
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1335

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By House Appropriations (originally sponsored by Representatives Valdez, Rude, Berry, Fitzgibbon, Morgan, Santos, Shewmake, Davis, Berg, Gilday, Bergquist, Fey, Bateman, Lekanoff, Lovick, Callan, Riccelli, Rule, Pollet, Senn, and Harris-Talley)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to review and property owner notification of
2 recorded documents with unlawful racial restrictions; amending RCW
3 64.06.020 and 49.60.227; adding a new section to chapter 49.60 RCW;
4 creating new sections; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the existence
7 of racial, religious, or ethnic-based property restrictions or
8 covenants on a deed or chain of title for real property is like
9 having a monument to racism on that property and is repugnant to the
10 tenets of equality. Furthermore, such restrictions and covenants may
11 cause mental anguish and tarnish a property owner's sense of
12 ownership in the property because the owner feels as though they have
13 participated in a racist act themselves.

14 It is the intent of the legislature that the owner, occupant, or
15 tenant or homeowners' association board of the property which is
16 subject to an unlawful deed restriction or covenant pursuant to RCW
17 49.60.224 is entitled to have discriminatory covenants and
18 restrictions that are contrary to public policy struck from their
19 chain of title. The legislature has presented two ways this can be
20 accomplished through RCW 49.60.227(1) (a) and (b). If the owner,
21 occupant, or tenant or homeowners' association board of the property

1 elects to pursue a judicial remedy, the legislature intends that the
2 court issue a declaratory judgment ordering the county auditor, or in
3 charter counties the county official charged with the responsibility
4 for recording instruments in the county records, to entirely strike
5 the racist or otherwise discriminatory covenants from the chain of
6 title. Striking the language does not prevent preservation of the
7 original record, outside of the chain of title, for historical or
8 archival purposes.

9 The legislature finds that striking racist, religious, and ethnic
10 restrictions or covenants from the chain of title is no different
11 than having an offensive statutory monument which the owner may
12 entirely remove. So too should the owner be able to entirely remove
13 the offensive written monument to racism or other unconstitutional
14 discrimination.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.60
16 RCW to read as follows:

17 (1) Subject to the availability of amounts appropriated for this
18 specific purpose, the University of Washington and Eastern Washington
19 University shall review existing recorded covenants and deed
20 restrictions to identify those recorded documents that include racial
21 or other restrictions on property ownership or use against protected
22 classes that are unlawful under RCW 49.60.224. For properties subject
23 to such racial and other unlawful restrictions, the universities
24 shall provide notice to the property owner and to the county auditor
25 of the county in which the property is located. The universities
26 shall provide information to the property owner on how such
27 provisions can be struck pursuant to RCW 49.60.227. The universities
28 may contract with other public and private not-for-profit higher
29 education institutions that are regionally accredited to carry out
30 the review and notification requirements of this section.

31 (2) This section expires July 1, 2027.

32 **Sec. 3.** RCW 64.06.020 and 2019 c 455 s 3 are each amended to
33 read as follows:

34 (1) In a transaction for the sale of improved residential real
35 property, the seller shall, unless the buyer has expressly waived the
36 right to receive the disclosure statement under RCW 64.06.010, or
37 unless the transfer is otherwise exempt under RCW 64.06.010, deliver

1 to the buyer a completed seller disclosure statement in the following
2 format and that contains, at a minimum, the following information:

3 INSTRUCTIONS TO THE SELLER

4 Please complete the following form. Do not leave any spaces blank. If
5 the question clearly does not apply to the property write "NA." If
6 the answer is "yes" to any * items, please explain on attached
7 sheets. Please refer to the line number(s) of the question(s) when
8 you provide your explanation(s). For your protection you must date
9 and sign each page of this disclosure statement and each attachment.
10 Delivery of the disclosure statement must occur not later than five
11 business days, unless otherwise agreed, after mutual acceptance of a
12 written contract to purchase between a buyer and a seller.

13 NOTICE TO THE BUYER

14 THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF
15 THE PROPERTY LOCATED AT.
16 ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

17 SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR
18 MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE
19 PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT.
20 UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE
21 BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS
22 DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A
23 SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR
24 SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED
25 DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR
26 TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

27 THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE
28 REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS
29 INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART
30 OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

31 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF
32 THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF
33 QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT
34 LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS,
35 ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER
36 TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE
37 BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR
38 INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A

1 CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS
2 OR WARRANTIES.

3 Seller is/ is not occupying the property.

4 **I. SELLER'S DISCLOSURES:**

5 *If you answer "Yes" to a question with an asterisk (*), please explain your
6 answer and attach documents, if available and not otherwise publicly recorded. If
7 necessary, use an attached sheet.

