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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 310  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Craig

Michael Hinel, Attorney

### SUMMARY

- Allows certain persons to request the county recorder to remove unenforceable discriminatory covenants from a real property instrument, such as a deed or mortgage, or to redact those covenants from the instrument's internet publication.
- Requires that documentation requesting the modification of a real property instrument to remove discriminatory covenants be recorded and indexed in the same manner as the original instrument being modified.
- Allows county recorders to refuse a redaction or modification request for the redaction or removal of nondiscriminatory covenants.
- Grants immunity from civil liability, with exceptions, for filing or recording a real property instrument that contains discriminatory covenants.
- Requires the Attorney General, in conjunction with the Ohio Recorders' Association, to prepare and provide to county recorders the application forms.

### DETAILED ANALYSIS

#### Removal of discriminatory covenants from real property instruments

The bill authorizes certain persons to request county recorders to (1) redact discriminatory covenants from any real property instrument filed with the county recorder from view by the general public on the Internet, or (2) record a modification document to remove the discriminatory covenants from the instrument.<sup>1</sup>

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<sup>1</sup> R.C. 317.115(B).

A discriminatory covenant, which is unenforceable under Ohio law, is language in a real property instrument that forbids or restricts the conveyance, encumbrance, leasing, or mortgaging of real property to any individual based on the individual's protected class, including race, color, religion, sex, military status, familial status, ancestry, disability, or national origin.<sup>2</sup>

The bill applies to any instrument pertaining to real property that is recorded by the county recorder, including deeds, mortgages, installment contracts, leases, and memoranda of trust.<sup>3</sup>

## **Application**

An attorney, a title insurance company or title agent authorized to do business in Ohio, or the owner of the real property that is the subject of the real property instrument may make a redaction or modification request by filing with the county recorder a redaction form or modification form, respectively. The property owner may make such a request at any time. All other eligible filers may make such a request only when there is a transfer or sale of an interest in the real property that is the subject of the real property instrument.<sup>4</sup>

## **County recorder's discretion**

A county recorder with whom a redaction form or modification form is filed must accept the filing, but may refuse a redaction or modification request if the redacted or stricken language in the real property instrument does not meet the bill's definition of a discriminatory covenant. If the county recorder refuses such a request, the county recorder must inform the filer of the denial in writing.<sup>5</sup>

## **Modification form recording requirement**

An eligible filer requesting the modification of a real property instrument to remove discriminatory covenants must include with the modification form a complete copy of the current real property instrument with the discriminatory covenants stricken or a complete list of all nondiscriminatory covenants that are in the instrument. The modification form and attachments must be presented to the county recorder in the same manner as prescribed by law for any real property filing that is not required to first be presented to the county auditor.

The county recorder must record and index the modification form and any attachments in the same manner as the original real property instrument being modified. Additionally, the county recorder must note on the modification form and attachments the recording reference

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<sup>2</sup> R.C. 317.115(A)(2); R.C. 4112.02(H)(1), not in the bill.

<sup>3</sup> R.C. 317.115(A)(1); R.C. 317.08, not in the bill.

<sup>4</sup> R.C. 317.115(B).

<sup>5</sup> R.C. 317.115(C), (D), and (G).

to the original real property instrument in the form of a book and page or instrument number and the date of their recording.<sup>6</sup>

A county recorder is not liable for recording a modification form and any attachments requested by a person that do not satisfy the bill's requirements. Any liability that may result from the recordation is the sole responsibility of the person who caused the modified recordation.<sup>7</sup>

### **Prescribing forms**

The bill requires the Attorney General, in conjunction with the Ohio Recorders' Association, to prepare and provide to county recorders the redaction and modification forms.<sup>8</sup>

### **Immunity from civil liability**

Any person who, in good faith and in the usual course of business, causes the recording of a real property instrument that contains a discriminatory covenant is immune from civil liability and is not considered a discriminatory housing practice. Such immunity, however, does not apply to any person who represents or attempts to represent that the discriminatory covenant is valid and enforceable, or honors or exercises, or attempts to honor or exercise, the discriminatory covenant.<sup>9</sup>

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## **HISTORY**

Action	Date
Introduced	03-10-22

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<sup>6</sup> R.C. 317.115(D).

<sup>7</sup> R.C. 317.115(F).

<sup>8</sup> R.C. 109.15.

<sup>9</sup> R.C. 317.115(E).