



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-2398/1  
KRP:skw

## 2023 SENATE BILL 439

September 20, 2023 - Introduced by Senators BALLWEG, L. JOHNSON, CARPENTER, JACQUE, LARSON, ROYS, SPREITZER and TAYLOR, cosponsored by Representatives NOVAK, HAYWOOD, ALLEN, ARMSTRONG, BINSFELD, C. ANDERSON, CABRERA, CONLEY, DITTRICH, DONOVAN, EMERSON, GOEBEN, GOYKE, GUSTAFSON, JACOBSON, JOERS, KRUG, MURPHY, MYERS, O'CONNOR, OHNSTAD, ORTIZ-VELEZ, PALMERI, SNODGRASS, SPIROS, STUBBS, SUBECK, VINING, MURSAU and DRAKE. Referred to Committee on Government Operations.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT** *to amend* 59.43 (1c) (intro.) and 706.05 (1); and *to create* 59.43 (1k),  
2           59.43 (9) (d), 710.25 and 895.12 of the statutes; **relating to:** declaring  
3           discriminatory restrictions in instruments that affect real property void and  
4           unenforceable and allowing an owner of real property to discharge and release  
5           such a discriminatory restriction.

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### ***Analysis by the Legislative Reference Bureau***

This bill provides that a restriction, covenant, or condition that prohibits or restricts the ownership, transfer, encumbrance, rental, occupancy, or use of real property on the basis of being a member of a protected class, as defined in the open housing law, (discriminatory restriction) and that is contained in a deed or other instrument affecting real property is void and unenforceable. Under current law, it is a violation of the open housing law to discriminate in housing, with limited exceptions, on the basis of sex; race; color; sexual orientation; disability; religion; national origin; marital status; family status; status as a victim of domestic abuse, sexual assault, or stalking; lawful source of income; age; or ancestry.

The bill also provides that no person may file or record a deed or other instrument that contains a discriminatory restriction with a register of deeds. If a person presents a deed or other instrument that contains a discriminatory restriction to a register of deeds for filing or recording, the register of deeds may reject the deed or instrument, or, if the register of deeds chooses to file or record the deed or instrument, the register of deeds may obscure the discriminatory restriction before filing or recording the deed or instrument.

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The bill provides that a person that drafts a deed or other instrument affecting real property may not include a discriminatory restriction in the deed or instrument. Under the bill, if a person violates that prohibition, a grantee or other beneficiary of the deed or instrument may bring a civil action for injunctive relief against the person, and, if the grantee or beneficiary prevails, the grantee or beneficiary is entitled to collect the costs of the action, including reasonable attorney fees.

Under the bill, an owner of real property that is affected by a deed or other instrument that contains a discriminatory restriction may record with the register of deeds a certification to discharge and release the discriminatory restriction from the owner's real property. The bill creates a statutory certification form an owner may use for that purpose and requires the Department of Administration to provide copies of the form to the public by posting the form on DOA's website.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 59.43 (1c) (intro.) of the statutes is amended to read:

2           59.43 **(1c)** REGISTER OF DEEDS; DUTIES. (intro.) Subject to ~~sub.~~ subs. (1g) to (1m),  
3 the register of deeds shall:

4           **SECTION 2.** 59.43 (1k) of the statutes is created to read:

5           59.43 **(1k)** AUTHORITY TO REJECT INSTRUMENTS WITH DISCRIMINATORY  
6 RESTRICTIONS. If a register of deeds is presented with an instrument for recording or  
7 filing that contains a discriminatory restriction, as defined in s. 710.25 (1), the  
8 register of deeds may return the instrument unrecorded or unfiled or may, prior to  
9 recording or filing the instrument, obscure the discriminatory restriction such that  
10 the discriminatory restriction is not discernible on the instrument.

11           **SECTION 3.** 59.43 (9) (d) of the statutes is created to read:

12           59.43 **(9)** (d) With regard to certifications to discharge and release  
13 discriminatory restrictions under s. 710.25 (5) (a) related to previously filed or  
14 recorded documents, the register of deeds shall, if possible, include on the previously

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1 filed or recorded documents a notation of the document number of the certification,  
2 the date when the certification is filed or recorded, and, if the certification is assigned  
3 a volume and page number, the volume and page where the certification is filed or  
4 recorded.

5 **SECTION 4.** 706.05 (1) of the statutes is amended to read:

6 706.05 (1) Subject to s. 59.43 (1g) to (1m) and (2m), every conveyance, and every  
7 other instrument ~~which~~ that affects title to land in this state, shall be entitled to  
8 record in the office of the register of deeds of each county in which land affected  
9 thereby may lie.

10 **SECTION 5.** 710.25 of the statutes is created to read:

11 **710.25 Discriminatory restrictions prohibited.** (1) In this section,  
12 “discriminatory restriction” means a restriction, covenant, or condition that  
13 prohibits or restricts the ownership, transfer, encumbrance, rental, occupancy, or use  
14 of real property on the basis of being a member of a protected class, as defined in s.  
15 106.50 (1m) (nm). “Discriminatory restriction” does not include a restriction,  
16 covenant, or condition that prohibits or restricts the ownership, transfer,  
17 encumbrance, rental, occupancy, or use of real property on a basis that is allowed  
18 under s. 106.50 (5m) (a) to (f) or 42 USC 3607.

19 (2) A discriminatory restriction contained in a deed or other instrument  
20 affecting real property is void and unenforceable.

21 (3) No person may file or record with, or present for filing or recording to, a  
22 register of deeds a deed or other instrument affecting real property that contains a  
23 discriminatory restriction.

