

SANTA CLARA COUNTY CLERK-RECORDER'S OFFICE
RESTRICTIVE COVENANT MODIFICATION PROGRAM
IMPLEMENTATION PLAN

Background

The California Fair Employment and Housing Act prohibits discrimination in housing based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information. Government Code section 12956.2(a) provides that any deed or other recorded instrument that contains unlawfully discriminatory language forbidding or restricting the right of any person to sell, buy, lease, rent, use or occupy the property on account of any of the characteristics specified above, may be revised to remove such unlawful language. A person who holds an ownership interest in property that believes the property is the subject of an unlawfully restrictive covenant may submit for recordation a Restrictive Covenant Modification document. If the existence of unlawfully restrictive language is confirmed by County Counsel, the modification document is recorded with the unlawful restrictive covenant redacted.

Pursuant to the 2021 legislation set forth in Assembly Bill (AB) 1466 and California Government Code Section 12956.3 (GC §12956.3), the Santa Clara County Clerk-Recorder's Office (CRO) has developed the following Restrictive Covenant Modification Program Implementation Plan (Plan). It has been developed on the principle of identifying any unlawful language contained within our records, most notably the restrictive covenants, and once located, we will record redactions consistent with AB1466.

Plan

A multi-faceted approach to this program is the most effective means to accomplishing compliance with the guidelines of AB1466. The initial facet is the location or identification of any documents with potential unlawful language contained in our records. The objective of locating the unlawful language in a document is not a quick nor simple task.

Milestones and Timeline

We determined that our office possess approximately 24 million documents in our records. Our goal is to complete the review of our existing 24 million records at a rate of 4 million documents per year, ending by December 2027.

YEARS	DOCUMENTS	# of IMAGES (approx. 3.5 images per document)
2022	2,400,000	8,400,000
2023	4,320,000	15,120,000
2024	4,320,000	15,120,000
2025	4,320,000	15,120,000
2026	4,320,000	15,120,000
2027	4,320,000	15,120,000
TOTAL	24,000,000	84,000,000

Approaches - Manual and Automated

While most of the 24 million records are in typed and digital (different from digitized) format, there are a significant number of the records that are handwritten and in books. They will require more labor-intensive review and process. The office, plan to review these records using technology capable of Optical Character Recognition (OCR); however, in order to utilize OCR, we must first have all of our images digitized. While the use of technology will significantly assist our efforts, we will not wait for the images to be digitized before proactively initiating our review of the records. Initially, our office has a manual process in place to locate and review the documents with the unlawful language. This process will be later refined through the use of technology. At a much later stage, the enhanced use of both the manual and automated processes will be utilized to achieve the optimum level of implementing this program.

Process

We have established a Restrictive Covenant Modification Program (RECOMP) Division in our office that will be responsible for the (1) location of the documents with potential unlawful language, (2) initiate the process for redaction, (3) review of the actual document to identify the unlawful language, (4) prepare the document for redaction, (5) present to County Counsel for review and approval of redaction, and, finally, (6) the recordation of the redacted restrictive covenant modification document.

While we believe that our RECOMP Division will move the process forward in the unlawful language redaction effort prior to and during the time it takes to digitize and OCR our records, we have been offered assistance from volunteers and student interns to assist us in our review. In addition to the RECOMP Division's responsibilities above, they will coordinate the work of the volunteers and student interns.

In summary, our approach to the process is as follows:

Step 1: Locating the document with unlawful language – this step may be initiated through the efforts of the RECOMP Division, volunteers/interns, the public, and/or technology.

Step 2: Preparation of Redacted Restrictive Covenant Modification Document including coversheet – this step may be performed by the RECOMP Division or a member of the public that may include the newly redacted language as well as a copy of the original document containing the unlawful language.

Step 3: Submission to County Counsel for review/approval – the Redacted Restrictive Covenant Modification Document and materials will be provided to County Counsel for review. The review period is up to 90 days.

Step 4: Upon County Counsel's approval, the RECOMP Division will record and index the Redacted Restrictive Covenant Modification.

Requests and Submissions from the Public

While the utilization of technology, RECOMP Division, and volunteers/student interns will make significant strides towards accomplishing the goals of AB 1466 (2021), we are also prepared to receive submissions of redacted restrictive covenant modifications from the public. In cases where a member of the public notifies our office of a potential restrictive covenant containing unlawful language, we will provide the template coversheet to be attached to the front of the redacted restrictive covenant document. We have also made the template coversheet on our website (or located below or hyperlinked here).

Once the proposed Redacted Restrictive Covenant Modification has been prepared/packaged by the RECOMP team, it will be submitted to County Counsel for review and/or approval for redaction. The review process may take up to 90 days. Upon the CRO receiving County Counsel's approval for the Redacted Restrictive Covenant Modification document, the RECOMP Division will record and index the approved Redacted Restrictive Covenant Modification document.

Tracking and Public Access

The newly recorded Redacted Restrictive Covenant Modification document will be tracked and available for review in our Official Records Index. It is identified in the index as RCMO.

The proposed Redacted Restrictive Covenant Modification documents that were not approved by County Counsel will be tracked and logged in the RECOMP Division's database.

Webpage Posting

This Implementation Plan is posted at the County Clerk-Recorder's webpage and can be found in the following link:

[Restrictive Covenant Modification Program \(Assembly Bill 1466\)](#)

Resources:

[Assembly Bill No. 1466](#)

[California Government Code Section 12956.3](#)

[California Government Code Section 27388.2](#)

[COVERSHEET - Racially Restrictive Covenant Modification \(Template\)](#)

