

A NOTE ON DISCRIMINATORY COVENANTS

Pending from the American Land Title Association are policy revisions, with changes to the 2006 policy standards.

One of those changes will include a revised definition of what is a Discriminatory Covenant. Current proposed language is:

"Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.

This definition will become Owner's Policy Condition 1.d, and Loan Policy Condition 1.e.

This definition will change or impact the currently used "but deleting any covenants, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restriction violate 42 USC 3604 (c)."

Sec. 3604 is of course the substance of the Fair Housing Act and subpart (c) is the prohibition of printing or publishing anything in violation of the Act.

The protected classes or characteristics protected under the Act are race and color, religion, sex, national origin, familial status, and disability.

It is noteworthy that the proposed definition extends a bit beyond that contained in the Act. In fact, many states have additional fair housing laws, that extend to persons or classes not covered by the Act. Thus, (it is assumed) the additions in the definition, and the inclusion of "other legally protected class(es)."

The definition covers insurance coverage issues, but what about the offending covenants itself?

The Saga of "In the Matter of That Portion of Lots 1 & 2 Block 1, Comstock Park Second Addition, According to Plat Recorded in Volume 2 of Plats..." etc. etc. Otherwise known as *May v. Spokane County*

Appellate Decision: 16 Wash. App. 2d 505, 481 P.3d 1098 (2021)
WA Supreme Court Decision: 2022 WL 964718 (March 31, 2022)
RCW §49.60.227 (amended 2021)