

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1066 (Delegates West and Lafferty)  
Environment and Transportation

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**Homeowners Associations - Recorded Covenants or Restrictions - Deletion of  
Restrictions Based on Race, Religious Belief, or National Origin**

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This bill authorizes a homeowners association (HOA) to delete a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin from the deeds or other declarations of property in the development if at least a majority of the governing body of the HOA of the development agrees to the deletion.

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially impact State operations or finances.

**Local Effect:** The bill is not anticipated to materially impact local government operations or finances, as discussed below.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** “Homeowners association” includes a person with the authority to enforce recorded covenants and restrictions limiting architectural alterations, renovations, landscaping elements, and other modifications to a lot or building located on a lot regardless of the ability of the person to impose a fee on a lot or a lot owner.

To accomplish deletion of a restrictive covenant, as specified, the governing body of the HOA must record with the clerk of the court in the jurisdiction where the development is located (1) an amendment to, or an amendment and restatement of, the deeds or other declarations that include the recorded covenant or restriction, executed by an authorized

representative of the HOA, that authorizes the deletion of the recorded covenant or restriction and (2) a statement that a majority of the governing body of the HOA has agreed to the deletion.

### **Current Law/Background:**

#### *Deletion of Ownership Restriction by a Homeowners Association*

An HOA may delete a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin from the deeds or other declarations of property in the development with the affirmative vote of at least 85% of the lot owners. If the deeds or other declarations specify a method of amendment or deletion of a recorded covenant or restriction, a recorded covenant or restriction may also be deleted as is specified for in the deeds or declarations.

After the lot owners in the development agree to the deletion of a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin, the governing body of the HOA must record an amendment to the deeds or other declarations with the clerk of the court in the jurisdiction where the development is located.

#### *Racially Restrictive Covenants*

Racially restrictive covenants in a deed or other instrument used to convey real property are unenforceable by State courts. While such covenants are not illegal *per se*, their enforcement by State court injunctions constitutes state action in violation of the Fourteenth Amendment to the U.S. Constitution.

Even though the covenants' race restrictions are unenforceable, many people still find them offensive. In 2017, the Rodgers Forge Community Association, near Baltimore, Maryland, appropriated \$2,000 to investigate how to remove the covenants and to include a section on its website explaining that the neighborhood today finds the language abhorrent and is trying to remove it.

#### *California Restrictive Covenant Modification*

In 2000, the California Fair Employment and Housing Act established procedures for removing illegal restrictive covenants. Effective January 1, 2006, any person holding an ownership interest of record in a property that he or she believes is the subject of an illegal restrictive covenant may record a restrictive covenant modification with the county recorder. Additionally, the board of directors of a common interest development or association is required, without approval of the owners, to delete any unlawful restrictive covenant and restate the declaration or governing document without the restrictive

covenant but with no other change. A board of directors of a common interest development or association is not required to obtain approval from the county recorder prior to removal of restrictive covenant language.

**Local Fiscal Effect:** Any impact on the operations or finances of the circuit courts depends on the number of changes filed by HOAs. The total number of HOAs which will submit revised covenants or restrictions is unknown. Additionally, while the bill may increase the workload of the clerks of the court, any increased activity can likely be handled with existing resources. Revenues from filing fees may increase minimally.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Secretary of State; Judiciary (Administrative Office of the Courts); Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2018  
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