

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1289 Session of
2023

INTRODUCED BY FLEMING, N. NELSON, VENKAT, MADDEN, PROBST, RABB,
BURGOS, SMITH-WADE-EL, McANDREW, SCHLOSSBERG, SANCHEZ, ROZZI,
WARREN, HILL-EVANS, FREEMAN, PARKER, MALAGARI, KRAJEWSKI,
KINSEY AND CERRATO, JUNE 1, 2023

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 1, 2023

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, in residential real
3 property, providing for discharging discriminatory real
4 estate covenants; and establishing the Unlawful Restrictive
5 Covenant Discharge Reimbursement Fund.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 68 of the Pennsylvania Consolidated
9 Statutes is amended by adding a chapter to read:

10 CHAPTER 74

11 DISCHARGING DISCRIMINATORY REAL ESTATE COVENANTS

12 Sec.

13 7401. Scope of chapter.

14 7402. Definitions.

15 7403. Nullification of existing unlawful restrictive covenants.

16 7404. Discharge of unlawful restrictive covenants.

17 7405. Form for discharge.

18 7406. Unlawful Restrictive Covenant Discharge Reimbursement

1 Fund.

2 7407. Unlawful restrictive covenants in declarations of common
3 interest ownership communities.

4 7408. Unlawful restrictive covenants not in declarations of
5 common interest ownership communities.

6 § 7401. Scope of chapter.

7 This chapter relates to real estate covenants that
8 discriminate against individuals.

9 § 7402. Definitions.

10 The following words and phrases when used in this chapter
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Board." The executive board or board of directors of a
14 common interest ownership community.

15 "Common interest ownership community." Includes:

16 (1) A condominium as defined in section 3103 (relating
17 to definitions).

18 (2) A cooperative as defined in section 4103 (relating
19 to definitions).

20 (3) A planned community as defined in section 5103
21 (relating to definitions).

22 "Department." The Department of Community and Economic
23 Development of the Commonwealth.

24 "Instrument." A deed, mortgage, declaration of restrictive
25 covenants, conditions or covenants, easement or other similar
26 document.

27 "Recorder." As follows:

28 (1) A county recorder of deeds or a county official or
29 department responsible for the recording of documents in a
30 county without a recorder of deeds.

1 (2) The term includes the Philadelphia Department of
2 Records and the Allegheny County Department of Real Estate.
3 "Unlawful restrictive covenant." A covenant or other
4 provision that purports to restrict ownership or occupancy of
5 real property on the basis of one or more of the following:

6 (1) Race, color, ethnicity, national origin, religious
7 creed, sex, gender identity, sexual orientation, age, marital
8 status, familial status, citizenship or immigration status or
9 any other status as those terms are defined in the act of
10 October 27, 1955 (P.L.744, No.222), known as the Pennsylvania
11 Human Relations Act, or 42 U.S.C. Ch. 45 (relating to fair
12 housing) or which may hereafter become a protected class
13 under Federal or State law.

14 (2) The presence of a sensory, mental or physical
15 disability or the use of a guide, service, assistance or
16 support animal as a reasonable accommodation for the user or
17 because the user is a handler or trainer of service, support,
18 assistance or guide animals.

19 § 7403. Nullification of existing unlawful restrictive
20 covenants.

21 (a) Unenforceable covenants.--An unlawful restrictive
22 covenant contained in an instrument affecting title to real
23 property, whether or not recorded, in this Commonwealth shall be
24 null, void and unenforceable ab initio without need for further
25 action by any person or recorder.

26 (b) Combined covenants.--If an unlawful restrictive covenant
27 is contained in an instrument affecting title to real property
28 that also contains other covenants or provisions that are not an
29 unlawful restrictive covenant, the validity and enforceability
30 of the remaining covenants or provisions, as well as the

1 validity of the recorded instrument, shall not be affected by
2 the nullification, voiding and unenforceability of the unlawful
3 restrictive covenant.

4 § 7404. Discharge of unlawful restrictive covenants.

