

## Eradication of Illegal Restrictive Covenants--It's the Law

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In the area of real estate, some of our state's history, both negative and positive, can be found in the content of documents filed with each county's County Recorder. Once something is so filed, or "recorded", it stays on the title as a public record, until something else happens. Some of the past we would like to forget, a past of discrimination, still is occasionally found in covenants, conditions and restrictions (commonly known as "CC&R's"). While such covenants are no longer legally enforceable, they still echo a regrettable past.

A number of years ago, in 2000, a law took effect which established a comprehensive effort intended to eradicate illegal restrictive covenants. Illegal restrictive covenants in California include restrictions based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry.

Community associations, their managers, real estate professionals, and attorneys need to be aware of the law's requirements. Illegal restrictive covenants are often thought only to pertain to older CC&R's, reflecting wrong and outdated discriminatory practices such as restricting by race or age.

However, the problem is not confined only to antiquated association governing documents. In an attempt to accomplish goals which might at first seem justified (such as project safety or vandalism prevention), associations can unwittingly approve new illegal restrictive covenants. Perhaps the most common such new form of illegal covenant is the restriction targeting children or families with children. Therefore, vigilance is always warranted, whether the governing documents are new or old.

Under California Civil Code section 1352.5, common interest development directors are instructed on a board vote and without needing approval of the members to amend governing documents to delete any illegal restrictive covenant language. No vote of the members is required, but the directors are not authorized to make any other changes to the governing document at the same time. Subsection (c) of this statute states that, if an association is given written notice of an illegal restrictive covenant and it fails to remove the offending language, the federal, state, or local government or any private citizen may sue the association for an injunction to enforce the law. The statute even provides for the award of attorney fees to the prevailing party. This law also specifically created a new crime. Under Government Code subsection 12956.1(d), a person who deliberately files a racially restrictive covenant is guilty of a misdemeanor. Use a CC&R to discriminate, and you might go to jail! The provision of the law which definitely affects all community associations is a disclosure requirement. Government Code subsection 12956.1(b) requires associations (and, by extension, their managers), realtors, escrows, and title companies to provide a cover page with any copy of association governing documents. This cover page must contain the following language, in at least 14 point bold face type: "If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of section 12956.1 of the Government Code."

Subpart (c) of the same section authorizes county recorders, upon request of any property owner, to remove any illegal restrictive covenants contained in any recorded document pertaining to the owner's property.

The statute hopefully is helping to finally eradicate illegal restrictive covenants in recorded governing documents. However, as can be seen, homeowner associations and their management professionals must continually remain vigilant of these requirements, and particularly the disclosure requirement. Under this statute, homeowner boards are required to, and should, move immediately to remove any restrictive covenant language. It is the law, and the right thing to do.

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