

CHAPTER 149

PROPERTY

SENATE BILL 24-145

BY SENATOR(S) Gardner, Gonzales, Kirkmeyer, Liston, Michaelson Jenet, Priola, Roberts;
also REPRESENTATIVE(S) Snyder and Rutinel, Bacon, Bird, Boesenecker, Clifford, Jodeh, Kipp, Lindsay, Lindstedt, Marshall,
Pugliese, Soper, Valdez, Weissman.

AN ACT

CONCERNING THE ENACTMENT OF THE "UNIFORM UNLAWFUL RESTRICTIONS IN LAND RECORDS ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 36.5 to title 38 as follows:

ARTICLE 36.5
Uniform Unlawful Restrictions in Land Records Act

38-36.5-101. Title. THIS ARTICLE 36.5 MAY BE CITED AS THE "UNIFORM UNLAWFUL RESTRICTIONS IN LAND RECORDS ACT".

38-36.5-102. Definitions. AS USED IN THIS ARTICLE 36.5:

(1) "AMENDMENT" MEANS A DOCUMENT THAT REMOVES AN UNLAWFUL RESTRICTION.

(2) "ASSOCIATION OF OWNERS" HAS THE SAME MEANING AS "ASSOCIATION" AS SET FORTH IN SECTION 38-33.3-103 (3).

(3) "COMMON INTEREST COMMUNITY" HAS THE SAME MEANING AS SET FORTH IN SECTION 38-33.3-103 (8).

(4) "DOCUMENT" MEANS A RECORD RECORDED OR ELIGIBLE TO BE RECORDED IN LAND RECORDS.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(5) "GOVERNING INSTRUMENT" HAS THE SAME MEANING AS "DECLARATION", AS DEFINED IN SECTION 38-33.3-103 (13).

(6) "GRANTEE INDEX" MEANS THE GRANTEE INDEX MAINTAINED IN A RECORDER'S OFFICE PURSUANT TO SECTION 30-10-408.

(7) "GRANTOR INDEX" MEANS THE GRANTOR INDEX MAINTAINED IN A RECORDER'S OFFICE PURSUANT TO SECTION 30-10-408.

(8) "LAND RECORDS" MEANS THE REAL ESTATE RECORDS IN THE OFFICE OF THE RECORDER PURSUANT TO SECTION 30-10-406 (1).

(9) "OWNER" MEANS A PERSON THAT HAS A FEE INTEREST IN REAL PROPERTY.

(10) "PERSON" MEANS AN INDIVIDUAL, BUSINESS TRUST, ESTATE, TRUST, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION OR OTHER BUSINESS OR NONPROFIT ENTITY, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER LEGAL ENTITY.

(11) "RECORD", USED AS A NOUN, MEANS INFORMATION:

(a) INSCRIBED ON A TANGIBLE MEDIUM; OR

(b) STORED IN AN ELECTRONIC OR OTHER MEDIUM AND RETRIEVABLE IN PERCEIVABLE FORM.

(12) "RECORDER" MEANS A COUNTY CLERK AND RECORDER.

(13) "REMOVE" MEANS ELIMINATE ANY APPARENT OR PURPORTEDLY CONTINUING EFFECT ON TITLE TO REAL PROPERTY.

(14) "UNLAWFUL RESTRICTION" MEANS A PROHIBITION, RESTRICTION, COVENANT, OR CONDITION IN A DOCUMENT THAT PURPORTS TO INTERFERE WITH OR RESTRICT THE TRANSFER, USE, OR OCCUPANCY OF REAL PROPERTY:

(a) ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, FAMILIAL STATUS, DISABILITY, OR OTHER PERSONAL CHARACTERISTICS; AND

(b) IN VIOLATION OF OTHER LAW OF THIS STATE, INCLUDING SECTION 24-34-502, REGARDING UNFAIR OR DISCRIMINATORY HOUSING PRACTICES, OR FEDERAL LAW.

