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## Discriminatory Racial Covenants and their Removal from Antiquated Real Property Records

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# Discriminatory Racial Covenants and their Removal from Antiquated Real Property Records

## *Title Consumer Series*

### **What are discriminatory racial covenants?**

Discriminatory racial covenants were private covenants put into recorded documents attempting to prohibit persons of particular races or ethnic backgrounds from owning or occupying homes in certain areas, resulting in segregation within residential neighborhoods throughout the country.

Many homeowners and homebuyers are not aware that private discriminatory racial covenants were enforced until they were struck down in the 1940s by the United States Supreme Court as being illegal and unconstitutional.

Believe it or not, these offensive covenants were once promoted by the Federal Housing Administration and upheld and enforced by courts across the country until the U.S. Supreme Court decision.

Because these documents are illegal and unenforceable, they very rarely come to a consumer's attention unless someone goes looking for them in old California real property records.

### **Do I need to remove discriminatory covenants when buying, selling, or refinancing a home?**

No. Discriminatory covenants are already illegal and unenforceable, so nothing requires homeowners or homebuyers to remove them from older county records when they are discovered.

However, California law does provide a way for consumers to initiate the removal of these discriminatory covenants through the use of a "Restrictive Covenant Modification" form (RCM), which can be completed and submitted to the county recorder to effectuate the redaction of discriminatory racial covenants.

### **What has changed with the law regarding these covenants?**

Despite the fact that these covenants have long been illegal and unenforceable, they are nonetheless very offensive when found. For this reason, the California State Legislature recently passed AB 1466 (McCarty), which provides for the restrictive covenant modification process to strike them entirely from public-facing documents.

### **How do I submit an RCM if I am aware of a discriminatory covenant and want to have it removed?**

In the rare event a consumer finds a discriminatory racial covenant, the consumer may complete an RCM and submit it to the county recorder of the county in which the home is located, requesting that the discriminatory language be struck from the document on a go-forward basis.

An RCM is a simple form that allows a homeowner or homebuyer to identify the document and location of the discriminatory covenant they believe is illegal. Once filled out, the RCM can be submitted to the county recorder and county counsel for consideration, along with a complete copy of the document containing the discriminatory covenant with the covenant redacted.

If the county counsel determines that the RCM request has indeed located an illegal and discriminatory racial covenant as defined by law, the RCM and document containing the redacted covenant will be recorded in county records.

In the event county counsel determines that an RCM form is targeting a covenant that is not illegal or discriminatory, the RCM and modified document will not be recorded, and the covenant will not be struck.

Once recorded, only the redacted, public-facing document -- now devoid of the illegal and discriminatory covenant -- should be made available to future homebuyers and sellers for review. Therefore, only individuals doing historical research should be able to find these discriminatory covenants in the future.

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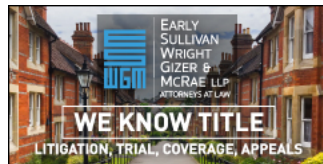
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