

DISCHARGE OF PROHIBITED RESTRICTIVE COVENANTS ACT

Act 234 of 2022

AN ACT to prohibit the recording of deeds or other instruments relating to real property that contain certain restrictive covenants or conditions; to make such restrictions unenforceable; and to provide remedies with respect to those instruments.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

The People of the State of Michigan enact:

565.861 Short title.

Sec. 1.

This act may be cited as the "discharge of prohibited restrictive covenants act".

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.862 Definitions.

Sec. 2.

As used in this act:

(a) "Discharge form" means the discharge of a prohibited restriction form described in section 5.

(b) "Person" means an individual or a partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(c) "Prohibited restriction" means a restriction, covenant, or condition, including a right of entry or possibility of reverter, that purports to restrict occupancy or ownership of property on the basis of race, color, religion, sex, familial status, national origin, or other class protected by the fair housing act, title VIII of the civil rights act of 1968, Public Law 90-284, in a deed or other instrument.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.863 Recording a deed with prohibited restrictions; prohibition.

Sec. 3.

A person shall not record in the records of the register of deeds a deed or other instrument that contains a prohibited restriction.

565.864 Prohibited restrictions as void; unenforceable.

Sec. 4.

- (1) A prohibited restriction is void and has no legal effect.
- (2) A court or other person shall not enforce a prohibited restriction.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.865 Discharge of prohibited restrictions; form.

Sec. 5.

A discharge of prohibited restriction form may be recorded with the register of deeds for the county where the property is located. A discharge form recorded under this section must substantially conform to the following form:

"DISCHARGE OF PROHIBITED RESTRICTION

The document recorded at Liber ____ Page ____ or Instrument number ____ contains language that violates the discharge of prohibited restrictive covenants act.

This document removes and abolishes from the original document any restriction, covenant, or condition, including a right of entry or possibility of reverter, that purports to restrict occupancy or ownership of property on the basis of race, color, religion, sex, familial status, national origin, or other class protected by the fair housing act, title VIII of the civil rights act of 1968, Public Law 90-284, and the discharge of prohibited restrictive covenants act.

☐ If this box is checked, a transcription or copy of the original document with language redacted or removed must be attached to this form.

The undersigned is/are the legal owner(s) of the property described in the document referenced above or an officer of the homeowners' or property owners' association, or the association of co-owners of the condominium, for the property described in the document referenced above.

Property description: _____

(Signature)

(Typed or printed name)

STATE OF MICHIGAN

COUNTY

Acknowledged before me in _____ County, Michigan, (or) before me using an electronic notarization system under MCL 55.286a in _____ County, Michigan, (or) before me using a remote electronic notarization platform under MCL 55.286b on (date), by (name of person acknowledged).

(Notary's signature)

(Notary public's name, typed, as it appears on application for commission)

Notary public, State of Michigan, County of _____.

My commission expires _____.

(Or, if acting in county other than county of commission) Acting in the County of _____.

Prepared by: _____ (Name and address of preparer)."

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.866 Homeowners' or property owners' association; authority to discharge a prohibited restriction; requirements; execution; recording with register of deeds.

Sec. 6.

(1) A homeowners' or property owners' association, acting through a simple majority vote of its board, may record a discharge form to remove any prohibited restriction in a deed or other instrument that affects a property governed by the homeowners' or property owners' association.

(2) If the board of a homeowners' or property owners' association receives a written request by a member of the association that the board exercise its authority under subsection (1), the board shall determine within a reasonable time whether a prohibited restriction is present in a deed or other instrument. If the board determines that a prohibited restriction is present in a deed or other instrument, the board shall record a discharge form, as provided under this subsection and subsections (1), (3), (4), and (9).

(3) Board action under subsection (1) or (2) does not require the vote or approval of the property owners.

(4) A discharge form prepared under subsection (1) or (2) may be executed by any officer authorized by the board.