38-36.5-103. Amendment by owner. AN OWNER OF REAL PROPERTY SUBJECT TO AN UNLAWFUL RESTRICTION MAY SUBMIT TO THE RECORDER FOR RECORDATION IN THE LAND RECORDS AN AMENDMENT TO REMOVE THE UNLAWFUL RESTRICTION, BUT ONLY AS TO THE OWNER'S PROPERTY.

38-36.5-104. Amendment by association of owners. (1) THE GOVERNING BODY OF AN ASSOCIATION OF OWNERS IDENTIFIED IN A GOVERNING INSTRUMENT MAY, WITHOUT A VOTE OF THE MEMBERS OF THE ASSOCIATION, AMEND THE GOVERNING INSTRUMENT TO REMOVE AN UNLAWFUL RESTRICTION.

(2) A MEMBER OF AN ASSOCIATION OF OWNERS MAY REQUEST, IN A RECORD THAT SUFFICIENTLY IDENTIFIES AN UNLAWFUL RESTRICTION IN THE GOVERNING INSTRUMENT, THAT THE GOVERNING BODY EXERCISE ITS AUTHORITY UNDER SUBSECTION (1) OF THIS SECTION. NO LATER THAN NINETY DAYS AFTER THE GOVERNING BODY RECEIVES THE REQUEST, THE GOVERNING BODY SHALL DETERMINE REASONABLY AND IN GOOD FAITH WHETHER THE GOVERNING INSTRUMENT INCLUDES THE UNLAWFUL RESTRICTION. IF THE GOVERNING BODY DETERMINES THE GOVERNING INSTRUMENT INCLUDES THE UNLAWFUL RESTRICTION, THE GOVERNING BODY, NO LATER THAN NINETY DAYS AFTER THE DETERMINATION, SHALL AMEND THE GOVERNING INSTRUMENT TO REMOVE THE UNLAWFUL RESTRICTION.

(3) AN OFFICER OF THE ASSOCIATION OF OWNERS DESIGNATED BY THE ASSOCIATION OF OWNERS OR, IN THE ABSENCE OF DESIGNATION, THE PRESIDENT OF THE ASSOCIATION OF OWNERS, ACTING ON BEHALF OF THE ASSOCIATION OF OWNERS, SHALL PREPARE, EXECUTE, RECORD, AND CERTIFY AN AMENDMENT ADOPTED PURSUANT TO THIS SECTION.

(4) AN AMENDMENT UNDER THIS SECTION IS EFFECTIVE NOTWITHSTANDING ANY PROVISION OF THE GOVERNING INSTRUMENT OR OTHER LAW OF THIS STATE THAT REQUIRES A VOTE OF THE MEMBERS OF THE ASSOCIATION OF OWNERS TO AMEND THE GOVERNING INSTRUMENT.

38-36.5-105. Requirements and limitations of amendment. (1) AN AMENDMENT UNDER THIS ARTICLE 36.5 MUST IDENTIFY, FOR AN AMENDMENT BY AN OWNER PURSUANT TO SECTION 38-36.5-103, THE OWNER, AND FOR AN AMENDMENT BY AN ASSOCIATION OF OWNERS PURSUANT TO SECTION 38-36.5-104, THE NAME OF THE COMMON INTEREST COMMUNITY AND THE ASSOCIATION. ALL AMENDMENTS MUST INCLUDE A DESCRIPTION OF THE REAL PROPERTY AFFECTED AND A REFERENCE TO THE DOCUMENT RECORDED IN THE LAND RECORDS CONTAINING THE UNLAWFUL RESTRICTION. ALL AMENDMENTS MUST INCLUDE A CONSPICUOUS STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM: "THIS AMENDMENT REMOVES FROM THIS DEED OR OTHER DOCUMENT AFFECTING TITLE TO REAL PROPERTY AN UNLAWFUL RESTRICTION AS DEFINED UNDER THE UNIFORM UNLAWFUL RESTRICTIONS IN LAND RECORDS ACT. THIS AMENDMENT DOES NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF A RESTRICTION THAT IS NOT AN UNLAWFUL RESTRICTION."

