



COUNCIL OF THE DISTRICT OF COLUMBIA
JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004

MATTHEW FRUMIN
Councilmember, Ward 3

COMMITTEE MEMBER
Executive Administration and Labor
Facilities and Family Services
Hospital and Health Equity
Housing
Transportation and the Environment

Nyasha Smith
Secretary of the Council
1350 Pennsylvania Avenue NW
Washington, DC 20004

September 18, 2023

Dear Secretary Smith:

Today, I am introducing the “Releasing Restrictive Covenants in Deeds Act of 2023” along with Chairman Mendelson and Councilmembers Nadeau, Allen, Lewis George, Parker, Robert White, Bonds, McDuffie, and Trayon White. This legislation would affirm that deed covenants or other restrictions that interfere with the use or occupancy of real property on the basis of demographic traits including race, color, religion, national origin, and more, are unlawful and void. The legislation would further allow for property owners to release these covenants from a deed. A signed copy of the legislation is enclosed.

Throughout the early twentieth century, exclusionary covenants were often imposed on deeds throughout the District with the explicit intent of prohibiting people of certain races or national origins from purchasing or living on the property.¹ In 1948, the Supreme Court of the United States unanimously held that any judicial or state enforcement of these covenants violates the Equal Protection Clause of the Fourteenth Amendment.² In 1968, federal law made the practice of writing racial covenants into deeds illegal.³

However, these covenants still commit harm: no one should have to live in a home with a covenant attached to it that says they are not welcome. Further, although these covenants are legally moot under federal law and Supreme Court jurisprudence, they may otherwise still be good on the title of many properties in the District. In other words, in the unlikely event that Supreme Court precedent and federal housing law ever changed, the many racist covenants existing in the District could hypothetically become active again. Yet, there is no clear way for property owners to release these

¹ See, e.g., Sarah Shoenfeld & Mara Cherkasky, *The rise and demise of racially restrictive covenants in Bloomingdale*, D.C. POLICY CENTER (April 3, 2019), available at

<https://www.dcpolicycenter.org/publications/racially-restrictive-covenants-bloomingdale/>.

² *Shelley v. Kraemer*, 334 US 1 (1948).

³ See Nancy H. Welsh, *Racially Restrictive Covenants in the United States: A Call to Action*, AGORA JOURNAL OF URBAN PLANNING & DESIGN, 130-142 (2018), available at

https://deepblue.lib.umich.edu/bitstream/handle/2027.42/143831/A_12%20Racially%20Restrictive%20Covenants%20in%20the%20US.pdf.

covenants from a deed, despite the desire of many residents to do so. Recognizing this, several states have enacted laws allowing for these covenants to be removed or released from deeds.⁴

In order to address the legacies left by these racist covenants, the enclosed legislation would affirm that these covenants are unlawful across the District, allow property owners to release these covenants from a deed through the recordation of an amendatory instrument with the Recorder of Deeds, and waive any fees from the Recorder of Deeds required to do so.

Should you have any questions about this legislation, please contact my Legislative Director, Steven A. Palmer, at spalmer@dccouncil.gov or (202) 724-8037.

Sincerely,



Matthew Frumin
Councilmember for Ward 3

⁴ See Cheryl W. Thompson et al., *Racial covenants, a relic of the past, are still on the books across the country*, NPR (November 17, 2021), available at <https://www.npr.org/2021/11/17/1049052531/racial-covenants-housing-discrimination#:~:text=Illinois%20becomes%20the%20latest%20state.And%20in%20September%2C%20California%20Gov..>



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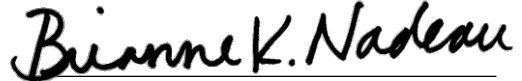
4 Chairman Phil Mendelson



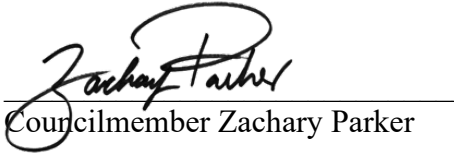
Councilmember Matthew Frumin

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8 Councilmember Charles Allen



Councilmember Brianne K. Nadeau

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12 Councilmember Zachary Parker



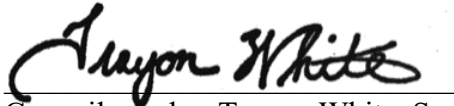
Councilmember Janeese Lewis George

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16 Councilmember Anita Bonds



Councilmember Robert C. White, Jr.

