



## Restrictive Covenant Modification Program Implementation Plan

Pursuant to Assembly Bill (AB) 1466 and California Government Code Section 12956.3, the Tulare County Assessor/Clerk-Recorder's Office has developed the following Restrictive Covenant Modification Program Implementation Plan.

### **Background**

The California Fair Employment and Housing Act ("FEHA", Government Code Section 12900, et seq.) prohibits discrimination in housing against any person based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information (the "Protected Characteristics"). FEHA prohibits discrimination in all aspects of the housing business, including renting, sales, mortgage lending and insurance, advertising, new construction, and restrictive covenants.

Discrimination in housing through a restrictive covenant includes the mere existence of a restrictive covenant, regardless of whether it is accompanied by a statement that the covenant is void or has been repealed. Existing law provides that a provision in any deed of real property in California which purports to restrict the right of any person to sell, lease, rent, use, or occupy the subject property to any person based on one of the Protected Characteristics—by providing for payment of a penalty, forfeiture, reverter, or otherwise—is void, except as specified.

Additionally, existing law provides that any deed or other written instrument that relates to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, any deed or instrument, that contains any provision that purports to forbid, restrict, or condition the right of any person or persons to sell, buy, lease, rent, use, or occupy the property on account of any of the Protected Characteristics, is deemed to be revised to omit that provision. Nonetheless, as further detailed below, through AB 1466 the State of California has now mandated a program to seek out and redact any unlawful restrictive covenants included in documents recorded with the County.

Existing law authorizes property owners to seek the retraction of unlawful restrictive covenants. A person who holds an ownership interest of record in property that they believe is the subject of an unlawfully restrictive covenant, as specified, may record a Restrictive Covenant Modification, which recordation is required to include a copy of the original document with the illegal language stricken. The County Recorder is presently required to make the Restrictive Covenant Modification forms available to the public.

Current law also requires the County Recorder, before recording any Restrictive Covenant Modification document, to submit the modification document and the original document to the County Counsel, who is required to determine whether the original document in fact contains an unlawful restriction based on any of the Protected Characteristics. The County Counsel must return these documents and inform the County Recorder of their determination.

California Assembly Bill 1466 ("AB 1466") expands upon these provisions. AB 1466 was signed in to law on September 28, 2021. The Bill amended California Government Code Section 12956.3, and



## OFFICE OF THE COUNTY OF TULARE ASSESSOR/CLERK-RECORDER

221 S. Mooney Blvd. • Room 103 • Visalia, CA 93291

**Tara K. Freitas, CPA**  
Assessor/Clerk-Recorder

requires a title company, escrow company, real estate broker, or real estate agent that has actual knowledge of a declaration, governing document, or deed that is being directly delivered to a person who holds or is acquiring an ownership interest in property, and includes a possible unlawfully restrictive covenant, to notify the person of the existence of that covenant and of the person's ability to have the covenant removed through the Restrictive Covenant Modification process. AB 1466 will, beginning July 1, 2022, upon request before the close of escrow, require the title company or escrow company that is directly involved in the pending transaction to assist in the preparation of a Restrictive Covenant Modification, as specified.

Additionally, AB 1466 requires the County Recorder of each county to establish a restrictive covenant program to assist in the redaction of unlawfully restrictive covenants. In this regard, AB 1466 will require each County Recorder to prepare an implementation plan by July 1, 2022, as specified, to identify unlawfully restrictive covenants in the records of their office, and to redact unlawfully restrictive covenants, as specified. Pursuant to AB 1466, the Tulare County Clerk-Recorder's Office ("Office") has developed and will implement the following Restrictive Covenant Modification Plan ("RCMP").

### **Plan**

**Step 1:** The Office will meet with third-party vendors to receive quotes for locating unlawful covenants in property documents that are currently digitized. This service will allow quick and efficient identification of restrictive covenants based upon a non-exclusive list of restrictive covenants and related verbiage.

**Step 2:** The Office will also meet with third-party vendors to receive quotes for digitizing property documents prior to 1950. The vendor will pull images from both paper and film-based records and convert them to digital file images which will be prepped, indexed, and ultimately placed into the Office's database. If funds do not allow for the cost of digitizing said documents, then the documents will be manually reviewed by the Office's designees to locate potentially unlawful language.

**Step 3:** All records that are identified as containing restrictive covenants will be forwarded to the Office, wherein they will be examined by management personnel or their designees. Once determined that a restrictive covenant may exist, the Office will forward a copy of the document to County Counsel for an official determination. The review process by County Counsel may take up to 90 days. Once it has been officially determined by County Counsel that the restrictive covenant does exist, the Office will re-record a copy of the original document with the restrictive covenant fully redacted. The document will be issued a new present-day document number and will be indexed both under the original document title and as a Restrictive Covenant Modification.

### **Public Submissions and Requests**

While the Office believes that this project will identify most, if not all, of the restrictive covenants that currently exist in the County's official records, the public should feel free to notify the Office of any Restrictive Covenants upon their discovery.



**OFFICE OF THE COUNTY OF TULARE  
ASSESSOR/CLERK-RECORDER**

221 S. Mooney Blvd. • Room 103 • Visalia, CA 93291

**Tara K. Freitas, CPA**  
Assessor/Clerk-Recorder

If a member of the public would like to submit a Restrictive Covenant Modification document on their own behalf, they are free to do so by following the steps below.

1. Obtain a complete copy of the original document containing unlawfully restrictive language from the County Clerk-Recorder's Official Public Records and locate and strike out any such unlawfully restrictive language.
2. Complete and print the Restrictive Covenant Modification form from the Tulare County Recorder's website or obtain and complete the form at the Tulare County Clerk-Recorder's Office.
3. Submit the completed Restrictive Covenant Modification form and the original document with language stricken to the County Clerk-Recorder's Office. No fee is required for this service.
4. The County Clerk-Recorder's Office will forward the Restrictive Covenant Modification form and the original document to the Office of the County Counsel, who shall determine whether the original document contains any unlawful restrictions.
5. The Office of the Tulare County Counsel will review and return the documents to the County Clerk-Recorder's Office along with its determination. This review will be completed within a reasonable period of time not to exceed three months from the date the request for recordation is made, unless extraordinary circumstances apply. If approved, a member of the Office of the County Counsel will sign the Restrictive Covenant Modification, and the County Clerk-Recorder's Office will record it. However, if the Office of the County Counsel finds that the original document does not contain an unlawful restriction, then the County Clerk-Recorder's Office will not record the Restrictive Covenant Modification. For either decision, the property owner(s) will be mailed notice informing them of the determination reached.

*\*Timelines of step implementation may be updated as more information and funding become available.*