



March 23, 2022

Vermont General Assembly
Senate Committee on Judiciary
115 State Street
Montpelier, VT 05633-5301

Dear Chair Sears and Members of the Senate Committee on Judiciary,

As representatives of the Community Associations Institute (CAI), we thank the Committee for this opportunity to provide input as the voice of association communities in favor of H 551, An act relating to prohibiting racially and religiously restrictive covenants in deeds, with an amendment. For background, CAI represents, educates, and assists community associations, community managers, and homeowners nationwide, including the more than 105,000 Vermonters who live in approximately 1,200 community associations across the state. CAI is supportive of legislative efforts to ease the burden on those who wish to remove outdated, racist, discriminatory, and legally unenforceable covenants from deeds and governing documents.

CAI applauds Representative Grad and her fellow Sponsors, Representatives Christie, Colburn, Colston, Kornheiser, LaLonde, and Rachelson, for taking the lead on this important issue, and for helping to see H 551 through the House. CAI supports legislation which makes the removal of these unenforceable, outdated, and discriminatory covenants easier while also limiting the financial burden on individual homeowners and organizations. If we are to continue to advance racial equity at all levels of government and civil society, then certain frameworks must be amended. To that end, CAI asks that the Committee consider amending H 551 to include an expedited process for community associations to remove racially and religiously restrictive covenants from their governing documents. CAI's suggested language can be found below:

A restriction, covenant, or condition, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property on the basis of race, color, national origin, religion, sex, familial status, or prohibits maintaining a trained guide dog or assistance animal because the individual is blind, deaf or has a physical disability, is void and has no legal effect, except a limitation of use for religious purposes as permitted under the Federal Fair Housing Act or state law.

CORRECTIVE ACTIONS BY AMENDMENT

(a) A homeowners' or property owners' association, cooperative corporation, condominium association, or planned community acting through a majority vote of its full board membership, may amend the association's governing documents for the purpose of removing any restriction, covenant, or condition, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property on the basis of race, color, national origin, religion, sex, familial status or maintains a trained guide dog or assistance animal because the individual has a disability recognized under the Fair Housing Act (42 U.S.C. 3601 et seq. or [insert citation to state anti-discrimination law]).

(b) If the board of a homeowners' or property owners' association, condominium association, or planned community, receives a written request by a member of the association that the board exercise its amending authority under subsection (a), the board shall, within a reasonable time not to exceed 90 days, investigate any claim of an unenforceable covenant and if determined to be unlawfully discriminatory



shall cause the provision to be removed, as provided under this section.

(c) Removal of a restriction, covenant, or condition pursuant to subparagraphs (a) or (b) above will not require approval of the owners, notwithstanding any provision of the governing documents to the contrary.

(d) An amendment under subsection (a) may be executed by any board officer.

PROPERTY DEED CHANGE

(a) If a deed or other instrument contains a provision that is prohibited as discriminatory under state or federal law, the owner, occupant, or tenant of the property that is subject to the provision or any member of the board of a homeowners' or property owners' association that would have a right to enforce such a provision may bring an action in the [insert court having jurisdiction] to have the provision stricken from the records of the register of deeds.

(b) An action under this section must be brought as an in rem, declaratory judgment action and the title of the action must include a description of the property. The owners of record of the property or any part of the property described in a deed containing an unlawful discriminatory provision are necessary parties to the action.

(c) If the court finds that any provisions of the deed or instrument are prohibited under this act, it shall enter an order striking the provisions from the records of the public recording office and direct that the order striking the provisions be notated on the deed or other instrument for the property described.

(d) Any reversionary clauses or other provisions intended to penalize the violation of a discriminatory provision in a deed or other instrument that is authorized to be removed under this law shall be void and unenforceable.

Often, the removal process for these covenants is time-consuming, requiring a vote from the majority of homeowners in a community, and expensive, requiring lawyers at every stage. Roughly sixteen states have already enacted laws which would expedite this process, allowing governing boards to unilaterally remove these terrible remnants of a less tolerant time.

CAI values our partnerships with lawmakers at all levels of government, and we hope to collaborate closely to use H 551 as an opportunity to correct historic wrongs, and advance racial equity in the State of Vermont.

Sincerely,

Dawn M. Bauman, CAE
Senior Vice President, Government & Public Affairs
Community Associations Institute (CAI)
dbauman@caionline.org (703) 970-9224

Ben Price, MPP
Manager, Government & Public Affairs
Community Associations Institute
bprice@caionline.org (703) 970-9282