



Restrictive Covenant Modification Program

Implementation Plan

Background

Declarations of Covenants, Conditions and Restrictions (CC&R) are disclosure documents that are often found when buying a home in a planned community. The stated purpose of these covenants, or rules and regulations, is to protect the value of the homes and quality of life within that community. In addition to CC&Rs, many older land title documents such as deeds and deeds of trust also included covenants which restricted the use and occupancy of real property, oftentimes dictating the race, gender, or sexual orientation of the buyer.

These restrictive covenants became common after 1926 when the U.S. Supreme Court validated their use in the case of *Corrigan v. Buckley*, and beginning in 1934, the Federal Housing Authority recommended the inclusion of restrictive covenants in the deeds of homes it insured. These racially restrictive covenants made it illegal for many races other than Caucasian to purchase, lease or rent homes in white communities. In 1948, through the *Shelley v. Kraemer* decision, the Supreme Court declared that racial restrictions could no longer be enforced, though it remained legal for realtors and property owners to discriminate based on race. In 1968, Congress passed the Fair Housing Act, finally outlawing discrimination on the basis of race or ethnicity in the sale or rental of housing. Since then, it has been illegal to act on the race restrictions that are still embedded in recorded documents today.

Pursuant to the 2021 legislation set forth in Assembly Bill AB-1466 and the California Government Code Section 12956.3, the San Francisco Assessor-Recorder's Office (ASR) has developed a plan to identify documents in its Official Record containing unlawful covenants in violation of GC Section 12955(l) and to rerecord them with the restrictive language redacted through its Restrictive Covenant Modification Program.

Unlawful restrictions include those restrictions based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision Section 12955, or ancestry.

Plan

The San Francisco Assessor-Recorder's Office has developed an approach to identify, review, redact, rerecord, and track documents containing restrictive covenants in its Official Record in accordance with California Government Code Section 12956.3 through the process described below.

Essentially, the Plan involves searching our historic records for keywords and phrases indicative of restrictive covenants, reviewing documents containing these keywords to determine if the language is illegal and should be redacted per GC 12956.3, and rerecording the original document with the illegal language redacted as a Restrictive Covenant Modification document in our modern recording system.

The process will involve review and actions by our vendors, Assessor-Recorder staff, and the City Attorney.

1. Discovery
 - a. San Francisco's Official Records begin in 1906 and contain millions of pages of recorded documents, which are stored and accessed by the public in two different hosting platforms: BMI Digital Reel (records from 1906 to 1999) and Records Manager (records from 2000 to present). Through previous efforts, all of ASR's original historic microfilm reels containing images of recorded documents have been digitized and made accessible to the public.
 - b. We will identify documents with restrictive covenants by first performing an Optical Character Recognition (OCR) scan of all digitized records and searching for keywords and phrases indicative of restrictive covenants (such as "Caucasian").
2. Review and Redact
 - a. Documents flagged through the OCR process as potentially containing restrictive language will be exported from the Official Record into a workflow for review by ASR staff to determine if the keyword or phrase indicates the presence of an illegal restriction.
 - b. The user interface in the workflow will allow ASR staff to input specific information about the document (such as APN, original recording date, etc.), which will be used to populate the Restrictive Covenant Modification document and the indexing information when it is recorded later in the process.
 - c. Documents with suspected restrictive covenants will be flagged for City Attorney review to determine if the language is restrictive, per GC 12956.2.
 - d. ASR staff will apply a transparent (temporary) redaction to the potentially illegal restriction, highlighting the offending language to facilitate City Attorney review.
3. City Attorney Review
 - a. The City Attorney will review the highlighted language and determine if it should be redacted. If determined that the language is illegally restrictive, the temporary redaction will become permanent.
 - b. After City Attorney review, the document will be routed through the workflow back to ASR for processing.
4. Create Restrictive Covenant Modification Document and Rerecord
 - a. The digital image of the original document with the illegal language redacted will be exported from the workflow, and a customized Restrictive Covenant Modification coversheet will be created and appended to the original document.
 - b. The Restrictive Covenant Modification coversheet will be populated with data extracted from the workflow, including APN, original instrument number, etc.
 - c. The new Restrictive Covenant Modification Document, consisting of the cover page and the original document with the illegal language redacted will then be recorded in our modern system, Records Manager and be indexed so that it will be easily identified as a Restrictive Covenant Modification Document.

5. Reporting and Tracking

- a. Restrictive Covenant Modification documents will be tracked in our recording system, Records Manager. Documents will be indexed with the Assessor Parcel Number, allowing for potential geolocational tracking of parcels with historic restrictive covenants.

In addition to ASR's plan to proactively locate documents with restrictive covenants as outlined above, we will continue to review and record Restrictive Covenant Modification Documents submitted by the public. AB-1466 removes the requirement that only individuals with an ownership interest can record Restrictive Covenant Modifications, allowing anyone to record an RCM. Please see our website for information on how the public can submit documents for [review](#).

Timeline

Because we anticipate that most (if not all) documents with restrictive language were recorded prior to the year 2000, we will concentrate our initial efforts on our 1906-1999 records contained in Digital Reel. There are approximately 15.1 million pages in Digital Reel and 4.5 million documents in Records Manager after 2000.

Last December, ASR pulled and delivered 93 books of records over five decades (1925-1975) for our vendor to OCR process and evaluate the records against a list of keywords and phrases indicative of restrictive covenants. From our initial findings, we estimate the records from 1906 through 1999 will result in the discovery of 250,000 potential restrictive covenants for ASR staff to review and route to the City Attorney. After a thorough review by ASR staff and the City Attorney, we anticipate the City Attorney will route 35,000 documents with language that is illegally restrictive for ASR staff to process.

We anticipate contracting with a vendor to assist with this effort in 2023 and estimate the records from 1906 through 1999 will be completed by the end of 2024. Once this is completed, we will begin to search records from 2000 – present and anticipate this effort will be completed by the end of 2025.