

SENATE BILL 335

N1, L3

3lr1167
CF HB 182

By: **Senator King**

Introduced and read first time: January 27, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 2023

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Unlawfully Restrictive Covenants – Modification by Counties or**
3 **Municipalities**

4 FOR the purpose of authorizing a county or municipality to execute and record a restrictive
5 covenant modification to an unlawfully restrictive covenant for a property within the
6 boundaries of the county or municipality subject to a certain notice requirement;
7 providing that persons with an ownership interest in property that is subject to an
8 unlawfully restrictive covenant may decline action by a county or municipality to
9 execute and record a restrictive covenant modification; and generally relating to
10 unlawfully restrictive covenants.

11 BY repealing and reenacting, with amendments,
12 Article – Real Property
13 Section 3–112
14 Annotated Code of Maryland
15 (2015 Replacement Volume and 2022 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Real Property**

19 3–112.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) In this section, “unlawfully restrictive covenant” means any recorded covenant
2 or restriction that restricts ownership based on race, religious belief, or national origin.

3 (b) This section does not apply to an unlawfully restrictive covenant that is part
4 of a declaration, uniform general scheme, or plan of development of a homeowners
5 association, as defined in § 11B–101 of this article.

6 (c) (1) A person may execute and record a restrictive covenant modification to
7 an unlawfully restrictive covenant in accordance with this section if the person:

8 [(1)] (I) Holds an ownership interest in property that the person believes
9 is subject to the unlawfully restrictive covenant; or

10 [(2)] (II) Is a nonprofit entity that is required to enforce within a defined
11 residential neighborhood:

12 [(i)] 1. Covenants that limit architectural alterations,
13 renovations, landscaping elements, or other modifications to residential lots in the
14 neighborhood; and

15 [(ii)] 2. The unlawfully restrictive covenant.

16 (2) (I) **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A**
17 **COUNTY OR MUNICIPALITY MAY EXECUTE AND RECORD A RESTRICTIVE COVENANT**
18 **MODIFICATION TO AN UNLAWFULLY RESTRICTIVE COVENANT IN ACCORDANCE WITH**
19 **THIS SECTION IF:**

20 1. **THE PROPERTY THAT THE COUNTY OR MUNICIPALITY**
21 **BELIEVES IS SUBJECT TO AN UNLAWFULLY RESTRICTIVE COVENANT IS WITHIN THE**
22 **BOUNDARIES OF THE COUNTY OR MUNICIPALITY; AND**

23 2. **AT LEAST 30 DAYS BEFORE EXECUTING AND**
24 **RECORDING THE RESTRICTIVE COVENANT MODIFICATION, THE COUNTY OR**
25 **MUNICIPALITY PROVIDES WRITTEN NOTICE IN ACCORDANCE WITH SUBPARAGRAPH**
26 **(III) OF THIS PARAGRAPH OF THE COUNTY’S OR MUNICIPALITY’S INTENT TO**
27 **EXECUTE AND RECORD THE RESTRICTIVE COVENANT MODIFICATION TO ALL**
28 **PERSONS WITH AN OWNERSHIP INTEREST IN THE PROPERTY.**

29 (II) **A PERSON WITH AN OWNERSHIP INTEREST IN THE**
30 **PROPERTY MAY DECLINE TO HAVE THE RESTRICTIVE COVENANT MODIFICATION**
31 **EXECUTED AND RECORDED BY THE COUNTY OR MUNICIPALITY BY NOTIFYING THE**
32 **COUNTY OR MUNICIPALITY WITHIN 30 DAYS AFTER THE DATE OF NOTICE.**

33 (III) **NOTICE UNDER SUBPARAGRAPH (I)2 OF THIS PARAGRAPH**
34 **SHALL:**

1 **1. BE SENT BY FIRST-CLASS MAIL; AND**

2 **2. PROVIDE INFORMATION ON HOW A PERSON WITH AN**
3 **OWNERSHIP INTEREST IN THE PROPERTY MAY DECLINE TO HAVE THE RESTRICTIVE**
4 **COVENANT MODIFICATION EXECUTED AND RECORDED BY THE COUNTY OR**
5 **MUNICIPALITY.**

6 (d) (1) A restrictive covenant modification shall:

7 (i) Consist of a complete copy of the original instrument containing
8 the unlawfully restrictive covenant with the language of the unlawfully restrictive covenant
9 stricken; and

10 (ii) Be accompanied by a complete restrictive covenant modification
11 intake sheet, on the form that the Administrative Office of the Courts provides.

12 (2) The restrictive covenant modification intake sheet described in
13 paragraph (1)(ii) of this subsection shall:

14 (i) 1. Be signed by the record owner of the property; or

15 2. In the case of a nonprofit entity, be accompanied by a
16 statement that a majority of the governing body of the nonprofit entity has agreed to the
17 restrictive covenant modification;

18 (ii) Reference the book and page number or other place where the
19 original instrument containing the unlawfully restrictive covenant is recorded; and

20 (iii) Include any other information that the Administrative Office of
21 the Courts considers necessary in carrying out the requirements of this section.

22 (e) (1) On receipt of a restrictive covenant modification, the clerk of the circuit
23 court shall submit the restrictive covenant modification together with a copy of the original
24 instrument referenced in the restrictive covenant modification to the county attorney.

25 (2) The county attorney shall:

26 (i) Review the restrictive covenant modification and the copy of the
27 original instrument to determine:

28 1. Whether the original instrument contains an unlawfully
29 restrictive covenant; and

30 2. Whether the restrictive covenant modification correctly
31 strikes through only the language of the unlawfully restrictive covenant; and

1 (ii) On completion of the review, return the restrictive covenant
2 modification and copy of the original to the clerk of the circuit court together with the
3 county attorney's determination.

4 (3) The clerk of the circuit court may not record a restrictive covenant
5 modification unless the county attorney determines that the modification is appropriate in
6 accordance with paragraph (2) of this subsection.

7 (f) A restrictive covenant modification shall be indexed in the same manner as
8 the original instrument.

9 (g) (1) Subject to all covenants, conditions, and restrictions that were recorded
10 after the recording of the original instrument, the restrictions contained in the restrictive
11 covenant modification, once recorded, are the only restrictions based on the original
12 instrument that apply to the property.

13 (2) The effective date of the terms and conditions contained in the
14 restrictive covenant modification shall be the same as the effective date of the original
15 instrument.

16 (h) If a person causes to be recorded a restrictive covenant modification that
17 contains modifications not authorized under this section:

18 (1) The clerk of the circuit court may not incur any liability for recording
19 the restrictive covenant modification;

20 (2) The county may not incur any liability as a result of a determination
21 rendered by the county attorney under subsection (e) of this section; and

22 (3) Any liability that results from the unauthorized recordation shall be
23 the sole responsibility of the person that executed the restrictive covenant modification.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2023.