



February 14, 2023

House Committee on Local Government  
Kansas House  
Kansas State Capitol  
300 SW 10<sup>th</sup> Street  
Topeka, Kansas 66612

**Comments Submitted Via Email to Kansas House Committee on Local Government**

**RE: HB 2376 - Prohibiting the recording of any restrictive covenant that violates the Kansas act against discrimination and authorizing the removal of such covenants from existing documents, and prohibiting city or county laws prohibiting discrimination that are more restrictive than state law.**

Dear Chairman Bergquist, and members of the House Committee on Local Government:

I am writing to provide the community association industry's support with suggested amendments to HB 2376 for your consideration. Community Associations Institute represents 74.1 million Americans living in more than 358,000 community associations (homeowners associations, condominiums, and cooperative) in the United States.

CAI fully supports the intent of this legislation; however, CAI urges you to either remove or extend the deadline requirement of 60 days for community association to amend their declaration or other governing documents that include a discriminatory restrictive covenant for the purpose of allowing the industry reasonable time to provide notice to the 2,000 community associations in the state of this new provision.

Many community associations in Kansas self-govern through a volunteer association board of directors. They do not hold regular monthly meetings, and do not have professional management to provide support to the board. CAI and its members, including management companies and attorneys, provide annual updates to communities in each respective state of new legislation impacting their associations. However, this process takes time and notice, and a 60-day deadline following the effective date of HB 2376 may not provide a reasonable period for the industry to inform the hundreds of communities this new, simplified ability to amend certain declaration covenants.

Nine other states in the country have adopted an identical concept, allowing community association boards a simplified process to amend antiquated and discriminatory restrictive covenants from their declarations or other governing documents, however no other state has enacted a strict timeline, such as the one proposed in HB 2376, for their communities to complete these amendments. APPENDIX 1.

Typically, associations have difficulty amending governing documents because most the requisite amendment process requires a vote of the majority (super majority – 67%) of the homeowners for an amendment to be adopted and the process by which a board must follow to amend government documents is an added and unnecessary expense on homeowners. HB 2376 would properly allow for a community association to complete this amendment process without the standard industry best

practice of a super-majority vote of the members of the association to amend the community declaration or other governing documents.

CAI's suggested language can be found below:

A restriction, covenant, or condition, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property on the basis of race, color, national origin, religion, sex, familial status, or prohibits maintaining a trained guide dog or assistance animal because the individual is blind, deaf or has a physical disability, is void and has no legal effect, except a limitation of use for religious purposes as permitted under the Federal Fair Housing Act or state law.

#### CORRECTIVE ACTIONS BY AMENDMENT

(a) A homeowners or property owners association, cooperative corporation, condominium association, or planned community acting through a majority vote of its full board membership, may amend the association's governing documents for the purpose of removing any restriction, covenant, or condition, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property on the basis of race, color, national origin, religion, sex, familial status or maintains a trained guide dog or assistance animal because the individual has a disability recognized under the Fair Housing Act (42 U.S.C. 3601 et seq. or [insert citation to state anti-discrimination law]).

(b) If the board of a homeowners or property owners association, condominium association, or planned community, receives a written request by a member of the association that the board exercise its amending authority under subsection (a), the board shall, within a reasonable time not to exceed 90 days, investigate any claim of an unenforceable covenant and if determined to be unlawfully discriminatory shall cause the provision to be removed, as provided under this section.

(c) Removal of a restriction, covenant, or condition pursuant to subparagraphs (a) or (b) above will not require approval of the owners, notwithstanding any provision of the governing documents to the contrary.

(d) An amendment under subsection (a) may be executed by any board officer.

#### PROPERTY DEED CHANGE

(a) If a deed or other instrument contains a provision that is prohibited as discriminatory under state or federal law, the owner, occupant, or tenant of the property that is subject to the provision or any member of the board of a homeowners or property owners association that would have a right to enforce such a provision may bring an action in the [insert court having jurisdiction] to have the provision stricken from the records of the register of deeds.

(b) An action under this section must be brought as an in rem, declaratory judgment action and the title of the action must include a description of the property. The owners of record of the



property or any part of the property described in a deed containing an unlawful discriminatory provision are necessary parties to the action.

(c) If the court finds that any provisions of the deed or instrument are prohibited under this act, it shall enter an order striking the provisions from the records of the public recording office and direct that the order striking the provisions be notated on the deed or other instrument for the property described.

(d) Any reversionary clauses or other provisions intended to penalize the violation of a discriminatory provision in a deed or other instrument that is authorized to be removed under this law shall be void and unenforceable. APPENDIX 2.

## Background

The Supreme Court held in *Shelley v. Kraemer*, 334 U.S. 1 (1948) that racially restrictive covenants in property deeds violated the Equal Protection Clause of the Fourteenth Amendment. In 1968, Congress passed the Fair Housing Act ("FHA") to prohibit private parties from setting discriminatory terms and conditions on the sale or use of property by making the practice of writing racial covenants into deeds illegal. Despite being deemed illegal by the FHA, that law did not provide for a method of removing discriminatory provisions from deeds and governing documents and thus remain as a blot on housing documents such as plats, deeds, and homeowner association bylaws. These discriminatory covenants are unenforceable and may cause unnecessary emotional distress to members of the community.

**CAI applauds the Kansas Legislature for wanting to join the nine other states, which allow for aid in the removal of discriminatory restrictive covenants from deeds, allowing governing boards to unilaterally remove these terrible remnants of a less tolerant time. More information on these enacted laws can be found [here](#). However, CAI urges the legislature to amend this bill language to allow for a reasonable and practical timeframe for communities to be made aware of this simplified process and to amend their documents.**

CAI is the only international membership organization dedicated to the community association model of homeownership. CAI members are homeowners, association board members, managing agents and business partners who work tirelessly to improve the community association model of housing. CAI members have a keen focus on homeowner and board member education, development and enforcement of best practices and ethical standards, and raising standards through credentialing and continuing education requirements for community association professionals. CAI's more than 44,000 members are organized in more than 60 chapters.

We hope the comments provided in this letter are helpful to you and your staff and will assist in developing public policy that is sensible for residents living in the Kansas' community associations. Please feel free to contact us to discuss these comments or any legislation impacting community association residents in the Kansas.

Thank you for your continued leadership and please contact me with any questions.



Respectfully yours,

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## APPENDIX 2

### **CAI's Model Legislative Language: Amendment Process to Remove Discriminatory Restrictive Covenants**

CAI supports the following model language:

A restriction, covenant, or condition, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property on the basis of race, color, national origin, religion, sex, familial status, or prohibits maintaining a trained guide dog or assistance animal because the individual is blind, deaf or has a physical disability, is void and has no legal effect, except a limitation of use for religious purposes as permitted under the Federal Fair Housing Act or state law.

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(c) Removal of a restriction, covenant, or condition pursuant to subparagraphs (a) or (b) above will not require approval of the owners, notwithstanding any provision of the governing documents to the contrary.

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(b) An action under this section must be brought as an in rem, declaratory judgment action and the title of the action must include a description of the property. The owners of record of the property or any part of the property described in a deed containing an unlawful discriminatory provision are necessary parties to the action.



(c) If the court finds that any provisions of the deed or instrument are prohibited under this act, it shall enter an order striking the provisions from the records of the public recording office and direct that the order striking the provisions be notated on the deed or other instrument for the property described.

(d) Any reversionary clauses or other provisions intended to penalize the violation of a discriminatory provision in a deed or other instrument that is authorized to be removed under this law shall be void and unenforceable.

**CAI Public Policy and Model Legislative Language History  
Adopted by the Board of Trustees, February 27, 2020**