



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Bethany Boyd

### **H.B. 412**

132nd General Assembly  
(As Introduced)

**Reps.** Craig, Antonio, Ashford, Boccieri, Boggs, Boyd, Brown, Cera, Clyde, Duffey, Galonski, Holmes, Howse, Ingram, Kelly, Kent, Leland, Lepore-Hagan, Miller, O'Brien, Ramos, Reece, Rogers, Sheehy, K. Smith, Sprague, Sweeney, Sykes, West

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### **BILL SUMMARY**

- Requires that county recorders make available to the public redaction forms and modification forms to request the removal of discriminatory covenants from real property instruments filed with the recorders' offices.
- Specifies who may request the removal of discriminatory covenants and when the requests may be made.
- Requires the county recorder to accept at no charge, and review and record, a redaction form to redact a discriminatory covenant from view by the general public on the Internet, but authorizes the county recorder to refuse to redact it.
- Requires the county recorder to accept at no charge a modification form with the current, problematic real property instrument attached to it, with the discriminatory covenant stricken in, or with a list of all nondiscriminatory covenants that are in, the instrument.
- Requires that a modification form and attachments be recorded and indexed in the same manner as the original real property instrument being modified.
- Allows a county recorder to refuse a redaction or modification request if the language in the real property instrument does not meet the bill's definition of a discriminatory covenant.
- Grants immunity from civil liability, with exceptions, to certain persons for filing or recording a real property instrument that contains a discriminatory covenant.

- Requires the Attorney General, in conjunction with the Ohio Recorders' Association, to prepare and provide to county recorders a redaction form and a modification form for their use.

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## **CONTENT AND OPERATION**

### **Removal of discriminatory covenants from real property instruments**

The bill requires that the county recorder make available to the public redaction forms and modification forms so that a person specified in the bill who believes that a real property instrument contains a discriminatory covenant may request, on a form developed by the Attorney General, that the county recorder (1) redact the discriminatory covenant from view by the general public on the Internet, or (2) record a modification document in which the person has stricken the discriminatory covenant in the instrument. The following persons may make such a request, by completing and filing a redaction form or a modification form with the county recorder at the specified time:

- ♦ An attorney, or a title insurance company or title agent authorized to do business in Ohio, at the time of a transfer or sale of interest in real property that is the subject of the real property instrument.
- ♦ A homeowner of record in the real property instrument, at any time.<sup>1</sup>

As defined in the bill, a discriminatory covenant is any provision in a real property instrument that forbids or restricts the conveyance, encumbrance, leasing, or mortgaging of the property to any person of a specified race, color, religion, sex, military status, familial status, ancestry, disability, or national origin.<sup>2</sup>

The real property instruments to which the bill applies are deeds, mortgages, installment contracts, leases, memoranda of trust, or any other instruments pertaining to real property that are recorded by the county recorder under a law that requires the county recorder to record specific types of instruments in the "official records."<sup>3</sup>

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<sup>1</sup> R.C. 317.115(B).

<sup>2</sup> R.C. 317.115(A)(2).

<sup>3</sup> R.C. 317.115(A)(1); R.C. 317.08, not in the bill.

## **Redaction forms**

Under the bill, the county recorder must accept at no charge, and review and record, a redaction form and the real property instrument that is the subject of the form, and may (but is not required to) redact the discriminatory covenant from view by the general public on the Internet.<sup>4</sup>

## **Modification forms**

The bill requires that the county recorder accept at no charge a modification form with a complete copy of the current real property instrument that is the subject of the form attached to the form, with the discriminatory covenant stricken, or with a complete list of all nondiscriminatory covenants that are in the instrument. The modification form and the attachments must be recorded and indexed in the same manner and must have the same effect as the original real property instrument being modified. The modification form and attachments must have noted on them a recording reference to the original real property instrument in the form of a book and page or instrument number, and the date of their recording. A modification form and attachments must be presented to the county recorder in the same manner as prescribed by law for any real property filing that is not required to first be presented to the county auditor.<sup>5</sup>

If an attorney, title insurance company or agent, or homeowner of record causes to be recorded a modification form and attachments that contain modifications not authorized by the bill, the county recorder is not liable for recording the modification form and attachments. The liability that may result from the recordation is the sole responsibility of the person who caused the modified recordation.<sup>6</sup>

## **County recorder's right to refuse redaction or modification requests**

A county recorder with whom a redaction form or modification form is filed may refuse a redaction or modification request if the language in the real property instrument does not meet the bill's definition of a discriminatory covenant. The refusal must be made to the filer in writing.<sup>7</sup>

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<sup>4</sup> R.C. 317.115(C).

<sup>5</sup> R.C. 317.115(D).

<sup>6</sup> R.C. 317.115(F).

<sup>7</sup> R.C. 317.115(G).



## Immunity from civil liability; exceptions

Any person who, in good faith and in the usual course of business, delivers to the county recorder a real property instrument that contains a discriminatory covenant that is void and unenforceable by law is immune from civil liability, notwithstanding any law to the contrary. In addition, delivery of the instrument does not constitute a discriminatory housing practice. But this immunity does *not* apply to any person who represents or attempts to represent that the discriminatory covenant is valid and enforceable, or honors or exercises, or attempts to honor or exercise, the discriminatory covenant.<sup>8</sup>

## Attorney General's role

The bill requires that the Attorney General, in conjunction with the Ohio Recorders' Association, prepare and provide to county recorders a redaction form and a modification form for their use in removing discriminatory covenants from real property instruments.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	11-09-17

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<sup>8</sup> R.C. 317.115(E).

<sup>9</sup> R.C. 109.15.

