



DEPARTMENT OF JUSTICE
ATTORNEY GENERAL'S OFFICE

MEMORANDUM

DATE: February 8, 2018

TO: Honorable Alissa Keny-Guyer, Chair
House Human Services and Housing Committee

FROM: Kate Denison, Legislative Policy Analyst

SUBJECT: HB 4134 – Removing Discriminatory Provisions from Property Records

This testimony is presented in support of HB 4134.

BACKGROUND

Because of their age, some older legal documents describing Oregon properties contain language no longer enforceable under existing law. This can include “racial covenants,” statements which attempt to limit the habitation of a given property to individuals only of Caucasian descent.

Racial covenants were an alternative to racially restrictive zoning ordinances (residential segregation based on race) that in 1917 the U.S. Supreme Court ruling of *Buchanan v. Warley* invalidated on constitutional grounds. They were used until the U.S. Supreme Court’s 1948 ruling in *Shelley v. Kraemer*, which found that the Equal Protection Clause prohibits racially-restrictive housing covenants, and that such covenants are unenforceable in court. Although restrictive covenants were no longer legally enforceable, they remained a tool used by some to maintain segregated neighborhoods. Many of these covenants still exist in the home titles of Oregonians.

Oregon legislators have responded by enacting laws declaring racially and otherwise discriminatory covenants void and unenforceable under law, but the current process in ORS 93.272 for fully *removing* the offensive language from all legal documents can be expensive and cumbersome for the average homeowner to navigate. Indeed, much of this language still exists in our property records because homeowners are either unaware of the current process or cannot spare the expense of hiring a lawyer to help them remove the offensive language.

CONCEPT

HB 4134 attempts to simplify the process of removing this language from property records by creating a new judicial process for removing discriminatory language from conveyancing instruments modeled after the current language in ORS 93.272. Specifically, the measure allows homeowners to notify any interested parties, or “owners of record,” of the action via certified mail, rather than having to provide expensive personal service. To ensure that the proper people

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are still notified, homeowners wishing to remove the language are required to submit a sworn affidavit ensuring that they made a good faith effort to notify all interested parties.

If within 20 days there is no request for hearing to oppose removal of the language, the court will enter a judgment removing the language from the title to their property. If a hearing is requested, the court will have 20 days to schedule the hearing, and may only consider the sole issue of whether the provision in question violates Oregon's prohibition on racial covenants.

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