a prohibited restriction is
49 void and has no legal effect.

50 (b) If a prohibited restriction is contained in any document affecting title to real property
51 that contains any other restrictions, covenants, or provisions which are not prohibited, the
52 validity and enforceability of the remaining restrictions, covenants, or provisions shall not be
53 affected.

54 Sec. 4. Amendment to deed by owner.

55 (a) If an owner of record believes their property is subject to a prohibited restriction, that
56 person may present to the Recorder of Deeds an amending instrument releasing the prohibited
57 restriction.

58 (b) An amending instrument under this section may be executed only by the property
59 owner and must be executed and acknowledged in the manner otherwise required under An act
60 providing for the recording of deeds, mortgages, and other conveyances affecting real estate in
61 the District of Columbia, effective April 29, 1878 (20 Stat. 39, ch. 69; D.C. Official Code § 42–
62 401).

63 (c) An amending instrument must:

64 (1) Identify and refer to the original deed or other document being amended and
65 give the book and page or other unique identifying number where the original deed or document
66 is recorded;

67 (2) Conspicuously state the following: “This amended deed or instrument strikes
68 from the original deed or instrument restrictions, covenants, or conditions that are prohibited
69 under the law.”; and

70 (3) Restate the prohibited restriction in full for the historical record.

71 (d) The Recorder of Deeds shall add to the grantor-grantee indices information sufficient
72 to reflect the existence of the amending instrument releasing the prohibited restriction from the
73 land records.

74 (e) An amending instrument recorded under this section affects only the prohibited
75 restriction in the original deed or document.

76 (f) Once a prohibited restriction is released under this act, the subject property shall no
77 longer be bound by said prohibited restriction.

78 Sec. 5. Amendments or modifications to association’s governing documents.

79 (a) The board of a common interest community, by a vote of a majority of the members
80 of the board and without further need for a vote by the unit owners, may amend its governing

81 documents for the sole purpose of releasing any prohibited restrictions as defined by this act.

82 (b) If the board of any common interest community receives a written request from any
83 unit owner within the community that the board exercise its amending authority under subsection
84 (a), the board shall, within a reasonable period of time not to exceed 90 days, investigate whether
85 a prohibited restriction exists within the governing documents. Should the board determine that a
86 prohibited restriction is in fact present in one or more of the governing documents, the board
87 shall promptly exercise its amending authority under this act to amend the governing documents
88 by releasing any such prohibited restriction.

89 (c) The amending instruments authorized by either subsection (a) or (b) of this section
90 may be executed by any authorized member of the board and shall be recorded by the Recorder
91 of Deeds in accordance with the law.

92 (d) For the purposes of authorizing the release of prohibited restrictions from governing
93 documents, the action of the board to amend the governing documents as provided for in this
94 section are effective notwithstanding any explicit or implicit provisions of the governing
95 documents to the contrary.

96 Sec. 6. Fees waived; no judicial approval necessary.

97 (a) The Recorder of Deeds shall waive any fees specifically directed at an owner's
98 attempt to release a prohibited restriction from a deed or other document as described under
99 sections 4 and 5 of this act.

100 (b) No judicial approval is needed to release a prohibited restriction under sections 4 and
101 5 of this act. This section is not intended to alter the need for judicial approval otherwise required
102 under law for any action except for the express release of a prohibited restriction.

103 Sec. 7. Prohibited restrictions shall not be recorded.

104 (a) No person shall knowingly present to the Recorder of Deeds for recordation a
105 document containing any prohibited restriction.

106 (b) The Recorder of Deeds does not have a duty to read or otherwise inspect a document
107 to determine whether it contains any prohibited restriction.

108 (c) The Recorder of Deeds may refuse to record a document containing a prohibited
109 restriction.

110 (d) A document presented in violation of subsection (a) of this section shall not cause the
111 Recorder of Deeds or the District to be liable for any damages resulting from its recordation or
112 refusal.

113 Sec. 8. Database of released covenants.

114 (a) In order to further historical research, the Recorder of Deeds shall maintain a database
115 of each prohibited restriction released under this act.

116 (b) The database shall include:

117 (1) The address of the property on which the prohibited restriction existed;

118 (2) A brief description of the nature of the prohibited restriction; and

119 (3) A cross-reference to the amending instrument in the property records.

120 Sec. 9. Liability for erroneous or inadvertent amendments or modifications.

121 (a) If a person presents an amending instrument to be recorded under this act that is not in
122 fact authorized by this act, the Recorder of Deeds and the District shall not be liable for any
123 damages.

124 (b) Any liability that may result by a recording that is not authorized in fact by this act
125 shall be the sole responsibility of the person who presented the amending instrument for
126 recordation.

127 (c) Except as otherwise provided in section 5, this act does not create a duty on the part of
128 an owner, association, board, or board member to amend a recorded deed, instrument, or
129 governing document, or to bring an action authorized under this act.

130 Sec. 10. Fiscal impact statement.

131 The Council adopts the fiscal impact statement in the committee report as the fiscal
132 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
133 approved October 16, 2006 (12 Stat. 2038; D.C. Official Code § 1-301.47a).

134 Sec. 11. Effective date.

135 This act shall take effect following approval by the Mayor (or in the event of veto by the
136 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
137 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
138 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
139 Columbia Register.