

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1026**

Introduced by Cavanaugh, J., 9; Hunt, 8; McKinney, 11.

Read first time January 13, 2022

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to real property; to adopt the Unlawful
- 2 Restrictive Covenant Modification Act.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 6 of this act shall be known and may be  
2 cited as the Unlawful Restrictive Covenant Modification Act.

3           Sec. 2. For purposes of the Unlawful Restrictive Covenant  
4 Modification Act:

5           (1) Board means the governing board of a common interest community  
6 association, condominium association, unit owners association,  
7 residential housing cooperative, or master association;

8           (2) County attorney means the county attorney of the county where  
9 the property subject to the unlawful restrictive covenant is located;

10          (3) Register of deeds means the register of deeds of the county  
11 where the property subject to the unlawful restrictive covenant is  
12 located; and

13          (4) Unlawful restrictive covenant means a restrictive covenant as  
14 defined in section 20-317 which may not lawfully be included in any  
15 transfer, sale, rental, or lease of housing and may not lawfully be  
16 honored or exercised pursuant to subdivision (6) of section 20-318.

17          Sec. 3. (1) A person or entity may execute and file a restrictive  
18 covenant modification to an unlawful restrictive covenant in accordance  
19 with the Unlawful Restrictive Covenant Modification Act if the person or  
20 entity:

21          (a) Holds an ownership interest in property that is subject to the  
22 unlawful restrictive covenant; or

23          (b) Is a common interest community association, condominium  
24 association, unit owners association, residential housing cooperative, or  
25 master association for a parcel of property subject to an unlawful  
26 restrictive covenant.

27          (2)(a) When a parcel of property subject to an unlawful restrictive  
28 covenant is in a common interest community association, condominium  
29 association, unit owners association, residential housing cooperative, or  
30 master association, only the board, acting through a majority vote, may  
31 execute and file a restrictive covenant modification under the act.

1 Removal of an unlawful restrictive covenant does not require approval of  
2 the owners or members of such association or cooperative, notwithstanding  
3 any provision of the governing documents of the association or  
4 cooperative to the contrary;

5 (b) If the board receives a written request by an owner or member of  
6 the association or cooperative that the board exercise its authority to  
7 execute and file a restrictive covenant modification under this section,  
8 the board shall, within ninety days, investigate any claim of an unlawful  
9 restrictive covenant and, if determined to be an unlawful restrictive  
10 covenant, shall execute and file a restrictive covenant modification as  
11 provided in this section.

12 (c) If a board fails or refuses to execute and file a restrictive  
13 covenant modification after it receives a written request by an owner or  
14 member as provided in subdivision (2)(b) of this section, the owner or  
15 member who made the written request may bring an action to compel the  
16 board to file a restrictive covenant modification. Any owner or member  
17 who prevails in such an action shall be entitled to recover reasonable  
18 attorney's fees and costs from the association or cooperative.

19 (d) The board shall give written notice to all owners or members of  
20 the association or cooperative of the restrictive covenant modification  
21 along with a copy of such restrictive covenant modification within  
22 twenty-one days after receiving a recorded copy of the documents.

23 (3) A restrictive covenant modification shall include:

24 (a) A complete copy of the original instrument containing the  
25 unlawful restrictive covenant with the language of the unlawful  
26 restrictive covenant stricken; and

27 (b) A petition to modify an unlawful restrictive covenant as  
28 provided in subsection (4) of this section.

29 (4) A petition to modify an unlawful restrictive covenant shall:

30 (a) Be signed by the record owner of the property or, in the case of  
31 an entity described in subdivision (1)(b) of this section, be accompanied

1 by a certification that a majority of the entity's board has agreed to  
2 the restrictive covenant modification;

3 (b) Reference the property index number or unique parcel  
4 identification code of the property for which the original instrument  
5 containing the unlawful restrictive covenant is recorded; and

6 (c) Include any other information that the register of deeds or  
7 county attorney considers necessary in carrying out the requirements of  
8 the act.

9 (5) On receipt of a restrictive covenant modification, the register  
10 of deeds shall submit the restrictive covenant modification together with  
11 a copy of the original instrument referenced in the restrictive covenant  
12 modification to the county attorney.

13 (6) Within thirty days after receipt of the restrictive covenant  
14 modification and the copy of the original instrument from the register of  
15 deeds, the county attorney shall:

16 (a) Review the restrictive covenant modification and the copy of the  
17 original instrument to determine:

18 (i) Whether the original instrument contains an unlawful restrictive  
19 covenant; and

20 (ii) Whether the restrictive covenant modification correctly strikes  
21 through only the language of the unlawful restrictive covenant; and

22 (b) Return the restrictive covenant modification and copy of the  
23 original instrument to the register of deeds together with the county  
24 attorney's written determination.

25 (7) The register of deeds may not record a restrictive covenant  
26 modification filed under this section unless the county attorney  
27 determines that the modification is appropriate in accordance with  
28 subsection (6) of this section. If the county attorney's written  
29 determination finds that the instrument contains an unlawful restrictive  
30 covenant, the register of deeds shall record the restrictive covenant  
31 modification with the language stricken as directed by the county

1 attorney.

2       Sec. 4. (1) A recorded restrictive covenant modification shall be  
3 indexed in the same manner as the original instrument.

4       (2) Subject to all lawful covenants, conditions, and restrictions  
5 that were recorded after the recording of the original instrument, the  
6 restrictions contained in a duly recorded restrictive covenant  
7 modification are the only restrictions based on the original instrument  
8 that apply to the property.

9       (3) The effective date of the terms and conditions contained in a  
10 duly recorded restrictive covenant modification shall be the same as the  
11 effective date of the original instrument.

12       Sec. 5. If a person or entity causes to be filed or recorded a  
13 restrictive covenant modification that contains modifications not  
14 authorized under the Unlawful Restrictive Covenant Modification Act:

15       (1) The register of deeds shall not incur any liability for  
16 recording the restrictive covenant modification;

17       (2) The county shall not incur any liability as a result of a  
18 determination rendered by the county attorney under section 3 of this  
19 act; and

20       (3) Any costs, fees, or liability that results from the unauthorized  
21 filing or recording shall be the sole responsibility of the person or  
22 entity that executed the restrictive covenant modification.

23       Sec. 6. The register of deeds may impose a fee for filing a  
24 restrictive covenant modification to an unlawful restrictive covenant  
25 pursuant to the Unlawful Restrictive Covenant Modification Act in an  
26 amount not to exceed ten dollars.