

Restrictive Covenant Modification Program Implementation Plan

Table of Contents

- Responsibilities of the County Recorder 1
- History of Restrictive Covenants..... 2
- Changes to Restrictive Covenant Modification 2
- Current Status of the Plan..... 2
- Identification 3
- Redaction..... 3
- Timelines..... 3
 - Phase One – Estimated timeline: July 2022 to December 2022..... 4
 - Phase Two – Estimated timeline: Beginning January 2023 4
 - Phase Three – Estimated timeline: TBD, after completion of Phase Two..... 4
 - Ongoing..... 4
- Tracking and Indexing..... 4
- Reporting 5
- Format of the Restrictive Covenant Modification Form..... 5
- How the Public May Submit an RCM..... 6
- Glossary for RCM..... 7
- Resources..... 7

Responsibilities of the County Recorder

The County Recorder’s Office is responsible for recording all real property and financing documents, indexing them for constructive notice, and preserving their image for future reference. We have records that date back prior to 1850 and California-statehood, and we maintain grantor/grantee indexes for the location of older documents. Documents recorded as of January 1964 to the present day are indexed and imaged in our current computerized system. Documents prior to December 31, 1963 are microfilmed and digitized but indexed only in handwritten index books (the indexes are also imaged, so they are available online and for preservation purposes). It is important to note that our office does not do research. We do not have the capacity to do more work, and our focus is recording, indexing, and imaging day-forward documents to make them available to the public.

History of Restrictive Covenants

A Restrictive Covenant is a restriction placed on property for use. In the early part of the 20th century, it was common for restrictive covenants on properties to include racially restrictive language. This would prevent people of color from purchasing, renting, or using property (unless as a servant). It was especially common in the 1930s and 1940s to see this type of language on documents. In 1948, the Supreme Court forbid enforcement of racially restrictive covenants.

Certain restrictive covenants are illegal and void under existing law and the California Fair Employment and Housing Act. These illegal restrictions pertain to age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in subdivision (p) of [Government Code] Section 12955, or ancestry. However, they still exist in the record itself as it was presented and recorded at that time in the past. Most property owners would only see this document when they are asked to sign a disclosure as part of the escrow process, pledging to ignore any racist language.

Prior to 2022, Government Code section 12956.2(a) provided that any person who holds an ownership interest in property that believes the recorded documents for the property contain any unlawfully restrictive covenants in violation of Government Code section 12955(l) may submit for recordation a Restrictive Covenant Modification document. If the existence of unlawfully restrictive language is confirmed by County Counsel, the modification document is recorded with the unlawful restrictive covenant stricken. However, most people are not even aware that these covenants exist and very few, eligible, property owners have completed this process.

Changes to Restrictive Covenant Modification

In 2021, Assembly Bill 1466 (AB 1466) legislation was passed and made changes to the RCM processes and added California Government Code Section 12956.3 (GC §12956.3). The new law imposes a state-mandated local program and opens the ability to all, including the County Recorder, to submit a RCM document for recording and redact the illegal restrictive language. As part of the new processes, GC §12956.3(b)(1), requires the Sonoma County Clerk-Recorder's Office create a Restrictive Covenant Modification Program Implementation Plan (Plan) to touch on the following requirements:

- Identify unlawfully restrictive covenants
- Redact unlawfully restrictive covenants
- Timelines of elements of the Plan
- Track identified illegal restrictive covenants
- Make index of recorded RCM documents available to the public
- Maintain original non-redacted original recording
- Provide status reports to the County Recorders Association of California

Current Status of the Plan

The County Recorder has done a preliminary manual search of recorded documents and have identified that illegal restrictive language does occur throughout time in our recordings. Due to the number of documents to search through, we will likely be working with an outside company and will need to go through the Request For Purchase (RFP) Process.

The County Recorder is currently preparing for the RFP Process by reviewing a variety of vendor solutions and preparing our desired functionality needed for execution of this plan. Additionally, we are reviewing our existing image inventory and identifying where new images may be needed. We want the best image available for a new RCM document.

Identification

Pursuant to GC §12956.3(b)(1)(A) and §12956.3(b)(2), we plan to identify the illegal restrictive language in our records in a variety of means, depending on the format and clarity of the document. Typewritten documents with illegal language will be identified by completing OCR searching of specific key words or portions of commonly used language. Identification by OCR depends on largely on the quality of the scanned image and the technology available at the time the OCR was completed. Handwritten documents will be evaluated in the future to determine the best method for identifying the illegal restrictive language. Currently, a manual review process would be the most likely method.

