



DEPARTMENT OF
FINANCE

FINANCE ADMINISTRATION

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CALIFORNIA

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May 10, 2005

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Law & Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Support - Assembly Bill 394 relating to Housing Discrimination

LOCATION AND COUNCIL DISTRICT Citywide

RECOMMENDATION

Staff recommends that the Law and Legislation Committee support Assembly Bill 394, relating to the housing discrimination.

CONTACT PERSONS Tina Lee-Vogt, Legislative Affairs Analyst - 808-2679

FOR THE COUNCIL MEETING OF May 17, 2005

SUMMARY

This report recommends that the Law and Legislation Committee support AB 394 authored by Assembly Member Roger Neillo which provides that an owner of real property, believing that the property is subject to an "unlawful restrictive covenant" (i.e., a provision containing illegal discriminatory restrictions), may record a Restrictive Covenant Modification on a form to be provided by county recorders.

BACKGROUND

Existing law authorizes a person who holds an ownership interest of record in property that he or she believes is the subject of a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, to file an application with the Department of Fair Employment and Housing requesting a determination of whether the restrictive covenant violates the fair housing laws and is

void. Existing law also requires the department to provide the applicant with a written statement entitled "RACIALLY OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICATION" if the department determines that the document contains a restrictive covenant that violates the law. Existing law authorizes the applicant to strike out a void restrictive covenant identified by the department, complete and attach a copy of the written statement from the department to the front of the document, and cause the modified document to be recorded if all other requirements of recordation are met, including the payment of any recordation fee.

AB 394, sponsored by the County of Sacramento, would delete the provisions authorizing a person to file an application with the Department of Fair Employment and Housing, requiring the department to respond, and authorizing the person to strike out the restrictive covenant, attach a statement to the document, and record the modified document. Instead, this bill provides homeowners with a new, simplified procedure to remove unlawful and offensive language in restrictive covenants. This bill also allows homeowners to record a Restrictive Covenant Modification without having to file an application with the state Department of Fair Employment and Housing. The author states that the bill will also allow one homeowner to record a modification that has the effect of removing the illegal restrictive language for all parcels in the relevant subdivision.

Unlawfully restrictive covenants include, those based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry. AB 394 adds the attributes of "sexual orientation" and "source of income" to this provision.

FINANCIAL CONSIDERATIONS

There are no financial impacts related to this report.

ENVIRONMENTAL CONSIDERATIONS

There are no environmental considerations related to this report.

POLICY CONSIDERATIONS

Staff recommendation to support AB 394 is consistent with the City's policy to oppose discrimination.

Law & Legislation Committee
AB 394 relating to Housing Discrimination
May 17, 2005

ESBD EFFORTS

Not applicable.

Respectfully submitted,



Tina Lee-Vogt
Legislative Affairs Analyst

RECOMMENDATION APPROVED



KEN NISHIMOTO
Assistant City Manager

Attachments:

Letter of Support, page 4

Assembly Bill 394 - Text, page 5

Assembly Bill 394 - Committee Analysis, page 10

May 17, 2005

Honorable Roger Neillo
California State Assembly
State Capitol
Sacramento, CA 95814

Support: Assembly Bill 394, relating to Housing Discrimination

Dear Assembly Member Neillo:

On behalf of the City of Sacramento, I am pleased to express the City's support of Assembly Bill 394, relating to the housing discrimination. The City applauds your effort to assist homeowners in removing unlawful and offensive language in restrictive covenants.

Thank you for introducing this important housing legislation.

Sincerely,

LAUREN HAMMOND, Chair
Law and Legislation Committee

CC: Senator David Cox
Senator Deborah Ortiz
Assembly Member Dave Jones
Assembly Member Alan Nakanishi
Mayor Fargo and Members of the City Council

AMENDED IN ASSEMBLY APRIL 18, 2005
AMENDED IN ASSEMBLY MARCH 17, 2005
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 394

Introduced by Assembly Member Niello
(Coauthors: Assembly Members Houston, Jones, and Nakanishi)
(Coauthors: Senators Cox and Ortiz)

February 11, 2005

An act to amend Section 12956.1 of, and to add Section 12956.2 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 394, as amended, Niello. Housing: discrimination.

