

WFG Informational Bulletin

To: All New Jersey Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: November 16, 2021
Bulletin No.: NJ2021-03
Subject: New law prohibiting certain restrictive covenants in deeds

On November 8, 2021, New Jersey enacted a new law, P.L. 2021, c.274, which requires that any deed recorded on or after January 1, 2022 shall not contain a reference to a specific portion of a restrictive covenant that is considered discriminatory and unlawful under the NJ Law Against Discrimination (N.J.S.A. 10:5-4 and N.J.S.A. 10:5-12). This includes any restriction on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression, or source of lawful income used for rental or mortgage payments.

Though such restrictions are already declared unlawful and therefore unenforceable, there was no law on the books that required such an unlawful restriction to be removed from the land records. This is the objective of this new law.

Below are the salient portions of the law that could affect your agency as settlement service providers:

- Any deed recorded on or after January 1, 2022 shall not contain a reference to the specific portion of a restrictive covenant purporting to restrict the ownership or use of real property as prohibited by the NJ Law Against Discrimination;
- A county clerk or a register of deeds and mortgages shall refuse to accept any deed submitted for recordation that references the specific portion of any such restrictive covenant.
- An attorney or title company preparing or submitting a deed for recordation shall ensure that the specific portion of such a restrictive covenant is not specifically referenced in the deed prior to the deed being submitted for recordation.

Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.

Since title agents are most frequently the group who submit deeds for recording in this state, this provision places an affirmative duty on the part of the title agent to review the deeds in the chain of title and if any reference to any unlawful restrictive covenant is found to then delete that portion prior to submitting a new deed for recordation. So, if cutting and pasting from prior deeds is your common practice, like it is for many, please be mindful of this new legal requirement and delete those unlawful portions appropriately.

- A deed may include a general provision that states that the deed is subject to any and all covenants of record; however, such provisions shall not apply to the specific portion of a restrictive covenant purporting to restrict the ownership or use of the property as prohibited by the NJ Law Against Discrimination.
- Any deed that is recorded in the land records on or after January 1, 2022 that mistakenly contains such a restrictive covenant shall nevertheless constitute a valid transfer of real property.

This law provides for a method whereby the owner of the real property can release these restrictions that appear in their chain of title by recording a “Certificate of Release of Certain Prohibited Covenants.” That form of Certificate of Release is included in the new law and is also available at the county office or the internet website of the County Clerk or Register of Deeds and Mortgages, as the case may be, where the real estate is located. The Certificate can be recorded at any time at the option of the owner. There is no filing or any other fee charged to the owner for the filing of this Certificate.

Finally, the law requires that within 90 days of enactment, the governing board of any homeowners’ or property owners’ association, cooperative association, condominium association or planned community, shall review their association documents and if any unlawful restrictions are found, it shall amend the documents to remove the restrictions.

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