

[First Reprint]

ASSEMBLY, No. 5390

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 23, 2021

Sponsored by:

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District 20 (Union)

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District 31 (Hudson)

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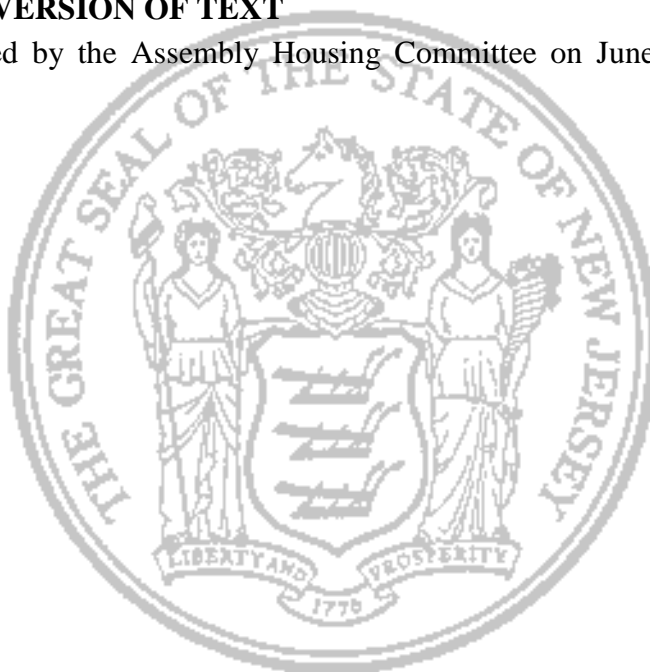
Assemblyman Johnson

SYNOPSIS

Concerns certain restrictive covenants on real property.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing Committee on June 2, 2021, with amendments.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning discriminatory restrictive covenants in deeds
2 and supplementing Title 46 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 ¹1. The Legislature finds and declares:

8 a. Restrictive covenants in deeds for real property that establish
9 certain restrictions on the ownership or use of real property are
10 prohibited by sections 4 and 11 of the “Law Against
11 Discrimination,” P.L.1945, c.169 (C.10:5-4 and C.10:5-12),
12 including restrictions on the basis of race, creed, color, national
13 origin, ancestry, age, marital status, affectional or sexual
14 orientation, familial status, disability, liability for service in the
15 Armed Forces of the United States, nationality, sex, gender identity
16 or expression, or source of lawful income used for rental or
17 mortgage payments.

18 b. While these forms of restrictive covenants are unlawful and
19 therefore unenforceable, no State law currently exists that would
20 require an unlawful and unenforceable restrictive covenant that
21 currently exists in a deed for real property to be removed.
22 Unsuspecting homeowners or potential home buyers who encounter
23 restrictive language in a deed and do not understand the intricacies
24 of the “Law Against Discrimination” may be discouraged from
25 buying a home or continuing to reside in a home for which the
26 ownership document, the deed, contains this language.
27 Furthermore, a person who has purchased a home without realizing
28 that such language is contained in the deed may feel shocked and
29 upset after reading the deed.

30 c. Allowing this type of language to continue to be contained
31 in a legal document recorded by a governmental entity of the State
32 of New Jersey, either the county clerk or the county register of
33 deeds and mortgages, is a reminder of a hurtful and shameful
34 national legacy that has been outlawed by the United States
35 Congress, and by the New Jersey Legislature through the “Law
36 Against Discrimination.”

37 d. The Virginia Legislature recently enacted a law prohibiting
38 the recording of a deed after July 1, 2020 that references the
39 specific portion of a restrictive covenant purporting to restrict the
40 ownership or use of the property as prohibited under the Virginia
41 Fair Housing Law. The Virginia law also provides a property
42 owner the ability to legally remove such an unenforceable
43 restrictive covenant from their deed.

44 e. The New Jersey Legislature has reviewed this Virginia law
45 and has determined that such a law shall be enacted in this State in

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted June 2, 2021.

1 furtherance of the Legislature’s continuing efforts to ensure that the
2 hateful and hurtful legacy embodied in many land transactions is
3 forever removed from State land deeds.¹

4
5 ¹**[1.]** 2.¹ A deed recorded on or after January 1, ¹**[2021]** 2022¹
6 shall not contain a reference to the specific portion of a restrictive
7 covenant purporting to restrict the ownership or use of real property
8 as prohibited by section 4 of P.L.1945, c.169 (C.10:5-4) or
9 subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12). A
10 county clerk or a register of deeds and mortgages shall refuse to
11 accept any deed submitted for recordation that references the
12 specific portion of any such restrictive covenant. An attorney or
13 title company preparing or submitting a deed for recordation shall
14 ensure that the specific portion of such a restrictive covenant is not
15 specifically referenced in the deed prior to the deed being submitted
16 for recordation. A deed may include a general provision that states
17 that the deed is subject to any and all covenants of record; however,
18 such provisions shall not apply to the specific portion of a
19 restrictive covenant purporting to restrict the ownership or use of
20 the property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-
21 4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12).

