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SB 1432: unlawful restrictive covenants; uniform act..

Sponsor: Senator Mesnard, LD 13

Caucus & COW

Overview

Establishes the Uniform Unlawful Restrictions in Land Records Act which provides requirements for removing an *unlawful restriction* from property or a governing instrument.

History

The Uniform Law Commission (ULC) approved a uniform state law to allow a property owner whose deed contains an unlawful and unenforceable restriction to record an amendment to the land records that effectively removes the restriction. An unlawful and unenforceable restriction is a restriction inserted into a deed that was intended to prevent the affected property from being sold to or occupied by persons covered by that restriction. Throughout the first half of the 20th century, owners and developers of real property commonly inserted restrictive covenants into deeds and declarations ([ULC](#)).

A homeowner association's (HOA) declaration may be amended by the HOA, if any, or, if there is no HOA or board, the owners of the property subject to the declaration, by an affirmative vote or written consent of the number of owners or eligible voters specified in the declaration. An amendment to a declaration may apply to fewer than all of the lots or less than all of the property bound by the declaration and an amendment is deemed to conform to the general design and plan of the community, if outlined conditions are met. Within 30 days after adopting an amendment, the amendment must be recorded. Regardless of any declaration provision that provides for periodic renewal of the declaration, an amendment to the declaration is effective immediately on recordation of the instrument in the county in which the property is located (A.R.S. § [33-1817](#)).

A condominium association's (COA) declaration may be amended only by a vote of the unit owners to which at least 67% of the votes in the COA are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use. Within 30 days after the adoption of any amendment, the amendment must be recorded. An amendment to the declaration must be recorded in each county in which any portion of the condominium is located and is effective only on recordation (A.R.S. § [33-1227](#)).

Provisions

1. Allows a real property owner, whose property is subject to an unlawful restriction, to submit to the county recorder an amendment to remove the unlawful restriction. (Sec. 1)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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2. Limits the applicability of the amendment to remove the unlawful restriction to only the owner's property. (Sec. 1)
3. Allows the governing body of an association, including the board of directors of a condominium or a planned community, to amend the association's governing instrument to remove an unlawful restriction without a vote of the association's membership. (Sec. 1)
4. Permits an association's member to request in a record that sufficiently identifies an unlawful restriction in the governing instrument that the governing body exercise its authority to amend the instrument to remove an unlawful restriction. (Sec. 1)
5. Requires the governing body, within 90 days after receiving the request, to determine whether the governing instrument includes the unlawful restriction. (Sec. 1)
6. Stipulates the governing body must amend the governing instrument to remove the unlawful restriction within 90 days after determining the inclusion of the unlawful restriction. (Sec. 1)
7. Asserts the governing body may execute an amendment to remove an unlawful restriction, and the amendment's effectiveness, regardless of any governing instrument provision or other law. (Sec. 1)
8. Provides requirements for an amendment to remove an unlawful restriction, including identifying only the document containing the unlawful restriction. (Sec. 1)
9. Requires the amendment to:
 - a) include a conspicuous statement as outlined;
 - b) be executed and acknowledged in the manner required for recordation of a document in the land records; and
 - c) be recorded in the land records of each county in which the document containing the unlawful restriction is recorded. (Sec. 1)
10. Specifies the amendment does not affect the validity or enforceability of any restriction that is not an unlawful restriction. (Sec. 1)
11. Asserts the amendment or a future conveyance of the affected real property is not a republication of a restriction that otherwise would expire by passage of time under any other law. (Sec. 1)
12. Prescribes an optional form that may be submitted by a property owner to the county recorder to remove an unlawful restriction. (Sec. 1)
13. Prescribes responsibilities for a county recorder in recording an amendment. (Sec. 1)
14. Exempts a recorder and the county from liability for recording an amendment. (Sec. 1)
15. Instructs a court, in applying and construing the unlawful restriction statutes, to consider the promotion of uniformity of the law among jurisdictions that enact it. (Sec. 1)
16. Asserts the unlawful restriction statutes modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, but does not modify, limit or supersede federal law relating to consumer disclosures or authorize electronic delivery of specified federal notices. (Sec. 1)
17. Cites the statutes governing unlawful restrictions, as established by this Act, as the Uniform Unlawful Restrictions in Land Records Act. (Sec. 1)

18. Defines pertinent terms. (Sec. 1)

19. Contains a severability clause. (Sec. 2)