(2) (a) THE AMENDMENT MUST BE EXECUTED AND ACKNOWLEDGED IN THE MANNER REQUIRED FOR RECORDATION OF A DOCUMENT IN THE LAND RECORDS. THE AMENDMENT MUST BE RECORDED IN THE LAND RECORDS OF EACH COUNTY IN WHICH THE DOCUMENT CONTAINING THE UNLAWFUL RESTRICTION IS RECORDED.

(b) FOR AN AMENDMENT BY AN OWNER PURSUANT TO SECTION 38-36.5-103, THE RECORDER SHALL INDEX THE AMENDMENT IN THE GRANTOR AND GRANTEE INDEX IN THE NAME OF THE RECORD OWNER. FOR AN AMENDMENT BY AN ASSOCIATION OF OWNERS PURSUANT TO SECTION 38-36.5-104, THE RECORDER SHALL INDEX THE AMENDMENT IN THE GRANTEE INDEX IN THE NAME OF THE COMMON INTEREST COMMUNITY CREATED PURSUANT TO THE GOVERNING INSTRUMENT AND IN THE NAME OF THE ASSOCIATION OF OWNERS AND IN THE GRANTOR INDEX IN THE NAME OF THE RECORD OWNER.

(3) THE AMENDMENT DOES NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY RESTRICTION THAT IS NOT AN UNLAWFUL RESTRICTION.

(4) THE AMENDMENT OR A FUTURE CONVEYANCE OF THE AFFECTED REAL PROPERTY IS NOT A REPUBLICATION OF A RESTRICTION THAT OTHERWISE WOULD EXPIRE BY PASSAGE OF TIME UNDER OTHER LAW OF THIS STATE.

38-36.5-106. Form for amendment. (1) AN OWNER MAKING AN AMENDMENT PURSUANT TO THIS ARTICLE 36.5 MUST USE A FORM SUBSTANTIALLY EQUIVALENT TO THE FOLLOWING FORM:

AMENDMENT BY OWNER TO REMOVE AN UNLAWFUL RESTRICTION

THIS AMENDMENT IS RECORDED UNDER THE STATE'S UNIFORM UNLAWFUL RESTRICTIONS IN LAND RECORDS ACT, ARTICLE 36.5 OF TITLE 38, COLORADO REVISED STATUTES (THE ACT), BY AN OWNER OF AN INTEREST IN REAL PROPERTY SUBJECT TO AN UNLAWFUL RESTRICTION AS DEFINED UNDER THE ACT.

- (1) NAME OF OWNER: _____
- (2) OWNER'S PROPERTY THAT IS SUBJECT TO THE UNLAWFUL RESTRICTION IS DESCRIBED AS FOLLOWS:
 ADDRESS: _____
 LEGAL DESCRIPTION: _____
- (3) THIS AMENDMENT AMENDS THE FOLLOWING DOCUMENT:
 TITLE OF DOCUMENT BEING AMENDED: _____
 RECORDING DATE OF DOCUMENT BEING AMENDED: _____

RECORDING INFORMATION (BOOK/PAGE OR INSTRUMENT NUMBER): _____

THIS AMENDMENT REMOVES FROM THE DOCUMENT DESCRIBED IN PARAGRAPH (3) ALL UNLAWFUL RESTRICTIONS AS DEFINED UNDER THE ACT. REMOVAL OF AN UNLAWFUL RESTRICTION THROUGH THIS AMENDMENT DOES NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF ANY OTHER RESTRICTION THAT IS NOT AN UNLAWFUL RESTRICTION AS DEFINED UNDER THE ACT AT THE TIME OF FILING THIS AMENDMENT. THIS AMENDMENT IS NOT EFFECTIVE IF THE PROPERTY IS SUBJECT TO A GOVERNING INSTRUMENT AS DEFINED UNDER THE ACT.

