Legislative Analysis

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PROHIBITED RESTRICTIVE COVENANTS ACT

House Bills 4416 and 4417 as introduced
Sponsor: Rep. Sarah Anthony
Committee: Local Government and Municipal Finance
Complete to 12-6-21

SUMMARY:

House Bill 4416 would create a new act, the Prohibited Restrictive Covenants Act, to prohibit the recording of deeds or other instruments related to real property that contain certain restrictive covenants or conditions, to make those restrictions unenforceable, and to provide remedies with respect to those instruments. House Bill 4417 would amend the Condominium Act to allow for the amendment of condominium documents to remove a prohibited restriction in accordance with the new act.

House Bill 4416 would create a new act called the Prohibited Restrictive Covenants Act.

Prohibited restrictions
The act would provide that a ***prohibited restriction*** is void and has no legal effect and would prohibit a court or other person from enforcing a prohibited restriction.

> ***Prohibited restriction*** would mean a restriction, covenant, or condition, including a right of entry or possibility of reverter, that violates the federal Fair Housing Act, which prohibits discrimination in housing based on race, color, religion, sex, national origin, familial status, or disability.[1]

The act would prohibit a person from recording in the records of the register of deeds a deed or other instrument containing a prohibited restriction. A person refusing to remove a prohibited restriction from a deed or other instrument before recording would be liable for any damage sustained by another person because of the refusal. This liability would not apply to the register of deeds or an employee of a register of deeds, nor would these provisions require the register of deeds or employees to inspect deeds or other instruments to determine whether recording them would be a violation.

Amending deeds
The act would allow a property owner to record with the register of deeds an amended deed or other instrument to remove a prohibited restriction. An amended deed or other instrument could be executed solely by the property owner and would have to be executed and acknowledged as required by law. The amended deed or other instrument would have to amend the deed or other instrument only as to the prohibited restriction. The amended deed or other instrument would have to identify and refer to the original deed or other instrument being amended and give the liber and page or other unique identifying number where the original is recorded. The deed or other instrument as amended would relate back to the times and dates that the deed or other

[1] See https://www.justice.gov/crt/fair-housing-act-1

instrument being amended was executed and recorded. The amended deed or other instrument would have to include the following statement:

> This amended deed or instrument strikes from an original deed or instrument restrictions, covenants, or conditions that are prohibited under the Prohibited Restrictive Covenants Act.

Amending owners' association and condominium documents

The act also would allow a homeowners' or property owners' association to amend its ***governing documents*** to remove a prohibited restriction through a simple majority vote of its board. The board would have to prepare amended governing documents within a reasonable time after receiving a written request from an association member to act under these provisions. These actions would not require the vote or approval of property owners, and an amended document could be executed by any board officer.

> ***Governing documents*** would mean the bylaws, articles of incorporation, or declaration of covenants, conditions, and restrictions of a homeowners' or property owners' association.

The act also would authorize the board of directors of a condominium association to remove a prohibited restriction in the ***condominium documents*** and require it to prepare amended condominium documents upon written request of a condominium co-owner.

> ***Condominium documents*** would mean the master deed as recorded under the Condominium Act and any other instrument referred to in the master deed or bylaws that affects the rights and obligations of a co-owner in the condominium.

An amended document described above would have to amend the document only as to the prohibited restriction. The amended document would have to be recorded with the register of deeds and would have to identify and refer to the original document being amended and give the liber and page or other identifying number where the original is recorded. The document as amended would related back to the times and dates that the document being amended was executed and recorded. The amended document would have to include the following statement:

> This amended document strikes from an original document restrictions, covenants, and conditions that are prohibited under the Prohibited Restrictive Covenants Act.

Action to strike prohibited restriction

If a deed or other instrument contained a provision prohibited by the act, the owner, occupant, or tenant of the property subject to the provision—or any member of the board of a homeowners' or property owners' association or of the board of directors of an association of co-owners of a condominium that would have a right to enforce such a provision—could bring an action in the circuit court in the county where the property is located to have the provision stricken from the records of the register of deeds. The action would have to be brought as an in rem, declaratory judgment action, and the title of the action would have to be the description of the property. The owners, occupants, or tenants of the property or any part of the property would be necessary parties to the action. In such an action, if the court finds that any provisions of the deed or instrument are prohibited under the act, it would have to enter an order striking

the provisions from the records of the register of deeds and eliminating the provisions from the deed or other instrument for the property described in the complaint.

Miscellaneous provisions

Except for a written request made to a homeowners' or property owners' association as described above, the act would not impose a duty on an owner, occupant, tenant, association, board, or member or officer of a board to amend a recorded deed or instrument or a governing document as provided in the act or to bring an action as authorized under the act. An owner, occupant, tenant, association, board, or member or officer of a board would not be liable for failing to amend a recorded deed or instrument or a governing document or failing to pursue an action in court as authorized under the act.

The recording requirements of 1937 PA 103 (which generally prescribes conditions for documents recorded with a register of deeds) would apply to a document, deed, or other instrument prepared and recorded under the act.[2] In addition, a register of deeds would entitled to the usual fees under the Revised Judicature Act for recording a document, deed, or other instrument prepared and recorded under the act.[3]

Finally, the new act would provide that it does not limit any right or remedy under the Elliott-Larsen Civil Rights Act or any other Michigan law.

House Bill 4417 would amend a section of the Condominium Act that governs the amendment of condominium documents to provide that the amendment of condominium documents to remove a prohibited restriction under the Prohibited Restrictive Covenants Act proposed by HB 4416 does not require the consent of co-owners and mortgagees and can be accomplished as provided in the Prohibited Restrictive Covenants Act.

The bill is tie-barred to HB 4416, which means that it could not take effect unless HB 4416 were also enacted.

MCL 559. 190

FISCAL IMPACT:

House Bill 4416 could have a fiscal impact on local circuit courts. The fiscal impact would depend on how provisions of the bill affected court caseloads and associated administrative costs.

The bills would have no fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

[2] https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-103-of-1937.pdf
[3] See http://legislature.mi.gov/doc.aspx?mcl-600-2567