

HOW TO REMOVE DISCRIMINATORY LANGUAGE IN REAL PROPERTY INSTRUMENTS

THE PROBLEM

- 1920 to 1940's:** In the South, cities had laws requiring non-whites to live in certain areas. Property was also restricted by instruments that created “white only” subdivisions.
- 1948:** Landmark United States Supreme Court case Shelley v. Kraemer struck down racially restrictive housing covenants.
- 1985:** Chapter 201 of the Texas Property Code became law. Chapter 201 allowed communities to change deed restrictions that had discriminatory language, but the process remained expensive & difficult.



THE SOLUTION

- 2021:** “Senator Royce West Act” Senate Bill 30 – Effective September 1, 2021. This new law creates a streamlined process for individuals to remove discriminatory language from the real property records. Texas Property Code Section 5.026(a).

HOW IT WORKS:

Q: Who can request discriminatory language be removed?

- a property owner in the subdivision, and individual with an interest in the real property shown in the chain of title documents, or an individual with permission from the property owner

Q: How do you request that the discriminatory language be removed?

- File 3 forms with the Clerk of the District Court in the County where the document containing the discriminatory language is recorded in the real property records.
 1. Motion to Remove Discriminatory Language (Motion)
 2. Affidavit
 3. Proposed Findings of Fact & Conclusions of Law (also known as: FOF & COL)

These 3 forms are attached and are found in Section 5.0261 of the Texas Property Code.

Q: What happens after you file the 3 forms listed above with the District Clerk?

- The Court will review the 3 forms that you filed. The Court may issue the FOF & COL without notice to anyone else and without your providing the Court any additional evidence. If 15 days pass and the Court has not granted your Motion, then your Motion is automatically granted. Once the Court issues the FOF & COL, the Court must send the findings to the appropriate County Clerk within 10 days of issuing.

Q: What happens next?

- The County Clerk must file the District Court’s issued FOF & COL into the same real property records where the original document with discriminatory language was initially filed for FREE. The County Clerk must index its filings to help the public find the filing.
- The County Clerk must then remove the racial covenant on the original filed document by placing a black box over it.

TEMPLATES

Misc. Docket No.

§ In the _____ Judicial District

§

§

In re: Conveyance Instrument with
Discriminatory Provision

§ In and For _____

§ County, Texas

**AFFIDAVIT RE: MOTION FOR JUDICIAL REVIEW OF CONVEYANCE
INSTRUMENT ALLEGED TO CONTAIN DISCRIMINATORY PROVISION AS
DEFINED BY SECTION 5.026 OF THE TEXAS PROPERTY CODE**

I declare that the statements in the Motion for Judicial Review of Conveyance Instrument Alleged to Contain Discriminatory Provision as Defined by Section 5.206 of the Texas Property Code are true to the best of my knowledge.

(Name)
(Address)

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned notary, on this day personally appeared _____, proved to me through _____ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

Notary Public in and for the State of Texas.

Misc. Docket No.

§ In the _____ Judicial District

§

§

In re: Conveyance Instrument with
Discriminatory Provision

§ In and For _____

§ County, Texas

**MOTION FOR JUDICIAL REVIEW OF CONVEYANCE INSTRUMENT ALLEGED
TO CONTAIN DISCRIMINATORY PROVISION AS DEFINED BY SECTION 5.026
OF THE TEXAS PROPERTY CODE**

Now Comes (name) and files this motion requesting a judicial determination of the status of a conveyance instrument that contains a discriminatory provision as defined by Section 5.0261(a), Texas Property Code, filed in the office of the Clerk of (county name) County, Texas, and in support of the motion would show the court as follows:

I. INDIVIDUAL MOVING FOR REMOVAL OF DISCRIMINATORY LANGUAGE

(Name), movant herein, is the person who owns the real property or the interest in real property described in the conveyance instrument or has been given permission by that person to file this motion.

II. INSTRUMENT WITH DISCRIMINATORY LANGUAGE

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed and recorded the conveyance instrument attached hereto and containing (number) pages. The instrument is recorded at _____ in the real property records of _____ County. The conveyance instrument contains a discriminatory provision as defined by Section 5.0261(a), Texas Property Code.

III. REQUEST FOR DISCRIMINATORY LANGUAGE REMOVAL

Movant alleges that the conveyance instrument attached hereto contains a discriminatory provision as defined by Section 5.0261(a), Texas Property Code, and that the discriminatory provision should be removed.

IV. ATTESTATION

Movant attests that assertions herein are true and correct.

V. PRAYER

Movant requests the court to review the attached conveyance instrument and enter an order removing the discriminatory provision as defined by Section 5.0261(a), Texas Property Code, together with such other orders as the court deems appropriate.

Respectfully submitted,

(Insert Signature)
(Type Name & Address)

Misc. Docket No.

§ In the _____ Judicial District

§

§

In re: Conveyance Instrument with
Discriminatory Provision

§ In and For _____

§ County, Texas

**JUDICIAL FINDING OF FACT AND CONCLUSION OF LAW REGARDING
CONVEYANCE INSTRUMENT ALLEGED TO CONTAIN A DISCRIMINATORY
PROVISION AS DEFINED BY SECTION 5.0261(a) of the TEXAS PROPERTY CODE**

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name) and the conveyance instrument attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the conveyance instrument under the authority vested in the court under Section 5.0261, Texas Property Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

The conveyance instrument recorded at _____ in the real property records of _____ County CONTAINS a discriminatory provision as defined by Section 5.0261(a), Texas Property Code. The discriminatory provision as defined by Section 5.0261(a), Texas Property Code, is void and removed from the conveyance instrument identified herein.

The conveyance instrument recorded at _____ in the real property records of _____ County and attached to the motion herein DOES NOT CONTAIN a discriminatory provision as defined by Section 5.0261(a), Texas Property Code.

This court expressly limits its finding of fact and conclusion of law to the review of a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same

class of records in which the subject conveyance instrument is filed, and the court directs the county clerk to index it using the same names used to index the subject conveyance instrument.

SIGNED ON THIS THE ____ DAY OF _____, 20____.

JUDGE _____

_____ (COURT)

_____ COUNTY, TEXAS