

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1289 Session of 2023

INTRODUCED BY FLEMING, N. NELSON, VENKAT, MADDEN, PROBST, RABB, BURGOS, SMITH-WADE-EL, McANDREW, SCHLOSSBERG, SANCHEZ, ROZZI, WARREN, HILL-EVANS, FREEMAN, PARKER, MALAGARI, KRAJEWSKI, KINSEY, CERRATO, HANBIDGE AND GREEN, JUNE 1, 2023

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 21, 2023

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, in residential real
3 property, providing for discharging discriminatory real
4 estate covenants; and establishing the Unlawful Restrictive <--
5 Covenant Discharge Reimbursement Fund.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 68 of the Pennsylvania Consolidated
9 Statutes is amended by adding a chapter to read:

10 CHAPTER 74

11 DISCHARGING DISCRIMINATORY REAL ESTATE COVENANTS

12 Sec.

13 7401. Scope of chapter.

14 7402. Definitions.

15 7403. Nullification of existing unlawful restrictive covenants.

16 7404. Discharge of unlawful restrictive covenants.

17 7405. Form for discharge.

18 7406. Unlawful Restrictive Covenant Discharge Reimbursement <--

1           Fund.  
2 ~~7407~~ 7406. Unlawful restrictive covenants in declarations of <--  
3           common interest ownership communities.

4 ~~7408~~ 7407. Unlawful restrictive covenants not in declarations <--  
5           of common interest ownership communities.

6 § 7401. Scope of chapter.

7       This chapter relates to real estate covenants that  
8 discriminate against individuals.

9 § 7402. Definitions.

10       The following words and phrases when used in this chapter  
11 shall have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13       "Board." The executive board or board of directors of a  
14 common interest ownership community.

15       "Common interest ownership community." Includes:

16           (1) A condominium as defined in section 3103 (relating  
17 to definitions).

18           (2) A cooperative as defined in section 4103 (relating  
19 to definitions).

20           (3) A planned community as defined in section 5103  
21 (relating to definitions).

22       "Department." The Department of Community and Economic  
23 Development of the Commonwealth.

24       "Instrument." A deed, mortgage, declaration of restrictive  
25 covenants, conditions or covenants, easement or other similar  
26 document.

27       "Recorder." As follows:

28           (1) A county recorder of deeds or a county official or  
29 department responsible for the recording of documents in a  
30 county without a recorder of deeds.

1           (2) The term includes the Philadelphia Department of  
2           Records and the Allegheny County Department of Real Estate.  
3           "Unlawful restrictive covenant." A covenant or other  
4           provision that purports to restrict ownership or occupancy of  
5           real property on the basis of one or more of the following:

6           (1) Race, color, ethnicity, national origin, religious  
7           creed, sex, gender identity, sexual orientation, age, marital  
8           status, familial status, citizenship or immigration status or  
9           any other status as those terms are defined in the act of  
10           October 27, 1955 (P.L.744, No.222), known as the Pennsylvania  
11           Human Relations Act, or 42 U.S.C. Ch. 45 (relating to fair  
12           housing) or which may hereafter become a protected class  
13           under Federal or State law.

14           (2) The presence of a sensory, mental or physical  
15           disability or the use of a guide, service, assistance or  
16           support animal as a reasonable accommodation for the user or  
17           because the user is a handler or trainer of service, support,  
18           assistance or guide animals.

19           § 7403. Nullification of existing unlawful restrictive  
20           covenants.

21           (a) Unenforceable covenants.--An unlawful restrictive  
22           covenant contained in an instrument affecting title to real  
23           property, whether or not recorded, in this Commonwealth shall be  
24           null, void and unenforceable ab initio without need for further  
25           action by any person or recorder.

26           (b) Combined covenants.--If an unlawful restrictive covenant  
27           is contained in an instrument affecting title to real property  
28           that also contains other covenants or provisions that are not an  
29           unlawful restrictive covenant, the validity and enforceability  
30           of the remaining covenants or provisions, as well as the

1 validity of the recorded instrument, shall not be affected by  
2 the nullification, voiding and unenforceability of the unlawful  
3 restrictive covenant.

4 § 7404. Discharge of unlawful restrictive covenants.