Existing law prohibits discrimination in housing through restrictive covenants based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry and provides that discrimination in housing through restrictive covenant includes the existence of a restrictive covenant regardless of whether accompanied by a statement that the covenant is repealed or void.

Existing law authorizes a person who holds an ownership interest of record in property that he or she believes is the subject of a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, to file an application with the Department of Fair Employment and Housing requesting a determination of whether the restrictive covenant violates the fair housing laws and is void. Existing law requires the department to provide the applicant with a written statement entitled "RACIALLY OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICATION" if the department determines that the document

contains a restrictive covenant that violates the law. Existing law authorizes the applicant to strike out a void restrictive covenant identified by the department, complete and attach a copy of the written statement from the department to the front of the document, and cause the modified document to be recorded if all other requirements of recordation are met, including the payment of any recordation fee.

This bill would delete the provisions authorizing a person to file an application with the Department of Fair Employment and Housing, requiring the department to respond, and authorizing the person to strike out the restrictive covenant, attach a statement to the document, and record the modified document. The bill would instead authorize a person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant based on race, color, religion, sex, *sexual orientation*, familial status, marital status, disability, national origin, *source of income*, or ancestry, to record ~~without being charged a fee~~, a document titled Restrictive Covenant Modification, which would include a copy of the original document with the illegal language stricken and which would be signed by that person under penalty of perjury. By requiring the document to be signed under penalty of perjury, the bill would create a new crime and thereby impose a state-mandated local program. The bill would also impose a state-mandated local program by requiring a county recorder to make available to the public forms for restrictive covenant modification ~~and to record the form without payment of a recordation fee.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12956.1 of the Government Code is
2 amended to read:

3 12956.1. (a) As used in this section, “association,”
4 “governing documents,” and “declaration” have the same
5 meanings as set forth in Section 1351 of the Civil Code.

6 (b) (1) A county recorder, title insurance company, escrow
7 company, real estate broker, real estate agent, or association that
8 provides a copy of a declaration, governing document, or deed to
9 any person shall place a cover page or stamp on the first page of
10 the previously recorded document or documents stating, in at
11 least 14-point boldface type, the following:

12 “If this document contains any restriction based on race, color,
13 religion, sex, *sexual orientation*, familial status, marital status,
14 disability, national origin, *source of income*, or ancestry, that
15 restriction violates state and federal fair housing laws and is void,
16 and may be removed pursuant to Section ~~12956.1~~ 12956.2 of the
17 Government Code. Lawful restrictions under state and federal
18 law on the age of occupants in senior housing or housing for
19 older persons shall not be construed as restrictions based on
20 familial status.”

21 (2) The requirements set forth in paragraph (1) shall not apply
22 to documents being submitted for recordation to a county
23 recorder.

24 ~~(d)~~

25 (c) Any person who records a document for the express
26 purpose of adding a racially restrictive covenant is guilty of a
27 misdemeanor. The county recorder shall not incur any liability
28 for recording the document. Notwithstanding any other provision
29 of law, a prosecution for a violation of this subdivision shall
30 commence within three years after the discovery of the recording
31 of the document.

32 SEC. 2. Section 12956.2 is added to the Government Code, to
33 read:

34 12956.2. (a) A person who holds an ownership interest of
35 record in property that he or she believes is the subject of an
36 unlawfully restrictive covenant in violation of subdivision (l) of
37 Section 12955 may record, ~~without being charged a fee pursuant~~
38 ~~to Section 6103~~, a document titled Restrictive Covenant

1 Modification. *The county recorder may choose to waive the fee*
2 *prescribed for recording and indexing instruments pursuant to*
3 *Section 27361 in the case of the modification document provided*
4 *for in this section.* The modification document shall include a
5 complete copy of the original document containing the illegal
6 language with the illegal language stricken and shall be signed
7 under penalty of perjury.