Redaction

Pursuant to GC §12956.3(b)(4), after the illegal restrictive language has been identified, the illegal wording will be redacted. The County Recorder will provide a suggested redaction to County Counsel for review, if approved, the document will be recorded and the illegal restrictive language will be blacked-out on the new recording. We will complete redaction based on the language identified and submission and approval of the redaction by County Counsel. If the suggested redaction is not correct or complete, County Counsel will make suggested changes prior to finalizing the redaction of the wording and approval of County Counsel.

Since the County Recorder is unable to change previously recorded documents, we will automatically be following GC §12956.3(c) and the original document will remain unmodified.

Timelines

Pursuant to GC §12956.3(b)(1)(B), this area of the plan will estimate the following timelines for when parts of the plan will be accomplished. Below is a list of the estimated number of images that will need to be reviewed.

Recording Dates	Book	Text	Estimated Images
Jan. 1, 1980 - Dec. 31, 2021	N/A	Typewritten	21,255,332
Jan. 1, 1964 - Dec. 31, 1979	Official Records Books 2012, Page 276- Book 3672	Typewritten	1,641,187
Sept. 22, 1921 - Dec. 31, 1963	Official Records Books 1-2012, Page 275	Typewritten	1,245,165
Jun. 24, 1899 - Mar. 30, 1922	Deed Books 186-408	Typewritten	70,670
Nov. 3, 1847 - Mar. 1899	Deed Books A-N and 6-185	Handwritten	121,000

The Restrictive Covenant Modification Program will be done in phases, subject to time and resources. Estimated timelines will be updated as more information is known.

Phase One – Estimated timeline: July 2022 to December 2022

We will evaluate the number of documents and pages prior to 1964, and determine costs of getting the document images in a format and system to be used for OCR searching. Due to the number of options related to available systems, we will do a Request for Proposal (RFP), evaluate the options and make a determination.

Phase Two – Estimated timeline: Beginning January 2023

Typewritten documents that are able to be easily OCR'd will be the initial focus. Depending on the system selected, these may either be records from 1964 to the present which are stored as images in our current recording system, or records from 1899 to 1963 that are stored as digitized microfilm images, microfilm and paper. Which documents are focused on first will be determined by the cost and scope determined in the first stage, in order to have them in a usable format for the system chosen.

The documents will be searched using OCR for restrictive language, and put through a workflow for identification of the language, redaction, approval and recording. Due to the unknown quantity of documents and documents with restrictive language that will need to be reviewed and approved, there is not a current estimated end date. As more information is gathered related to the quantity, this timeframe will be updated.

Phase Three – Estimated timeline: TBD, after completion of Phase Two

The handwritten documents prior to 1899 will be the last documents reviewed. This is due to the fact that they will likely contain fewer illegal restrictive covenants than later documents, as well as the more time intensive searching that will be needed. Toward the end of Phase Two, a determination will be made about the best way to identify restrictive language in the handwritten documents.

Ongoing

We will perform an annual evaluation of Government Code section 12955(l), which governs the applicable illegal restrictive language. It is possible that documents that have already been searched will need to be searched again for any new requirements. Additionally, already identified and modified documents may need additional identification and modification should they include something that is included in any future changes. The Recorder has no ability to reject a document for recording that contains any illegal restrictive language and such language may only be discovered and modified using the Restrictive Covenant Modification process.

Anyone may take the steps to identify and present a RCM document to the Recorder. These documents will be reviewed and if applicable, recorded, as they are presented and not within the Recorder's proposed Phase timeline.

Tracking and Indexing

Pursuant to GC §12956.3(b)(1)(C) and §12956.3(b)(3), we will maintain an index of all recorded Restrictive Covenant Modification under the title "Restrictive Covenant Modification". This will provide the ability to track what has been identified and recorded. The public index of recorded documents is available on our website any time and both the public index and document images are available during business hours in our office.

If resources allow, we will index the legal descriptions included with the RCM documents, to allow for future mapping projects related to property restrictions.

Reporting

As required by GC §12956.3(d)(1), the County Recorder will report status reports on the progress of the restrictive covenant modification program to the County Recorders Association of California (CRAC). The CRAC will then submit compiled status reports on this progress to the Legislature by January 1, 2023 and January 1, 2025. The report will likely describe the number of documents identified for redaction, and the implementation timelines for actions taken by each county recorder's office.