22 Any deed that is recorded in the land records on or after January
23 1, ¹**[2021]** 2022¹ that mistakenly contains such a restrictive
24 covenant shall nevertheless constitute a valid transfer of real
25 property.

26
27 ¹**[2.]** 3.¹ A restrictive covenant prohibited by section 4 of
28 P.L.1945, c.169 (C.10:5-4) or subsection g. of section 11 of
29 P.L.1945, c.169 (C.10:5-12) may be released by the owner of the
30 real property subject to the restrictive covenant by recording a
31 “Certificate of Release of Certain Prohibited Covenants.” The real
32 property owner may record such a certificate prior to recordation of
33 a deed conveying real property to a purchaser, or when a real
34 property owner discovers that such a prohibited covenant exists and
35 chooses to affirmatively release it. The form of the certificate shall
36 be promulgated by the ¹**[Administrative Office of the Courts]**
37 Department of Community Affairs¹, and shall be available at the
38 county office, or on the ¹Internet¹ website, of the county clerk or
39 register of deeds and mortgages, as appropriate to the county in
40 which the real property is located ¹, and shall also be available on
41 the Internet website of the Department of Community Affairs¹.
42 There shall be no filing fee, or any other fee, charged to the owner
43 of a real property for the filing of this certificate.

44 The certificate promulgated by the ¹**[Administrative Office of**
45 **the Courts]** Department of Community Affairs¹ shall conform
46 substantially to the following “Certificate of Release of Certain
47 Prohibited Covenants” format:

1 CERTIFICATE OF RELEASE OF CERTAIN PROHIBITED
2 COVENANTS

3
4 County of Record: _____

5
6 Date of Deed Containing Prohibited Covenant: _____

7
8 Deed Book: _____ Page: _____

9
10 Name(s) of Grantor(s): _____

11
12 Name(s) of Current Owner(s): _____

13
14 Real Property Description: _____

15
16 Brief Description of Prohibited Covenant: _____

17
18 The covenant contained in the above-mentioned deed is released
19 from the above-described real property to the extent that it contains
20 terms purporting to restrict the ownership or use of the property as
21 prohibited in section 4 of P.L.1945, c.169 (C.10:5-4).

22
23 The undersigned is/are the legal owners of the property described
24 herein.

25
26 Given under my/our hand(s) this _____ day of _____,
27 20__.

28
29 _____

30
31 _____

32 (Current Owners)

33
34 State of New Jersey
35 County of _____

36
37 Subscribed, sworn to, and acknowledged before me this _____ day
38 of _____, 20__.

39
40 _____

41 Notary Public

42
43 Notary Registration Number: _____

44
45 My Commission Expires: _____

1 ¹4. a. As used in this section:

2 “Association” shall mean a homeowners’ or property owners’
3 association, cooperative corporation, condominium association, or
4 planned community acting through a majority vote of its full board
5 membership; and

6 “Board” shall mean the governing board of an association.

7 b. Within 90 days of the enactment of P.L. _____, c. _____ (C. _____)
8 (pending before the Legislature as this bill), each board shall review
9 the association’s governing documents to determine whether those
10 documents contain any restriction, covenant, or condition, that
11 prohibits or limits the conveyance, encumbrance, rental, occupancy,
12 or use of real property as prohibited by section 4 of P.L.1945, c.169
13 (C.10:5-4) or subsection g. of section 11 of P.L.1945, c.169
14 (C.10:5-12). If an association finds such an unlawful restriction,
15 covenant, or condition in any of those documents, it shall amend the
16 document or documents to remove the restriction, covenant, or
17 condition. Removal of such a restriction, covenant, or condition
18 shall not require approval of the members of the association,
19 notwithstanding any provision of the governing documents to the
20 contrary.

21 c. If, after the review and amendment of governing documents
22 pursuant to subsection b. of this section has been completed, a
23 board receives a written request from a member of the association
24 to remove from those documents language that the member believes
25 to be an unlawful restriction, covenant, or condition that prohibits
26 or limits the conveyance, encumbrance, rental, occupancy, or use of
27 real property as prohibited by section 4 of P.L.1945, c.169 (C.10:5-
28 4) or subsection g. of section 11 of P.L.1945, c.169 (C.10:5-12), the
29 board shall immediately undertake a review of the document or
30 documents, which review shall be completed within 30 days of the
31 member’s written request. If the board determines that the member
32 is correct, the board shall amend the document or documents to
33 remove the restriction, covenant, or condition within 30 days of its
34 determination.

35 d. Nothing in this act shall give rise to a private cause of action
36 by or against an association, a board, a member, or the public for
37 acting or not acting to remove or not remove an unlawful
38 restriction, covenant, or condition.¹

39

40 ¹[3.] 5.¹ This act shall take effect immediately.