

Restrictive Covenant Modification

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In 2018, Washington State amended its law against discrimination to provide property owners a new way to strike racially restrictive covenants from documents affecting the title of their properties. If your property had a racially restrictive covenant recorded in the past, you can now record a modification document with the county auditor where your property is located.

What are racially restrictive covenants?

In the first half of the twentieth century, restrictive covenants were recorded on some properties in Washington which included racially restrictive provisions. These racially restrictive covenants sometimes singled out specific races that were excluded from owning or occupying the property. Other versions would limit ownership or use to one particular race. Sometimes the restrictive covenants limited ownership or use by members of certain religions.

Are racially restrictive covenants valid and enforceable?

No. In 1948 the United States Supreme Court ruled that racially restrictive covenants could not be enforced. In 1968 the federal Fair Housing Act banned covenants discriminating on the basis of race, color, religion, or national origin. A Washington state law passed in 1969 provides that such covenants are void, meaning that they have no legal effect. That law, [Section 49.60.224 of the Revised Code of Washington](#), says that it is an unfair practice to attempt to honor a racially restrictive covenant in the chain of title. The chain of title includes all the recorded documents that affect title to a property, back to the original conveyance by the United States.

How can I find out if the land title records for my property contain a racially restrictive covenant?

Two sources can help you determine if a racially restrictive covenant is related to your property. The first source is the land title records maintained by county auditors. These records are public so you can search them for free. This can be a complex process and fees are charged for copies.

The second source is your owner's title insurance policy, which is typically issued at the same time the property is purchased. A title insurance policy identifies documents appearing in the public records that affect title to the property. Your policy may reference deeds recorded decades ago, or covenant documents affecting an entire subdivision. You may be able to request copies from the title company that issued your title policy, although a fee may be charged. You may also use the recording information in your title policy to get copies from the county auditor.

What will filing a modification document do?

The modification document will refer to the original recorded document that contained the racially restrictive covenant and contain the following statement required by law:

The referenced original written instrument contains discriminatory provisions that are void and unenforceable under [RCW 49.60.224](#) and federal law. This document strikes from the referenced original instrument all provisions that are void and unenforceable under law.

Recording a modification document will provide notice in the land title records that the racially restrictive covenant is void and unenforceable. It will not delete the historic record. The modification document legally strikes, but does not physically erase, the void and illegal discriminatory provisions from the original document.

Do I need to file a modification document to protect my rights in my property?

No. Racially restrictive covenants have been void in Washington since 1969. The attempt by any person to enforce such a covenant against your property would be a violation of state and federal law. Your rights are protected by existing law and do not require that you record a modification document.

HOW TO PREPARE AND RECORD A RESTRICTIVE COVENANT MODIFICATION DOCUMENT:

If you have verified that a document recorded with the county auditor in the chain of title to your property contains a racially restrictive covenant and you have decided to record a modification document, here are the steps to follow.

STEP ONE:

Obtain the following necessary information about your property from your deed or your title insurance policy.

- Recording number (often referred to as the “auditor’s file number”) of the original document containing the racially restrictive covenant that is void under [RCW 49.60.224](#). It is not necessary to obtain the recording number for any later document repeating the terms of the original document or referencing its recording number.
- Recording date of the original document containing the racially restrictive covenant.
- The names of all current owners of the property (ex: you and your co-owners, if any).
- Legal description (both full and abbreviated) of your property, AND
- Tax parcel number for your property.
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STEP TWO:

Fill in the Restrictive Covenant Modification Document with the information above but do not sign it.

STEP THREE:

Take the document and government-issued identification to a licensed notary public and sign in the presence of the notary. There may be a charge to have the document notarized.

STEP FOUR:

Take the document to your county auditor for recording. You can bring the document in person or mail it to the county auditor in the county in which the property is located. **There is no charge to record the document.**