OWNER'S SIGNATURE: _____
DATE: _____
NOTARY ACKNOWLEDGMENT: _____

(2) AN ASSOCIATION OF OWNERS MAKING AN AMENDMENT PURSUANT TO THIS ARTICLE 36.5 MUST USE A FORM SUBSTANTIALLY EQUIVALENT TO THE FOLLOWING FORM:

AMENDMENT BY ASSOCIATION OF OWNERS TO REMOVE AN UNLAWFUL RESTRICTION

THIS AMENDMENT IS RECORDED UNDER THE STATE'S UNIFORM UNLAWFUL RESTRICTIONS IN LAND RECORDS ACT, ARTICLE 36.5 OF TITLE 38, COLORADO REVISED STATUTES (THE ACT), BY AN ASSOCIATION OF OWNERS IDENTIFIED IN A GOVERNING INSTRUMENT THAT CONTAINS AN UNLAWFUL RESTRICTION AS DEFINED UNDER THE ACT.

- (1) NAME OF OWNER: _____
- (2) NAME OF ASSOCIATION: _____

(3) PROPERTY ENCUMBERED BY A GOVERNING INSTRUMENT CONTAINING THE UNLAWFUL RESTRICTION IS DESCRIBED AS FOLLOWS:

LEGAL DESCRIPTION: _____

(4) THIS AMENDMENT AMENDS THE FOLLOWING DESCRIBED DOCUMENT:

TITLE OF DOCUMENT BEING AMENDED: _____

RECORDING DATE OF DOCUMENT BEING AMENDED: _____

RECORDING INFORMATION (BOOK/PAGE OR INSTRUMENT NUMBER): _____

THIS AMENDMENT REMOVES FROM THE DOCUMENT DESCRIBED IN PARAGRAPH (4) ALL UNLAWFUL RESTRICTIONS AS DEFINED UNDER THE ACT. REMOVAL OF AN UNLAWFUL RESTRICTION THROUGH THIS AMENDMENT DOES NOT AFFECT THE VALIDITY AND ENFORCEABILITY OF ANY OTHER RESTRICTION THAT IS NOT AN UNLAWFUL RESTRICTION AS DEFINED UNDER THE ACT AT THE TIME OF FILING THIS AMENDMENT.

ASSOCIATION'S SIGNATURE: _____

DATE: _____

NOTARY ACKNOWLEDGMENT: _____

38-36.5-107. Duty and liability of recorder. (1) THE RECORDER SHALL RECORD AN AMENDMENT SUBMITTED UNDER THIS ARTICLE 36.5, ADD THE AMENDMENT TO THE GRANTOR OR GRANTEE INDEX, AS APPROPRIATE, AND CROSS REFERENCE THE AMENDMENT TO THE DOCUMENT CONTAINING THE UNLAWFUL RESTRICTION.

(2) THE RECORDER AND THE RECORDER'S JURISDICTION ARE NOT LIABLE FOR RECORDING AN AMENDMENT UNDER THIS ARTICLE 36.5, FOR THE ABSENCE OF A RECORDED AMENDMENT UNDER THIS ARTICLE 36.5, OR FOR ANY FAILURE OR INACCURACIES IN CROSS-REFERENCING THE AMENDMENT TO THE DOCUMENT CONTAINING THE UNLAWFUL RESTRICTION.

38-36.5-108. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS UNIFORM ACT, A COURT SHALL CONSIDER THE PROMOTION OF UNIFORMITY OF THE LAW AMONG JURISDICTIONS THAT ENACT IT.

38-36.5-109. Relation to electronic signatures in global and national commerce act. THIS ARTICLE 36.5 MODIFIES, LIMITS, OR SUPERSEDES THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SEC. 7001 ET SEQ., AS AMENDED, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE 15 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN 15 U.S.C. SEC. 7003 (b).

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 1, 2024