

IN THE SENATE

SENATE BILL NO. 1240

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO RESTRICTIVE COVENANTS; AMENDING CHAPTER 6, TITLE 55, IDAHO CODE,  
2 BY THE ADDITION OF A NEW SECTION 55-616, IDAHO CODE, TO PROVIDE FOR THE  
3 PROHIBITION AND REMOVAL OF RESTRICTIVE COVENANTS FOR REAL PROPERTY;  
4 AMENDING CHAPTER 8, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SEC-  
5 TION 55-820, IDAHO CODE, TO PROVIDE FOR THE PROHIBITION AND REMOVAL OF  
6 RESTRICTIVE COVENANTS FOR REAL PROPERTY; AND DECLARING AN EMERGENCY AND  
7 PROVIDING AN EFFECTIVE DATE.  
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Chapter 6, Title 55, Idaho Code, be, and the same is  
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
12 ignated as Section 55-616, Idaho Code, and to read as follows:

13 55-616. PROHIBITION AND REMOVAL OF RESTRICTIVE COVENANTS. (1) Every  
14 provision in a written instrument relating to real property that purports to  
15 forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof  
16 to individuals because of race, color, ethnicity, or national origin and ev-  
17 ery condition, restriction, or prohibition, including a right of entry or  
18 possibility of reverter, that directly or indirectly limits the use or oc-  
19 cupancy of real property on the basis of race, color, ethnicity, or national  
20 origin is void.

21 (2) It shall be unlawful to insert in a written instrument relating to  
22 real property a provision that is void under this section or to honor or at-  
23 tempt to honor such a provision in the chain of title.

24 (3) The owner or tenant of property subject to a written instrument  
25 that contains a provision that is void pursuant to subsection (1) of this  
26 section may record a restrictive covenant modification document with the  
27 county clerk in the county in which the property is located. Such modifica-  
28 tion document shall be a standard form developed and designed by the county  
29 clerk. Each county clerk shall make available in the county clerk's office  
30 instructions on how to record a restrictive covenant modification document  
31 and shall provide such instructions on the county website, if applicable.

32 (4) The modification document shall contain a recording reference to  
33 the original written instrument and a legal description of the property, and  
34 the owner or tenant who causes to be recorded a modification document shall  
35 clearly state the person's name on the modification document and shall ex-  
36 ecute the modification document prior to recordation. Except for a modifi-  
37 cation regarding a provision that is void pursuant to subsection (1) of this  
38 section, no other modifications shall be allowed on a restrictive covenant  
39 modification form.

40 (5) The modification document must state, in part: "The referenced  
41 original written instrument contains discriminatory provisions that are  
42 void and unenforceable under Section 55-616, Idaho Code, and federal law.

1 This document strikes from the referenced original instrument all provi-  
2 sions based on race, color, ethnicity, or national origin that are void and  
3 unenforceable under law."

4 (6) The effective date of the modification document shall be effective  
5 as of the date of the original document and shall supersede the discrimina-  
6 tory language in the original written instrument.

7 (7) If the owner or tenant causes to be recorded a modification document  
8 that contains modifications not authorized by this section, the county clerk  
9 shall not incur liability for recording the document. Any liability that may  
10 result is the sole responsibility of an owner or tenant who willfully causes  
11 the recordation with modifications not authorized by this section.

12 (8) No filing or recording fees or otherwise authorized surcharges  
13 shall be required for the filing of a modification document pursuant to this  
14 section.

15 (9) Nothing in this section shall affect the provisions of section  
16 67-5909(10), Idaho Code.

17 SECTION 2. That Chapter 8, Title 55, Idaho Code, be, and the same is  
18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
19 ignated as Section 55-820, Idaho Code, and to read as follows:

20 55-820. PROHIBITION AND REMOVAL OF RESTRICTIVE COVENANTS. No deed  
21 recorded on or after July 1, 2022, shall contain a reference to a restrictive  
22 covenant prohibited by section 55-616(1), Idaho Code. A county clerk may  
23 refuse to accept any deed submitted for recordation that references any such  
24 restrictive covenant. The person who prepares or submits a deed for recor-  
25 dation has the responsibility for ensuring that such a restrictive covenant  
26 is not referenced in the deed prior to such deed being submitted for recorda-  
27 tion. Any deed that is recorded in the land records on or after July 1, 2022,  
28 that mistakenly contains such a restrictive covenant shall nevertheless  
29 constitute a valid transfer of real property but without any effect given to  
30 the prohibited language.

31 SECTION 3. An emergency existing therefor, which emergency is hereby  
32 declared to exist, this act shall be in full force and effect on and after  
33 July 1, 2022.