

State of Wisconsin



2023 Senate Bill 439

Date of enactment:
Date of publication*:

2023 WISCONSIN ACT

AN ACT to create 59.43 (9) (d) and 710.25 of the statutes; **relating to:** declaring discriminatory restrictions in instruments that affect real property void and unenforceable and allowing an owner of real property to discharge and release such a discriminatory restriction.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 3. 59.43 (9) (d) of the statutes is created to read:

59.43 (9) (d) With regard to certifications to discharge and release discriminatory restrictions under s. 710.25 (5) (a) related to previously filed or recorded documents, the register of deeds shall, if possible, include on the previously filed or recorded documents a notation of the document number of the certification, the date when the certification is filed or recorded, and, if the certification is assigned a volume and page number, the volume and page where the certification is filed or recorded.

SECTION 5. 710.25 of the statutes is created to read:

710.25 Discriminatory restrictions prohibited.

(1) In this section, "discriminatory restriction" means a restriction, covenant, or condition that prohibits or restricts the ownership, transfer, encumbrance, rental, occupancy, or use of real property on the basis of being a member of a protected class, as defined in s. 106.50 (1m) (nm). "Discriminatory restriction" does not include a restriction, covenant, or condition that prohibits or restricts the ownership, transfer, encumbrance, rental, occupancy, or use of real property on a basis that is allowed under s. 106.50 (5m) (a) to (f) or 42 USC 3607.

(2) A discriminatory restriction contained in a deed or other instrument affecting real property is void and unenforceable.

(3) No person may file or record with, or present for filing or recording to, a register of deeds a deed or other instrument affecting real property that contains a discriminatory restriction.

(4) A person that drafts a deed or other instrument affecting real property may not include a discriminatory restriction in the deed or instrument.

(5) (a) If real property is affected by a deed or other instrument that contains a discriminatory restriction, an owner of the real property may discharge and release the discriminatory restriction from the owner's real property by recording a certification to discharge and release the discriminatory restriction. Subject to s. 59.43 (2m), the certification is entitled to record in the office of the register of deeds in the county in which the owner's real property is located if the certification includes all of the following:

1. The signature of the owner.
2. An acknowledgement or authentication in accordance with s. 706.06 or ch. 140.
3. The full legal description, as defined in s. 706.01 (7r), of the real property to which the certification relates.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

4. The title of the deed or instrument that contains the discriminatory restriction, the document number of the deed or instrument, and, if given on the deed or instrument, the volume and page where the deed or instrument is filed or recorded.

(b) An owner of real property may record a single certification under par. (a) to discharge and release discriminatory restrictions from multiple deeds and instruments that affect the real property. The certification shall include the information specified under par. (a) 4. for every deed or instrument to which the certification applies.

(c) An owner of real property may make the certification under par. (a) in substantially the following form:

**DISCHARGE AND RELEASE
OF DISCRIMINATORY RESTRICTION
AFFECTING REAL PROPERTY**

Pursuant to section 710.25 of the Wisconsin statutes, a restriction, covenant, or condition that prohibits or restricts the ownership, transfer, encumbrance, rental, occupancy, or use of real property in this state on the basis of membership in a protected class, as defined in the Wisconsin statutes, contained in a deed or other instrument affecting real property is void and unenforceable. Pursuant to section 710.25 of the Wisconsin statutes, any owner of real property may record this form to discharge and release such a discriminatory restriction from the owner's real property.

DISCHARGE AND RELEASE BY OWNER

I, (name of owner), certify all of the following:

That I own the following described real property located in County, Wisconsin:

.... (property description)

That the real property is affected by an instrument titled and recorded on (date), in the Office of the Register of Deeds for County, Wisconsin, in volume, at page, as document number

[Repeat for each instrument to which the form applies.]

That the instrument(s) (contains) (contain) one or more discriminatory restrictions that are void and unenforceable under section 710.25 of the Wisconsin statutes and the Wisconsin and U.S. Constitutions.

That, pursuant to section 710.25 of the Wisconsin statutes, the discriminatory restrictions are hereby discharged and released from the real property, and the remainder of the instrument(s) (continues) (continue) in full force and effect with respect to the real property and

shall be construed as if the discriminatory restrictions are not contained therein.

OWNER'S CERTIFICATION

The undersigned certifies that the information stated in this instrument is true and correct to the best of my knowledge, information, and belief. The undersigned makes this instrument for the purpose of discharging and releasing one or more discriminatory restrictions affecting my real property that are void and unenforceable.

Signed

Dated

ACKNOWLEDGEMENT

State of

County of

Signed and affirmed before me on (date), by (name of owner).

Signature of notary

(Seal, if any, of notary)

Printed name

My commission expires:

This instrument was drafted by:

(d) The department of administration shall prepare and provide copies of the form under par. (c) to the public by posting the form on the department's website.

SECTION 7. Nonstatutory provisions.

(1) **LEGISLATIVE INTENT STATEMENT.** Covenants in deeds and other instruments that are discriminatory based on race and other protected classes are unenforceable under the 1968 federal Fair Housing Act, 42 USC 3601 to 3631, and Wisconsin's open housing law, s. 106.50, and are against the governmental purpose of allowing an owner of real property to discharge and release a discriminatory restriction from real property that is affected by a deed or other instrument that contains a discriminatory restriction.

SECTION 8. Initial applicability.

(1) **DISCRIMINATORY RESTRICTIONS VOID; RETROACTIVE APPLICATION.** The treatment of s. 710.25 (2) first applies retroactively to a deed or other instrument that contains a discriminatory restriction, as defined in s. 710.25 (1), and that is created before, and applies to a deed or other instrument that contains a discriminatory restriction and that is created on or after, the effective date of this subsection.

SECTION 9. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of ss. 59.43 (9) (d) and 710.25 (5) takes effect on the first day of the 5th month beginning after publication.