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MONTEREY COUNTY
ASSESSOR-COUNTY CLERK/RECORDER



RESTRICTIVE COVENANT MODIFICATION
PROGRAM - IMPLEMENTATION PLAN
JULY 1, 2022



BACKGROUND:

The California Fair Employment and Housing Act, prohibits discrimination in housing based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, veteran or military status, national origin, ancestry, or source of income.

Existing law provides that a provision in any deed of real property in California that restricts the right of any person to sell, lease, rent, use, or occupy the property to persons having the characteristics specified above is unlawful and unenforceable.

Prior to July 1, 2022, if a recorded document contained unlawful restrictive language, only a person who held an ownership interest of record in the property could submit a Restrictive Covenant Modification (RCM) to the county recorder. The unlawful restrictive language was required to be stricken (lined through) from the document. It would then be forwarded, with a copy of the original, to the county counsel for review and determination. Upon determination, it would be returned to the county recorder for recordation or rejection.

Effective July 1, 2022, Government Code section 12956.2(a)(1) authorizes a title company, escrow company, county recorder, real estate broker, real estate agent, a person who holds an ownership interest of record in the property or any other person to submit an RCM document to the county recorder. The law requires the unlawful restrictive language be redacted, such that it is not readable or visible. A "Restrictive Covenant Modification" form must be completed and attached as the first page of the RCM document. The county recorder must then forward the RCM document to the county counsel, with a copy of the original, for review and determination. Upon determination within the required 90-day period, the RCM document is returned to the county recorder for recordation or rejection.

In addition to the RCM documents submitted to the county recorder in person or through the mail, the law now also requires the county recorder to:

1. identify and process real property documents containing unlawful restrictive language held within its recorded records,
2. prepare an implementation plan, which shall be publicly available and may be posted on the internet website of the county recorder,
3. record RCM documents under the title "Restrictive Covenant Modification", searchable on the county recorder's public access computers in the office and on the county recorder's real property index website outside of the office,
4. index the RCM document in the same manner as the original document being modified,
5. index the name of the requesting party,
6. keep a log of all the RCM documents identified, reviewed, and recorded or rejected,
7. provide a status report on its progress to the County Recorders' Association of California for submittal to the State by January 1, 2023, and January 1, 2025, and
8. retain each nonredacted record for future reference and public request needs.

IMPLEMENTATION PLAN:

As required by law, effective July 1, 2022, the Monterey County Recorder's Office (The Office) will process Restrictive Covenant Modification (RCM) documents in two separate manners:

First manner of processing:

1. The Office will continue to accept RCM documents over the counter or through the mail for processing. The following requirements and steps will be followed:
 - a. A Restrictive Covenant Modification form must be completed and attached as the first page of the RCM document by the requestor (The form is available on the county recorder's website, www.co.monterey.ca.us/recorder, or it can be requested from the county recorder's office) and
 - b. The RCM document must have the unlawful restrictive language redacted (blacked-out), so it is not readable or visible.
 - c. Upon receipt and review to ensure the above requirements have been met, the county recorder will forward the RCM document and a copy of the original to the county counsel for review and determination.
 - d. The county counsel must complete the bottom portion of the RCM form with their determination. The RCM document must be returned to the county recorder for recordation or rejection within the required 90-day period,
 - e. The county recorder will keep an electronic log of all RCM documents submitted. The Office's log will contain the following information:
 1. Date received
 2. Name of person and/or agency requesting RCM document review
 3. Original document number
 4. Grantor and grantee names
 5. Date forwarded to County Counsel

6. Date received by County Counsel
 7. Date received back from County Counsel
 8. County Counsel's determination
 9. If determined unlawful, the RCM document will be recorded, the new document number logged, and the date returned to the requesting party entered.
 10. If determined non-restrictive, the RCM document will not be recorded and the date the document is returned to the requesting party will be entered.
- f. This process may take as long as 90 days.
 - g. There will not be a fee to record an RCM document. If a copy is requested the \$2 per page copy fee and the \$2 certification fee per document will apply.
 - h. The RCM document will be indexed as a Restrictive Covenant Modification document in the same manner as the original document being modified, containing a recording reference to the original document. The executing requesting party's name will also be indexed with the title "executing requesting party".
 - i. The RCM document will be searchable and viewable on the Monterey County Recorder's Public Access computers in the office or on the Monterey County Recorder's Real Property website index outside of the office. Please note that document images are only viewable in the office. Document images are not viewable to on the county recorder's external website.
 - j. The nonredacted document will be retained for future reference and public request needs.

Second manner of processing:

2. Simultaneously, but separate from RCM documents that will be received in person or through the mail, the law requires the county recorder to identify and process real property documents containing unlawful restrictive language held within its recorded records.

The Office's real property documents are housed in two separate systems. Years 1978 – present date are housed in Tyler Technologies, Inc.'s Eagle Recorder system. This system contains 44 years of recorded records, housing approximately 3,999,289 documents. Years 1977 – 1850 are housed in BMI's DigitalReel system. This system contains 127 years of recorded records, housing approximately 6,975,593 images.

The Office will be starting the process of identifying unlawful restrictive language within our recorded records in BMI's DigitalReel system, years 1977 – 1850.

The identification of unlawful restrictive language in recorded real property documents will be performed by BMI's Optical Character Recognition (OCR) system.

The Office is currently reviewing BMI's initial proposal which consists of starting the OCR process on type written deeds for years 1904 – 1977. BMI's OCR system is not yet ready to identify unlawful restrictive words in handwritten documents.

Once OCR is completed by BMI, the identified documents will be sent to the county recorder's office electronically. The county recorder's office will start the process of reviewing the identified documents and forwarding them to the county counsel for their review and determination. Upon determination, the county counsel will return the RCM documents to the county recorder for recordation or rejection within the required 90-day period.

Upon near completion of the first subset of recorded records the county recorder will decide which recorded real property documents will follow next. Upon completion of review and identification of all recorded documents housed within BMI's DigitalReel's system the county recorder will start with the review and identification of all documents housed in Tyler Technologies' Eagle recording system, years 1978 – present date.

We anticipate this project will take four to five years for completion. We currently do not have an estimated timeline for how long the OCR process will take. In addition to working with our software vendors, we will be working in conjunction with our County Counsel's office to ensure they receive a volume of documents that they will be able to review and render determination on within the required 90-day period. Once we are aware of what will be a workable process time for the county counsel and the county recorder, we will be able to estimate timelines and completion dates and posts accordingly.

This implementation plan will be updated as more specific information is received.

Please note:

Government Code section 12956.2(h)

If a person causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the person who caused the modified recordation as provided in subdivision (a).

Government Code section 12956.3(g)

The failure of a county recorder to identify or redact illegal restrictive covenants, as require by this section, or the county recorder's identification or redaction of any restrictive covenants that are later determined not to be illegal, shall not result in any liability against the county recorder or the county.

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