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DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 243

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO UNLAWFUL RESTRICTIVE COVENANTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 96, Title 9 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 9628. Redaction of unlawful restrictive covenant.

4 (a) An owner of real property that is subject to an instrument that contains a provision that is in violation of §  
5 9605(b) of this title, including a governing document of a common interest community, may request that the recorder for  
6 the county in which the instrument is recorded redact and strike the provision from the instrument.

7 (b) Before granting a request made under subsection (a) of this section, a recorder must submit the request and the  
8 instrument at issue to the county attorney.

9 (1) The county attorney shall determine whether the instrument contains an unlawful restrictive covenant in  
10 violation of § 9605(b) of this title.

11 (2) The county attorney shall inform the recorder of the county attorney's decision within 90 days of receipt of  
12 the request and the instrument from the recorder.

13 (3) The recorder shall deny a request made under subsection (a) of this section if the county attorney  
14 determines that the instrument does not contain an unlawful restrictive covenant in violation of § 9605(b) of this title.

15 (c) A recorder may prescribe the form and required contents of a request under subsection (a) of this section, but  
16 the request must include at least the following information:

17 (1) The legal description of the property subject to the provision in violation of § 9605(b) of this title.

18 (2) The type of instrument that is subject to the provision in violation of § 9605(b) of this title and the  
19 instrument's book and page number or instrument number.

20 (3) A clear description of the provision claimed to be in violation of § 9605(b) of this title.

21 (d)(1) This section applies to an owner of real property that is part of a common interest community under Chapter  
22 81 of Title 25.

23 (2) Notwithstanding any other law or contractual provision to the contrary, an owner of real property that is  
24 part of a common interest community under Chapter 81 of Title 25 may make a request under subsection (a) of this  
25 section that the recorder for the county in which the instrument is recorded redact and strike a provision that is in  
26 violation of § 9605(b) of this title from all instruments affecting real property that is part of the common interest  
27 community.

28 Section 2. Amend § 9605, Title 9 of the Delaware Code by making deletions as shown by strike through and  
29 insertions as shown by underline as follows:

30 § 9605. Recordation of instruments.

31 (b)(1) No recorder shall A recorder may not knowingly record or receive for filing any contract, mortgage, lease,  
32 deed or ~~conveyance~~ conveyance, or any other indenture or agreement affecting real ~~property, which property that~~ contains  
33 any promise, ~~covenant~~ covenant, or restriction ~~which that~~ that limits, restrains, ~~prohibits~~ prohibits, or otherwise provides against  
34 the sale, gift, transfer, assignment, conveyance, ownership, lease, rental, ~~use~~ use, or occupancy of real property to or by any  
35 person because of race, color, creed, religion, sex, ~~national origin~~ sexual orientation, gender identity, disability, age, marital  
36 status, familial status, source of income, national origin, or ancestry.

37 (2) Paragraph (b)(1) of this section does not prohibit a recorder from recording or receiving for filing any  
38 contract, mortgage, lease, deed or conveyance, or any other indenture or agreement affecting real property that contains  
39 a provision that is permitted by the exceptions to the Delaware Fair Housing Act under §§ 4603A and 4607 of Title 6.

#### SYNOPSIS

Since 1973, § 9605(b) of Title 9 of the Delaware Code (“§ 9605”) has prohibited the recordation of instruments that restrict the sale, gift, transfer, assignment, conveyance, ownership, lease, rental, use, or occupancy of real property to or by any person because of the person’s race, color, creed, sex, national origin, or ancestry.

This Act provides a mechanism for owners of real property subject to an instrument that contains a provision that restricts property rights based on the list of characteristics included in § 9605, including the governing documents of a common interest community, to redact and strike the unlawful restrictive covenant language from instruments recorded with a county recorder of deeds before the original enactment of § 9605 or in violation of § 9605.

This Act also amends the list of characteristics included in § 9605 that may not be used to discriminate in the sale, gift, transfer, assignment, conveyance, ownership, lease, rental, use, or occupancy of real property to make it consistent with Delaware’s fair housing laws. However, this Act makes clear that provisions that are permitted by the exceptions to the Delaware Fair Housing Act are not prohibited from being recorded by a recorder of deeds.

Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Henry