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20 Councilmember Trayon White, Sr.



Councilmember Kenyan R. McDuffie

24 A BILL

28
29 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

34 To clarify that prohibited restrictive covenants are unlawful, to allow property owners and boards
35 of common interest communities to release prohibited restrictive covenants from a deed,
36 and to allow the Recorder of Deeds to refuse to record a document containing a
37 prohibited restriction.

38
39 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
40 act may be cited as the “Releasing Restrictive Covenants in Deeds Act of 2023”.

41 Sec. 2. Definitions.

42 For the purposes of this act, the term:

43 (1) "Amending instrument" means an affidavit, deed, form, or other recorded
44 document issued for the purpose of amending, modifying, or releasing a prohibited restriction
45 under this act.

46 (2) "Common interest community" means a residential condominium, residential
47 cooperative, or other residential real property with respect to which a person, by virtue of the
48 person's ownership of a parcel of real property, is obligated to pay a share of property taxes,
49 insurance premiums, maintenance costs, or costs of improvement of other real property described
50 in a recorded covenant that creates the common interest community.

51 (3) "Document" shall have the same meaning as provided in section 2(2) of the
52 Uniform Real Property Electronic Recording Act of 2005, effective October 18, 2005 (D.C. Law
53 16-25; D.C. Official Code § 42-1231(2)).

54 (4) "Governing documents" means the declaration of covenants, conditions, and
55 restrictions and other recorded documents relating to the administration of a common interest
56 community.

57 (5) "Prohibited restriction" means a prohibition, restriction, covenant, or condition
58 that directly or indirectly interferes with or limits the transfer, use, or occupancy of real property
59 on the basis of race, color, religion, national origin, sex, age, marital status, sexual orientation,
60 gender identity or expression, disability, or discrimination on other status or condition in
61 violation of Section 221 of the Human Rights Act of 1977, effective December 13, 1977 (D.C.
62 Law 2-38; D.C. Official Code § 2-1402.21(a)).

63 Sec. 3. Prohibited restrictions void and unenforceable.

64 (a) Prohibited restrictions are unlawful and void and have no legal effect.

65 (b) If a prohibited restriction is contained in any document affecting title to real property
66 that contains any other restrictions, covenants, or provisions which are not prohibited, the
67 validity and enforceability of the remaining restrictions, covenants, or provisions shall not be
68 affected.

69 Sec. 4. Amendment to deed by owner.

70 (a) If an owner of record believes their property is subject to a prohibited restriction, that
71 person may present to the Recorder of Deeds an amending instrument releasing the prohibited
72 restriction.

73 (b) An amending instrument under this section may be executed only by the property
74 owner and must be executed and acknowledged in the manner otherwise required under An act
75 providing for the recording of deeds, mortgages, and other conveyances affecting real estate in
76 the District of Columbia, effective April 29, 1878 (20 Stat. 39, ch. 69; D.C. Official Code § 42–
77 401).

78 (c) An amending instrument must:

79 (1) Identify and refer to the original deed or other document being amended and
80 give the book and page or other unique identifying number where the original deed or document
81 is recorded;

82 (2) Conspicuously state the following: “This amended deed or instrument strikes
83 from the original deed or instrument restrictions, covenants, or conditions that are prohibited
84 under the law.”; and

85 (3) Restate the prohibited restriction in full for the historical record.

