
A BILL FOR AN ACT

RELATING TO PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 515-2, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Discriminatory restrictive covenant" means any
5 restrictive covenant on real property which, if enforced, would
6 violate the:

7 (1) Prohibition in the federal Fair Housing Act (42 U.S.C.
8 section 3601 et seq.) against discrimination on the
9 basis of race, color, sex, religion, familial status,
10 disability, or national origin;

11 (2) Equal protection clause of the United States
12 Constitution, under Shelley v. Kraemer, 334 U.S. 1
13 (1948) (holding that the enforcement of a racially
14 restrictive covenant violated the equal protection
15 clause); or

16 (3) Prohibition against discrimination on the basis of
17 race, sex, including gender identity or expression,



1 sexual orientation, color, religion, marital status,
 2 familial status, ancestry, disability, age, or human
 3 immunodeficiency virus infection."

4 SECTION 2. Section 515-6, Hawaii Revised Statutes, is
 5 amended to read as follows:

6 "**§515-6 Restrictive covenants and conditions.** (a) Every
 7 provision in an oral agreement or a written instrument relating
 8 to real property that purports to forbid or restrict the
 9 conveyance, encumbrance, occupancy, or lease thereof to
 10 individuals because of race, sex, including gender identity or
 11 expression, sexual orientation, color, religion, marital status,
 12 familial status, ancestry, disability, age, or human
 13 immunodeficiency virus infection, is void.

14 (b) Every condition, restriction, or prohibition,
 15 including a right of entry or possibility of reverter, that
 16 directly or indirectly limits the use or occupancy of real
 17 property on the basis of race, sex, including gender identity or
 18 expression, sexual orientation, color, religion, marital status,
 19 familial status, ancestry, disability, age, or human
 20 immunodeficiency virus infection is void, except a limitation,
 21 on the basis of religion, on the use of real property held by a



1 religious institution or organization or by a religious or
2 charitable organization operated, supervised, or controlled by a
3 religious institution or organization, and used for religious or
4 charitable purposes.

5 (c) It is a discriminatory practice to insert in a written
6 instrument relating to real property a provision that is void
7 under this section or to honor or attempt to honor [~~such a~~] the
8 provision in the chain of title.

9 (d) Any person who discovers a recorded discriminatory
10 restrictive covenant may:

11 (1) With the consent of all parties to a real estate
12 transaction, include in any deed, mortgage, or other
13 instrument filed for recording in connection with the
14 transaction a statement that the discriminatory
15 restrictive covenant is invalid and unenforceable; or

16 (2) Prepare and record a separate notice, cross-referenced
17 to the discriminatory restrictive covenant, stating
18 that the discriminatory restrictive covenant is
19 invalid and unenforceable.

20 (e) The statement or notice described under subsection (d)
21 shall be in a form substantially consistent with the following:



1 "The chain of title for the real property described
2 herein contains a restrictive covenant that, if
3 enforced, would discriminate against individuals based
4 upon their race, color, sex, religion, familial
5 status, disability, or national origin. The covenant
6 is invalid, unenforceable, and antithetical to
7 American values of justice and equal protection under
8 the law."

9 (f) A person who in good faith:

10 (1) Prepares or causes to be prepared; or

11 (2) Records or causes to be recorded;

12 a statement or notice under subsection (d) shall be immune from
13 liability for incorrectly stating that the restrictive covenant
14 is discriminatory."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Property; Discriminatory Restrictive Covenants; Invalid;
Immunity

Description:

Allows a person who discovers a recorded discriminatory restrictive covenant to take certain actions without liability, to invalidate the covenant. Defines discriminatory restrictive covenant. Effective 7/1/2050. (SD2)

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