8 **1. TITLE**

9 Yes No Don't know A. Do you have legal authority to sell
10 the property? If no, please explain.

11 Yes No Don't know *B. Is title to the property subject to
12 any of the following?

13 (1) First right of refusal

14 (2) Option

15 (3) Lease or rental agreement

16 (4) Life estate?

17 Yes No Don't know *C. Are there any encroachments,
18 boundary agreements, or boundary
19 disputes?

20 Yes No Don't know *D. Is there a private road or easement
21 agreement for access to the property?

22 Yes No Don't know *E. Are there any rights-of-way,
23 easements, or access limitations that
24 may affect the Buyer's use of the
25 property?

26 Yes No Don't know *F. Are there any written agreements
27 for joint maintenance of an easement
28 or right-of-way?

29 Yes No Don't know *G. Is there any study, survey project,
30 or notice that would adversely affect
31 the property?

32 Yes No Don't know *H. Are there any pending or existing
33 assessments against the property?

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Yes No Don't know *(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?

(2) When was it last pumped?
.....

Yes No Don't know *(3) Are there any defects in the operation of the on-site sewage system?

Don't know (4) When was it last inspected?
.....

By whom:

Don't know (5) For how many bedrooms was the on-site sewage system approved?

..... bedrooms

Yes No Don't know E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

Yes No Don't know *F. Have there been any changes or repairs to the on-site sewage system?

Yes No Don't know G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

.....

Yes No Don't know *H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

.....

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

[] Yes [] No [] Don't know *A. Has the roof leaked within the last five years?

[] Yes [] No [] Don't know *B. Has the basement flooded or leaked?

[] Yes [] No [] Don't know *C. Have there been any conversions, additions, or remodeling?

[] Yes [] No [] Don't know *(1) If yes, were all building permits obtained?

[] Yes [] No [] Don't know *(2) If yes, were all final inspections obtained?

[] Yes [] No [] Don't know D. Do you know the age of the house? If yes, year of original construction:

[] Yes [] No [] Don't know *E. Has there been any settling, slippage, or sliding of the property or its improvements?

[] Yes [] No [] Don't know *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Foundations Decks Exterior Walls
Chimneys Interior Walls Fire Alarm
Doors Windows Patio
Ceilings Slab Floors Driveways
Pools Hot Tub Sauna
Sidewalks Outbuildings Fireplaces
Garage Floors Walkways Siding
Other Woodstoves Elevators
Incline Elevators Stairway Chair Wheelchair Lifts
Lifts

[] Yes [] No [] Don't know *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?

[] Yes [] No [] Don't know H. During your ownership, has the property had any wood destroying organism or pest infestation?

[] Yes [] No [] Don't know I. Is the attic insulated?

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Other

Yes No Don't know *C. Are there any pending special assessments?

Yes No Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. ENVIRONMENTAL

Yes No Don't know *A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

Yes No Don't know *B. Does any part of the property contain fill dirt, waste, or other fill material?

Yes No Don't know *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

Yes No Don't know D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

Yes No Don't know *E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

Yes No Don't know *F. Has the property been used for commercial or industrial purposes?

Yes No Don't know *G. Is there any soil or groundwater contamination?

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Yes No Don't know *H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?

Yes No Don't know *I. Has the property been used as a legal or illegal dumping site?

Yes No Don't know *J. Has the property been used as an illegal drug manufacturing site?

Yes No Don't know *K. Are there any radio towers in the area that cause interference with cellular telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

Yes No Don't know *A. Did you make any alterations to the home? If yes, please describe the alterations:

Yes No Don't know *B. Did any previous owner make any alterations to the home?

Yes No Don't know *C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

Yes No Don't know *Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

1 DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY
2 SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME
3 SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER
4 OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM
5 THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT
6 TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN
7 STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE
8 THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE
9 AGREEMENT.

10 BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE
11 STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE
12 OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER
13 PARTY.