86 (d) The Recorder of Deeds shall add to the grantor-grantee indices information sufficient
87 to reflect the existence of the amending instrument releasing the prohibited restriction from the
88 land records.

89 (e) An amending instrument recorded under this section affects only the prohibited
90 restriction in the original deed or document.

91 Sec. 5. Amendments or modifications to association's governing documents.

92 (a) The board of a common interest community, by a vote of a majority of the members
93 of the board and without further need for a vote by the unit owners, may amend its governing
94 documents for the sole purpose of releasing any prohibited restrictions as defined by this act.

95 (b) If the board of any common interest community receives a written request from any
96 unit owner within the community that the board exercise its amending authority under subsection
97 (a), the board shall, within a reasonable period of time not to exceed 90 days, investigate whether
98 a prohibited restriction exists within the governing documents. Should the board determine that a
99 prohibited restriction is in fact present in one or more of the governing documents, the board
100 shall promptly exercise its amending authority under this act to amend the governing documents
101 by releasing any such prohibited restriction.

102 (c) The amending instruments authorized by either subsection (a) or (b) of this section
103 may be executed by any authorized member of the board and shall be recorded by the Recorder
104 of Deeds in accordance with the law.

105 (d) For the purposes of authorizing the release of prohibited restrictions from governing
106 documents, the action of the board to amend the governing documents as provided for in this
107 section are effective notwithstanding any explicit or implicit provisions of the governing
108 documents to the contrary.

109 Sec. 6. Fees waived; no judicial approval necessary.

110 (a) The Recorder of Deeds shall waive any fees specifically directed at an owner's
111 attempt to release a prohibited restriction from a deed or other document as described under
112 sections 4 and 5 of this act.

113 (b) No judicial approval is needed to release a prohibited restriction under sections 4 and
114 5 of this act. This section is not intended to alter the need for judicial approval otherwise required
115 under law for any action except for the express release of a prohibited restriction.

116 Sec. 7. Prohibited restrictions shall not be recorded.

117 (a) No person shall knowingly present to the Recorder of Deeds for recordation a
118 document containing any prohibited restriction.

119 (b) The Recorder of Deeds does not have a duty to read or otherwise inspect a document
120 to determine whether it contains any prohibited restriction.

121 (c) The Recorder of Deeds may refuse to record a document containing a prohibited
122 restriction.

123 (d) A document presented in violation of subsection (a) of this section shall not cause the
124 Recorder of Deeds or the District to be liable for any damages resulting from its recordation or
125 refusal.

126 Sec. 8. Database of released covenants.

127 (a) In order to further historical research, the Recorder of Deeds shall maintain a database
128 of each prohibited restriction released under this act.

129 (b) The database shall include:

130 (1) The address of the property on which the prohibited restriction existed;

131 (2) A brief description of the nature of the prohibited restriction; and

132 (3) A cross-reference to the amending instrument in the property records.

133 Sec. 9. Liability for erroneous or inadvertent amendments or modifications.

134 (a) If a person presents an amending instrument to be recorded under this act that is not in
135 fact authorized by this act, the Recorder of Deeds and the District shall not be liable for any
136 damages.

137 (b) Any liability that may result by a recording that is not authorized in fact by this act
138 shall be the sole responsibility of the person who presented the amending instrument for
139 recordation.

140 (c) Except as otherwise provided in section 5, this act does not create a duty on the part of
141 an owner, association, board, or board member to amend a recorded deed, instrument, or
142 governing document, or to bring an action authorized under this act.

143 Sec. 10. Fiscal impact statement.

144 The Council adopts the fiscal impact statement in the committee report as the fiscal
145 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
146 approved October 16, 2006 (12 Stat. 2038; D.C. Official Code § 1-301.47a).

147 Sec. 11. Effective date.

148 This act shall take effect following approval by the Mayor (or in the event of veto by the
149 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
150 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
151 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
152 Columbia Register.