8 (b) The modification document shall be indexed in the same
9 manner as the original document being modified. It shall contain
10 a recording reference to the original document in the form of a
11 book and page or instrument number, and date of the recording.

12 (c) Subject to covenants, conditions, and restrictions that were
13 recorded after the recording of the original document that
14 contains the illegal language and subject to covenants,
15 conditions, and restrictions that will be recorded after the
16 Restrictive Covenant Modification, the restrictions in the
17 Restrictive Covenant Modification, once recorded, are the only
18 restrictions having effect on the property.

19 (d) The county recorder shall make available to the public
20 Restrictive Covenant Modification forms.

21 (e) If the holder of an ownership interest of record in property
22 causes to be recorded a modified document pursuant to this
23 section that contains modifications not authorized by this section,
24 the county recorder shall not incur liability for recording the
25 document. The liability that may result from the unauthorized
26 recordation is the sole responsibility of the holder of the
27 ownership interest of record who caused the modified
28 recordation.

29 (f) *This section does not apply to persons holding an*
30 *ownership interest in property that is part of a common interest*
31 *development as defined in subdivision (c) of Section 1351 of the*
32 *Civil Code if the board of directors of that common interest*
33 *development is subject to the requirements of subdivision (b) of*
34 *Section 1352.2 of the Civil Code.*

35 SEC. 3. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution for
37 certain costs that may be incurred by a local agency or school
38 district because, in that regard, this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the
40 penalty for a crime or infraction, within the meaning of Section

1 17556 of the Government Code, or changes the definition of a
2 crime within the meaning of Section 6 of Article XIII B of the
3 California Constitution.

4 *In addition, no reimbursement is required by this act pursuant*
5 *to Section 6 of Article XIII B of the California Constitution for*
6 *certain other costs that may be incurred by a local agency or*
7 *school district because the local agency or school district has the*
8 *authority to levy service charges, fees, or assessments sufficient*
9 *to pay for the program or level of service mandated by this act,*
10 *within the meaning of Section 17556 of the Government Code.*

11 However, if the Commission on State Mandates determines
12 that this act contains other costs mandated by the state,
13 reimbursement to local agencies and school districts for those
14 costs shall be made pursuant to Part 7 (commencing with Section
15 17500) of Division 4 of Title 2 of the Government Code.

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Date of Hearing: April 27, 2005

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

AB 394 (Niello) - As Amended: April 18, 2005

Policy Committee: Judiciary HousingVote:7-0
9-0

Urgency: No State Mandated Local Program:
Yes Reimbursable: No

SUMMARY

This bill:

- 1) Provides that an owner of real property, believing that the property is subject to an "unlawful restrictive covenant" (i.e., a provision containing illegal discriminatory restrictions), may record a Restrictive Covenant Modification on a form to be provided by county recorders.
- 2) Authorizes county recorders to choose to waive the recording fee for the above process.
- 3) Requires a Restrictive Covenant Modification to include a complete copy of the original document containing the illegal language with the illegal language stricken.

FISCAL EFFECT

Negligible fiscal impact. To the extent the recorders would incur any non-absorbable costs, they have existing authority to charge fees to cover such costs.

COMMENTS

Purpose . The sponsor (County of Sacramento) states that AB 394 provides homeowners with a new, simplified procedure to remove unlawful and offensive language in restrictive covenants because it allows homeowners to record a Restrictive Covenant Modification without having to file an application with the state Department of Fair Employment and Housing. As the author points out, the bill will also allow one homeowner to record a

□

restrictive language for all parcels in the relevant subdivision.

Unlawfully restrictive covenants include, according to current law, those based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry. AB 394 adds the attributes of "sexual orientation" and "source of income" to this provision.

Analysis Prepared by : Chuck Nicol / APPR. / (916) 319-2081