(5) The board of directors of an association of co-owners of a condominium, acting through a simple majority vote of the board, may record a discharge form to remove any prohibited restriction in a deed or other instrument that affects a property governed by the board.

(6) If the board of directors of an association of co-owners of a condominium receives a written request by a co-owner that the board exercise its authority under subsection (5), the board shall determine within a reasonable time whether a prohibited restriction is present in a deed or other instrument. If the board determines that a prohibited restriction is present in a deed or other instrument, the board shall record a discharge form, as provided under this subsection and subsections (5), (7), (8), and (9).

(7) Notwithstanding sections 90 and 90a of the condominium act, 1978 PA 59, MCL 559.190 and 559.190a, board action under subsection (5) or (6) does not require the vote or approval of the condominium co-owners or mortgagees.

(8) A discharge form prepared under subsection (5) or (6) may be executed by any officer authorized by the board.

(9) A discharge form prepared under this section must be recorded with the register of deeds for the county where the property is located.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.867 Property owner; authority to discharge a prohibited restriction.

Sec. 7.

(1) A property owner may record in the records of the register of deeds for the county where the property is located a discharge form to remove any prohibited restriction.

(2) A discharge form recorded under this section may be executed solely by the property owner.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.868 Standing to file action for discharge of prohibited restriction.

Sec. 8.

(1) If a recorded deed or other recorded instrument contains a provision that is prohibited under this act, the owner, occupant, or tenant of the property that is subject to the provision or any member of the board of a homeowners' or property owners' association or of the board of directors of an association of co-owners of a condominium that would have a right to enforce the provision may bring an action in the circuit court in the county in which the property is located to have a discharge form recorded with the register of deeds.

(2) An action under this section must be brought as an in rem, declaratory judgment action and the title of the action must be the description of the property. The owners, occupants, and tenants of the property or any part of the property are necessary parties to the action.

(3) In an action under this section, if the court finds that any provisions of the deed or instrument are prohibited under this act, it shall enter an order requiring a discharge form to be recorded with the register of deeds in accordance with this act.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.869 Recording of discharge form; fees.

Sec. 9.

As provided in section 2567 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2567, a register of deeds is entitled to the fees under that section for recording a discharge form prepared and recorded under this act.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.870 Refusal to remove prohibited restrictions; liability; costs and attorney fees.

Sec. 10.

(1) A person that refuses, before recording, to remove from a deed or other instrument a prohibited restriction is liable for all actual court costs and reasonable attorney fees incurred in an action before a court of competent jurisdiction to enforce the provisions of this act.

(2) Subsection (1) does not apply to a register of deeds or an employee of a register of deeds.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.871 Duties not created by act; liability.

Sec. 11.

(1) Except as otherwise provided in section 6(2) and (6), this act does not create a duty on the part of an owner, occupant, tenant, association, board, or member or officer of a board to do any of the following as authorized under this act:

- (a) Record a discharge form.
- (b) Bring an action under this act.

(2) An owner, occupant, tenant, association, board, or member or officer of a board is not liable for failing to do any of the following as authorized under this act:

- (a) Record a discharge form.
- (b) Bring an action in court under this act.

(3) This act does not limit any right or remedy under the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804, or any other law of this state.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022

565.872 Effect of act.

Sec. 12.

This act does not do either of the following:

(a) Impose a duty on a register of deeds or employee of a register of deeds to inspect a deed or other instrument to determine whether recording the deed or instrument would violate this act.

(b) Create a duty, a responsibility, a requirement, or an obligation on the part of a title insurance company or title insurance agency, or the officers, directors, shareholders, employees, or contractors of a title insurance company or title insurance agency, to inspect a deed or other instrument to determine whether recording the deed or instrument would violate this act. A title insurance company or title insurance agency, or the officers, directors, shareholders, employees, or contractors of the title insurance company or title insurance agency, are expressly excluded from any liability or cause of action that may be brought by any person under this act.

History: 2022, Act 234, Imd. Eff. Dec. 13, 2022