Format of the Restrictive Covenant Modification Form

Our prepared fillable form may be located here:

<https://sonomacounty.ca.gov/Ektron%20Documents/assets/Sonoma/Sample%20Dept/Divisions%20and%20Sections/Clerk/Service%20Information/Service/Right%20Column%20Content/2022-AB1466-Restrictive-Covenant-Modification-form-fillable.pdf>

As identified in Government Code section 12956.2(f), the RCM form shall be in substantially the following form:

RESTRICTIVE COVENANT MODIFICATION:

The following reference document contains a restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in Section 12955 of the Government Code, or ancestry, that violates state and federal fair housing laws and is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of redacting and eliminating that restrictive covenant as shown on page(s) ___ of the document recorded on _____ (date) in book _____ and page _____ or instrument number _____ of the official records of the County of _____, State of California.

Attached hereto is a true, correct and complete copy of the document referenced above, with the unlawful restrictive covenant redacted.

This modification document shall be indexed in the same manner as the original document being modified, pursuant to subdivision (d) of Section 12956 of the Government Code.

The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(Signature of submitting party)

_____ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, hereby states that it has determined that the original document referenced above contains an unlawful restriction and this modification may be recorded.

Or

_____ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, finds that the original document does not contain an unlawful restriction, or the modification document contains modifications not authorized, and this modification may not be recorded.

County Counsel

By:

Date:

How the Public May Submit an RCM

If you have found an illegal restrictive covenant in the body of a recorded document, you have four options:

1. Submit a notification to the County Recorder using the [Restrictive Covenant Modification Submission form](#). Once received, we will review the document and take care of any additional steps.
2. Email the County Recorder with the requested information. Once received, we will review the document and take care of any additional steps. Please email ClerkRecorder@sonoma-county.org with the following information:
 - a. Document number or Book and Page reference.
 - b. Document Type
 - c. Names on the Document
 - d. Where you see the illegal restrictive language
 - e. Contact information for the submitter
3. Call the County Recorder with the requested information. Once received, we will review the document and take care of any additional steps. Please call 707-565-3800, Monday through Friday, 9:00am to 4:00pm with the following information:
 - a. Document number or Book and Page reference.
 - b. Document Type
 - c. Names on the Document
 - d. Where you see the illegal restrictive language
 - e. Contact information for the submitter
4. Visit the Restrictive Covenant Modification area of our website or visit in-person at County Recorder, 585 Fiscal Dr Rm 103, Santa Rosa, CA 95403 during our open hours Monday, Tuesday, Thursday, and Friday 8:00am to 5:00pm and Wednesday 8:00am to 4:00p to obtain the Restrictive Covenant Modification (RCM) form. The form on our website is available here: <https://sonomacounty.ca.gov/Main%20County%20Site/General/Sonoma/Sample%20Dept/Divisions%20and%20Sections/Clerk/Service%20Information/Service/Right%20Column%20Content/2022-AB1466-Restrictive-Covenant-Modification-form-fillable.pdf>
 - a. Complete the RCM Form with required information, print the form, and sign with wet dark ink on the "Signature of submitting party" line.
 - b. Attach a regular photocopy of the entire referenced document with the proposed redactions identified

- c. Present the document with the proposed redaction and the completed RCM Form to the County Recorder
- d. The County Recorder will submit the document to County Counsel for determination
- e. County Counsel will review and respond to the County Recorder with a determination in a reasonable period of time, not to exceed three (3) months, from the date the request for recordation is made.
- f. If approved to be recorded, the County Recorder will record the RCM document as a “Restrictive Covenant Modification” document title and as the original document title(s) as recorded and indexed. The Restrictive Covenant Modification title will contain a recording reference to the original document in form of a book/page or instrument number, and date of recording. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document. Once recorded, the original will be returned to the Name and Address shown on the upper-left corner of the document in the “When Recorded Mail To:” area.
- g. If not approved for recording and needs corrections, County Counsel will notify the County Recorder of the reason(s) why the document is unable to be Approved and needed corrections. The County Recorder will contact you with any needed corrections.
- h. If not approved for recording and no correction will make it approved, the County Recorder will provide the unapproved document for your records.

Glossary for RCM

Redaction: means the process of rerecording of a document that originally contained unlawful restrictive language, and when presented to the county recorder for rerecording, no longer contains the unlawful language or the unlawful language is masked so that it is not readable or visible.

Redacted: means the result of the rerecording of a document that originally contained unlawful restrictive language, and when presented to the county recorder for rerecording, no longer contains the unlawful language or the unlawful language is masked so that it is not readable or visible.

Resources

[Assembly Bill 1466](#)

[California Government Code Section 12955\(l\)](#)

[California Government Code Section 12956.2](#)

[California Government Code Section 12956.3](#)

[California Government Code Section 27388.2](#)

[Restrictive Covenant Modification – Discriminatory Restrictions Cover Page](#)