5 (a) Landowner discharge.--An owner of real property,
6 including a common interest ownership community, with an
7 unlawful restrictive covenant recorded in the instrument may
8 file a form described in section 7405 (relating to form for
9 discharge) with the recorder in the county where the real
10 property is located to strike the unlawful restrictive covenant
11 from the instrument.

12 (b) Electronic filing.--A form filed under subsection (a)
13 shall be in writing and may be filed electronically if the
14 county allows for electronic recording of deeds.

15 (c) Duty of recorder.--The recorder shall record the form
16 submitted under subsection (a) and, to the extent practicable,
17 notate the indices to the records accordingly to reflect the
18 invalidity of the unlawful restrictive covenant.

19 (d) Fees prohibited.--A recorder may not assess a fee for
20 the filing of a form under this section.

21 (e) Separation of covenant from instrument.--When the form
22 submitted under subsection (a) is properly recorded, the removal
23 of the unlawful restrictive covenant is effective and does not
24 affect the validity of the instrument. The instrument shall be
25 construed as if the unlawful restrictive covenant was never
26 contained in the instrument.

27 § 7405. Form for discharge.

28 (a) Development.--No later than 90 days after the effective
29 date of this section, the department shall develop and release a
30 standardized form for landowners or other persons with an

1 interest in real property to file with the recorder to discharge
2 an unlawful restrictive covenant within the interested person's
3 instrument.

4 (b) Distribution.--No later than 30 days after the
5 standardized form required in subsection (a) is approved in
6 final form by the department, the department shall provide a
7 "Discharge of Unlawful Restrictive Covenant" form to each
8 recorder in this Commonwealth and publish the form on the
9 department's publicly accessible Internet website.

10 § 7406. Unlawful Restrictive Covenant Discharge Reimbursement
11 Fund.

12 The Unlawful Restrictive Covenant Discharge Reimbursement
13 Fund is established in the State Treasury for the purpose of
14 reimbursing recorders for the costs incurred in recording
15 discharges of unlawful restrictive covenants as provided under
16 section 7404 (relating to discharge of unlawful restrictive
17 covenants). Funding to carry out the purpose of this fund shall
18 be contingent on appropriations of the General Assembly.

19 § 7407. Unlawful restrictive covenants in declarations of
20 common interest ownership communities.

21 (a) Board vote for removal.--Notwithstanding any other
22 provision of law, a board of a common interest ownership
23 community may, upon receipt of an opinion by independent legal
24 counsel, consider an unlawful restrictive covenant to be removed
25 as a corrective amendment by a vote of a majority of the members
26 of the board and without further need for a vote by unit owners
27 or approval from lenders on individual units, thereby correcting
28 the declaration by amendment to remove the unlawful restrictive
29 covenant.

30 (b) Unit owner request for removal.--If a unit owner in a

1 common interest ownership community submits a written request to
2 the board for an amendment to the declaration to remove an
3 unlawful restrictive covenant, the board shall, no later than 90
4 days after receipt of the request, hold a meeting to determine
5 whether an unlawful restrictive covenant exists and should be
6 removed from the declaration by a corrective amendment to the
7 declaration. If the board finds that an unlawful restrictive
8 covenant exists and should be removed from the declaration by a
9 corrective amendment to the declaration, the board shall take
10 swift action to record the corrective amendment.

11 § 7408. Unlawful restrictive covenants not in declarations of
12 common interest ownership communities.

13 If an instrument in the chain of title to the common elements
14 in a condominium, in the common facilities or controlled
15 facilities in a planned community or in the chain of title to a
16 real estate cooperative includes an unlawful restrictive
17 covenant, the board may perform a landowner discharge in
18 accordance with section 7404 (relating to discharge of unlawful
19 restrictive covenants).

20 Section 2. This act shall take effect as follows:

21 (1) The following shall take effect immediately:

22 (i) The addition of 68 Pa.C.S. §§ 7402 and 7403.

23 (ii) This section.

24 (2) The remainder of this act shall take effect in 60
25 days.