14 DATE BUYER BUYER.

15 (2) If the disclosure statement is being completed for new
16 construction which has never been occupied, the disclosure statement
17 is not required to contain and the seller is not required to complete
18 the questions listed in item 4. Structural or item 5. Systems and
19 Fixtures.

20 (3) The seller disclosure statement shall be for disclosure only,
21 and shall not be considered part of any written agreement between the
22 buyer and seller of residential property. The seller disclosure
23 statement shall be only a disclosure made by the seller, and not any
24 real estate licensee involved in the transaction, and shall not be
25 construed as a warranty of any kind by the seller or any real estate
26 licensee involved in the transaction.

27 **Sec. 4.** RCW 49.60.227 and 2018 c 65 s 1 are each amended to read
28 as follows:

29 (1)(a) If a written instrument contains a provision that is void
30 by reason of RCW 49.60.224, the owner, occupant, or tenant of the
31 property which is subject to the provision or the homeowners'
32 association board may cause the provision to be stricken from the
33 public records by bringing an action in the superior court in the
34 county in which the property is located. The action shall be an in
35 rem, declaratory judgment action whose title shall be the description
36 of the property. The necessary party to the action shall be the
37 owner, occupant, or tenant of the property or any portion thereof.

1 The person bringing the action shall pay a fee set under RCW
2 36.18.012.

3 (b) If the court finds that any provisions of the written
4 instrument are void under RCW 49.60.224, it shall enter an order
5 striking the void provisions from the public records and eliminating
6 the void provisions from the title or lease of the property described
7 in the complaint.

8 (i) A complete copy of any document affected by the order shall
9 be made an exhibit to the order and the order shall identify each
10 document by recording number and date of recordation and set forth
11 verbatim the void provisions to be struck from such document. The
12 order shall include a certified copy of each document, upon which the
13 court has physically redacted the void provisions.

14 (ii) The person bringing the action may obtain and deliver a
15 certified copy of the order to the office of the county auditor or,
16 in charter counties, the county official charged with the
17 responsibility for recording instruments in the county records, in
18 the county where the property is located.

19 (iii) The auditor shall record the documents prepared by the
20 court. An image of each document so corrected shall be placed in the
21 public records. Each corrected document shall contain the following
22 information on the first page or a cover page prepared pursuant to
23 RCW 65.04.047: The auditor's file number or book and page of the
24 original document, a notation that the original document was
25 corrected pursuant to this section, the cause number of the court
26 action, and the date the order was entered.

27 (iv) The auditor or official shall update the index of each
28 original document referenced in the order with the auditor's file
29 number of the corrected document. Further, the index will note that
30 the original record is no longer the primary official public record
31 and is removed from the chain of title pursuant to the court order.

32 (v) The original document or image and subsequent records of such
33 actions shall be separately maintained in the county's records and,
34 at the auditor's or official's discretion, the original document or
35 image may also be transferred to the secretary of state archives
36 division to be preserved for historical or archival purposes.

37 (2) (a) As an alternative to the judicial procedure set forth in
38 subsection (1) of this section, the owner of property subject to a
39 written instrument that contains a provision that is void by reason
40 of RCW 49.60.224 may record a restrictive covenant modification

1 document with the county auditor, or in charter counties the county
2 official charged with the responsibility for recording instruments in
3 the county records, in the county in which the property is located.

4 (b) The modification document shall contain a recording reference
5 to the original written instrument.

6 (c) The modification document must state, in part:

7 "The referenced original written instrument contains
8 discriminatory provisions that are void and unenforceable under RCW
9 49.60.224 and federal law. This document strikes from the referenced
10 original instrument all provisions that are void and unenforceable
11 under law."

12 (d) The effective date of the modification document shall be the
13 same as the effective date of the original written instrument.

14 (e) If the owner causes to be recorded a modification document
15 that contains modifications not authorized by this section, the
16 county auditor or recording officer shall not incur liability for
17 recording the document. Any liability that may result is the sole
18 responsibility of the owner who caused the recordation.

19 (f) No filing or recording fees or otherwise authorized
20 surcharges shall be required for the filing of a modification
21 document pursuant to this section.

22 (3) For the purposes of this section, "restrictive covenant
23 modification document" or "modification document" means a standard
24 form developed and designed by the Washington state association of
25 county auditors.

26 NEW SECTION. **Sec. 5.** This act applies to real estate
27 transactions entered into on or after January 1, 2022.

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