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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 243
AS AMENDED BY
SENATE AMENDMENT NO. 1

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:

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

§ 9628. Redaction of unlawful restrictive covenant.

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

(b)(1) Before granting a request made under subsection (a) of this section, a recorder must submit the request and the instrument at issue to the county attorney.

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

b. The county attorney shall inform the recorder of the county attorney's decision within 90 days of receipt of the request and the instrument from the recorder, unless extraordinary circumstances apply, then the county attorney has 60 additional days to inform the recorder of the county attorney's decision.

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

(2) The county attorney may compile a list of phrases identified as unlawful restrictive covenants in violation of § 9605(b) of this title. Notwithstanding paragraph (b)(1) of this section, a recorder may grant a request made under subsection (a) of this section without further review by the county attorney if the request is in compliance with the list compiled by the county attorney.

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

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

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

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

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

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

(e)(1) Upon request for inspection, copying, or any other public disclosure of an instrument that has had an unlawful restrictive covenant in violation of § 9605(b) of this title redacted from it under this section, a recorder shall make available only the redacted version of that instrument.

(2) A recorder may disclose the unredacted version of an instrument that has had an unlawful restrictive covenant in violation of § 9605(b) of this title redacted from it under this section only in response to a subpoena or order of a court of competent jurisdiction.

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

§ 9605. Recordation of instruments.

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

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

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