



# New Jersey Adopts Legislation Requiring the Removal of Discriminatory Restrictive Covenants in Deeds and Association Documents

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On November 8, 2021, the New Jersey's Governor Phil Murphy signed legislation, A-5390/SB-2861, that requires the removal of discriminatory language restricting the ownership or use of real property as prohibited by the Law Against Discrimination from all deeds recorded on or after January 1, 2022, and further requires homeowners' or condominium associations to immediately review their governing documents and remove such language. Although these covenants already are illegal and unenforceable, the bill aims to remove them entirely. The bill takes effect immediately.

The bill also requires a county clerk or a register of deeds and mortgages to refuse to accept any deed submitted for recordation that references the specific portion of any such restrictive covenant. Moreover, an attorney or title company preparing or submitting a deed for recordation must ensure that the specific portion of such a restrictive covenant is not specifically referenced in the deed prior to the deed being submitted for recordation, although the deed may include general provisions that the deed "is subject to any and all covenants of record[.]" Any deed that is recorded in the land records on or after January 1, 2022 that mistakenly contains such a restrictive covenant, however, shall nevertheless constitute a valid transfer of real property.

With regard to deeds recorded with such restrictive covenants, the bill provides a property owner the opportunity to release such a restrictive covenant by recording a "Certificate of Release of Certain Prohibited Covenants" with the county clerk, or register of deeds and mortgages, as appropriate, in the county wherein the real property is

located. The real property owner may record such a certificate prior to recordation of a deed conveying real property to a purchaser, or when a real property owner discovers that such a prohibited covenant exists and chooses to affirmatively release it.

Lastly, the bill requires that, within 90 days of its enactment, every governing board of a homeowners' or property owners' association, cooperative corporation, condominium association, or planned community must review the association's governing documents to determine whether those documents contain any restriction, covenant, or condition that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property as prohibited by the Law Against Discrimination, particularly N.J.S.A. 10:5-4 and 10:5-12. If an association finds such an unlawful restriction, covenant, or condition in any of those documents, it must amend the document to remove the restriction, covenant, or condition. Removal of such a restriction, covenant, or condition does not require approval of the members of the association, notwithstanding any provision of the governing documents to the contrary. Further, if a board later receives a written request from a member of its association to remove from those documents language that the member believes to be an unlawful restriction, the board must immediately undertake a review of the documents and complete the review within 30 days of the request. If the board determines that the member is correct, the board must amend the document or documents to remove the restriction, covenant, or condition within 30 days of its determination. The bill, however, does not provide a private cause of action by or against an association, a board, a member, or the public for acting, or not acting, to remove or not remove an unlawful restriction, covenant, or condition.

For a copy of A-5390/SB-2861, please contact Michael O'Donnell at [modonnell@riker.com](mailto:modonnell@riker.com), Michael Crowley at [mcrowley@riker.com](mailto:mcrowley@riker.com), Desiree McDonald at [dmcDonald@riker.com](mailto:dmcDonald@riker.com), or Kevin Hakansson at [khakansson@riker.com](mailto:khakansson@riker.com).

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