5 (a) Landowner discharge.--An owner of real property,  
6 including a common interest ownership community, with an  
7 unlawful restrictive covenant recorded in the instrument may  
8 file a form described in section 7405 (relating to form for  
9 discharge) with the recorder in the county where the real  
10 property is located to ~~strike~~ REPUDIATE the unlawful restrictive <--  
11 covenant from the instrument.

12 (b) Electronic filing.--A form filed under subsection (a)  
13 shall be in writing and may be filed electronically if the  
14 county allows for electronic recording of deeds.

15 (c) Duty of recorder.--The recorder shall record the form  
16 submitted under subsection (a) and, to the extent practicable,  
17 notate the indices to the records accordingly to reflect the  
18 invalidity of the unlawful restrictive covenant.

19 (d) Fees prohibited.--A recorder may not assess a fee for  
20 the filing of a form under this section.

21 (e) Separation of covenant from instrument.--When the form  
22 submitted under subsection (a) is properly recorded, the removal  
23 of the unlawful restrictive covenant is effective and does not  
24 affect the validity of the instrument. The instrument shall be  
25 construed as if the unlawful restrictive covenant was never  
26 contained in the instrument.

27 § 7405. Form for discharge.

28 (a) Development.--No later than 90 days after the effective  
29 date of this section, the department shall develop and release a  
30 standardized form for landowners or other persons with an

1 interest in real property to file with the recorder to discharge  
2 an unlawful restrictive covenant within the interested person's  
3 instrument.

4 (b) Distribution.--No later than 30 days after the  
5 standardized form required in subsection (a) is approved in  
6 final form by the department, the department shall provide a  
7 "Discharge of Unlawful Restrictive Covenant" form to each  
8 recorder in this Commonwealth and publish the form on the  
9 department's publicly accessible Internet website.

10 ~~§ 7406. Unlawful Restrictive Covenant Discharge Reimbursement~~ <--  
11 ~~Fund.~~

12 ~~The Unlawful Restrictive Covenant Discharge Reimbursement~~  
13 ~~Fund is established in the State Treasury for the purpose of~~  
14 ~~reimbursing recorders for the costs incurred in recording~~  
15 ~~discharges of unlawful restrictive covenants as provided under~~  
16 ~~section 7404 (relating to discharge of unlawful restrictive~~  
17 ~~covenants). Funding to carry out the purpose of this fund shall~~  
18 ~~be contingent on appropriations of the General Assembly.~~

19 ~~§ 7407~~ 7406. Unlawful restrictive covenants in declarations of <--  
20 common interest ownership communities.

21 (a) Board vote for removal.--Notwithstanding any other  
22 provision of law, a board of a common interest ownership  
23 community may, upon receipt of an opinion by independent legal  
24 counsel, consider an unlawful restrictive covenant to be removed  
25 as a corrective amendment by a vote of a majority of the members  
26 of the board and without further need for a vote by unit owners  
27 or approval from lenders on individual units, thereby correcting  
28 the declaration by amendment to remove the unlawful restrictive  
29 covenant.

30 (b) Unit owner request for removal.--If a unit owner in a

1 common interest ownership community submits a written request to  
2 the board for an amendment to the declaration to remove an  
3 unlawful restrictive covenant, the board shall, no later than 90  
4 days after receipt of the request, hold a meeting to determine  
5 whether an unlawful restrictive covenant exists and should be  
6 removed from the declaration by a corrective amendment to the  
7 declaration. If the board finds that an unlawful restrictive  
8 covenant exists and should be removed from the declaration by a  
9 corrective amendment to the declaration, the board shall take  
10 swift action to record the corrective amendment.

11 ~~§ 7408~~ 7407. Unlawful restrictive covenants not in declarations <--  
12 of common interest ownership communities.

13 If an instrument in the chain of title to the common elements  
14 in a condominium, in the common facilities or controlled  
15 facilities in a planned community or in the chain of title to a  
16 real estate cooperative includes an unlawful restrictive  
17 covenant, the board may perform a landowner discharge in  
18 accordance with section 7404 (relating to discharge of unlawful  
19 restrictive covenants).

20 Section 2. This act shall take effect as follows:

21 (1) The following shall take effect immediately:

22 (i) The addition of 68 Pa.C.S. §§ 7402 and 7403.

23 (ii) This section.

24 (2) The remainder of this act shall take effect in 60  
25 days.