24 (4) A person that drafts a deed or other instrument affecting real property may  
25 not include a discriminatory restriction in the deed or instrument.

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1           **(5)** (a) If real property is affected by a deed or other instrument that contains  
2 a discriminatory restriction, an owner of the real property may discharge and release  
3 the discriminatory restriction from the owner's real property by recording a  
4 certification to discharge and release the discriminatory restriction. Subject to s.  
5 59.43 (2m), the certification is entitled to record in the office of the register of deeds  
6 in the county in which the owner's real property is located if the certification includes  
7 all of the following:

8           1. The signature of the owner.

9           2. An acknowledgement or authentication in accordance with s. 706.06 or ch.  
10 140.

11           3. The full legal description, as defined in s. 706.01 (7r), of the real property to  
12 which the certification relates.

13           4. The title of the deed or instrument that contains the discriminatory  
14 restriction, the document number of the deed or instrument, and, if given on the deed  
15 or instrument, the volume and page where the deed or instrument is filed or  
16 recorded.

17           (b) An owner of real property may record a single certification under par. (a)  
18 to discharge and release discriminatory restrictions from multiple deeds and  
19 instruments that affect the real property. The certification shall include the  
20 information specified under par. (a) 4. for every deed or instrument to which the  
21 certification applies.

22           (c) An owner of real property may make the certification under par. (a) in  
23 substantially the following form:

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1 DISCHARGE AND RELEASE  
2 OF DISCRIMINATORY RESTRICTION  
3 AFFECTING REAL PROPERTY

4 Pursuant to section 710.25 of the Wisconsin statutes, a restriction, covenant,  
5 or condition that prohibits or restricts the ownership, transfer, encumbrance, rental,  
6 occupancy, or use of real property in this state on the basis of membership in a  
7 protected class, as defined in the Wisconsin statutes, contained in a deed or other  
8 instrument affecting real property is void and unenforceable. Pursuant to section  
9 710.25 of the Wisconsin statutes, any owner of real property may record this form to  
10 discharge and release such a discriminatory restriction from the owner's real  
11 property.

12 DISCHARGE AND RELEASE BY OWNER

13 I, .... (name of owner), certify all of the following:

14 That I own the following described real property located in .... County,  
15 Wisconsin:

16 .... (property description)

17 That the real property is affected by an instrument titled .... and recorded on  
18 .... (date), in the Office of the Register of Deeds for .... County, Wisconsin, in volume  
19 ....., at page ....., as document number ....

20 [Repeat for each instrument to which the form applies.]

21 That the instrument(s) (contains) (contain) one or more discriminatory  
22 restrictions that are void and unenforceable under section 710.25 of the Wisconsin  
23 statutes and the Wisconsin and U.S. Constitutions.

24 That, pursuant to section 710.25 of the Wisconsin statutes, the discriminatory  
25 restrictions are hereby discharged and released from the real property, and the

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1 remainder of the instrument(s) (continues) (continue) in full force and effect with  
2 respect to the real property and shall be construed as if the discriminatory  
3 restrictions are not contained therein.

**OWNER'S CERTIFICATION**

5 The undersigned certifies that the information stated in this instrument is true  
6 and correct to the best of my knowledge, information, and belief. The undersigned  
7 makes this instrument for the purpose of discharging and releasing one or more  
8 discriminatory restrictions affecting my real property that are void and  
9 unenforceable.

10 Signed ....

11 Dated ....

**ACKNOWLEDGEMENT**

13 State of ....

14 County of ....

15 Signed and affirmed before me on .... (date), by .... (name of owner).

16 Signature of notary ....

17 (Seal, if any, of notary)

18 Printed name ....

19 My commission expires: ....

20 This instrument was drafted by: ....

21 (d) The department of administration shall prepare and provide copies of the  
22 form under par. (c) to the public by posting the form on the department's website.

23 **SECTION 6.** 895.12 of the statutes is created to read:

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1           **895.12 Discriminatory restrictions in real property instruments;**  
2           **injunctive relief. (1)** In this section, “discriminatory restriction” has the meaning  
3           given in s. 710.25 (1).

4           **(2)** If a person that drafts a deed or other instrument affecting real property  
5           includes a discriminatory restriction in the deed or instrument in violation of s.  
6           710.25 (4), a grantee or other beneficiary of the deed or instrument may, in addition  
7           to any other remedies available under law, bring a civil action for injunctive relief  
8           against the person.

9           **(3)** If a plaintiff prevails in an action under sub. (2), the court shall award to  
10          the plaintiff the costs of the action, including, notwithstanding s. 814.04 (1),  
11          reasonable attorney fees incurred in connection with the action.

12           **SECTION 7. Nonstatutory provisions.**

13          (1) LEGISLATIVE INTENT STATEMENT. Covenants in deeds and other instruments  
14          that are discriminatory based on race and other protected classes are unenforceable  
15          under the 1968 federal Fair Housing Act, 42 USC 3601 to 3631, and Wisconsin’s open  
16          housing law, s. 106.50, and are against the governmental purpose of allowing an  
17          owner of real property to discharge and release a discriminatory restriction from real  
18          property that is affected by a deed or other instrument that contains a discriminatory  
19          restriction.

20           **SECTION 8. Initial applicability.**

21          (1) DISCRIMINATORY RESTRICTIONS VOID; RETROACTIVE APPLICATION. The treatment  
22          of s. 710.25 (2) first applies retroactively to a deed or other instrument that contains  
23          a discriminatory restriction, as defined in s. 710.25 (1), and that is created before, and  
24          applies to a deed or other instrument that contains a discriminatory restriction and  
25          that is created on or after, the effective date of this subsection.

