

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 186

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

Read first time January 09, 2023

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 the 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 liabilities that result from the
21 unauthorized filing or recording shall be the sole responsibility of the
22 person or 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.