



AUDITOR-CONTROLLER/CLERK-RECORDER AGENCY

RESTRICTIVE COVENANT MODIFICATION PROGRAM IMPLEMENTATION PLAN

Melissa Wilk

Auditor-Controller/Clerk-Recorder

June 2022



Background

Historically, some recorded real estate documents contain language that unlawfully restricts sale, use, or ownership of property based on age, race, religion, sex, gender, gender expression, gender identity, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information. While these unlawful restrictions are unenforceable today, they are still part of the public record found in local government archives in California and throughout the United States. On September 28, 2021, AB 1466 was signed into law providing, among other things, that California Recorders create and implement a Restrictive Covenants Program for the purposes of identifying and redacting unlawfully restrictive covenants found in the official public record.



Statutory Requirements

The California Fair Employment and Housing Act prohibits discrimination in housing based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information. Government Code section 12956.2(a) provides that any deed or other recorded instrument that contains unlawfully discriminatory language forbidding or restricting the right of any person to sell, buy, lease, rent, use or occupy the property on account of any of the characteristics specified above, may be revised to remove such unlawful language. Any person that believes real property is the subject of an unlawfully restrictive covenant 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 redacted.



Program Development

Pursuant to the 2021 legislation set forth in Assembly Bill (AB) 1466 and California Government Code Section 12956.3 (GC §12956.3), the Alameda County Clerk-Recorder's Office has developed the following Restrictive Covenant Modification Program Implementation Plan (RCMPIP). This plan has been developed with the goal of identifying any unlawful language contained within our public archives, most notably records containing restrictive covenants. Once formally reviewed and authorized by County Counsel, we will promptly record redactions consistent with the provisions of AB 1466. Under this program, any newly recorded modification document and the original unredacted document will be retained in the land record system and the public will have the option to view or purchase copies of these records.



Program Approach

The Alameda County Clerk-Recorder's Office will leverage current technology investment in our existing land records system, acquire additional vendor tools and services, and utilize industry best practices to achieve agency objectives and meet all requirements for our Restrictive Covenant Modification Program (RCMP). Program objectives will be met through a multi-phase approach to digitize records and make use of OCR (Optical Character Recognition) software and machine learning tools to process these images and identify language indicative of unlawfully restrictive covenants for subsequent review and administration. Documents with formats incompatible to OCR technology, such as handwritten documents, will be given secondary priority and manually reviewed.



Program Approach (Continued)

The Alameda County Clerk-Recorder's Office has currently established a process for review, processing, and recordation of restrictive covenant modification documents as required under AB 1466 and this process has been in place since January 1, 2022. It is understood that this process will likely need continued refinement as we adopt and implement technology to digitize and process our extensive public record archives. Additionally, we are working with our technology partners to explore new options to allow public users (and internal staff) to manually flag records that may contain unlawfully restrictive covenants for review and possible redaction.

The Alameda County Clerk-Recorder's Office plans to use both existing and temporary staff to meet program timelines and objectives with a targeted program completion date of December 31, 2027 for all OCR compatible (machine-readable) documents.



Current Status of Documents

- Real estate documents from October 1999 to June 2022 are entirely indexed in our land records software system and are fully digitized.
- Real estate documents from 1969 to October 1999 are entirely indexed in our land records software system but only partially digitized.
- Real estate documents from 1853 to 1968 can only be located in microfilm, books, and 3rd party software systems.



Review and Redaction Elements

- Land records software will require modifications and new workflow configuration to identify discriminatory language and review unlawfully restrictive covenants.
- Program will require additional development of document staging and rejection/approval processes for historical volumes.
- Program will require sufficient resource allocation for review, recordation, or rejection of Restrictive Covenant Modification document volumes.



Record Digitization and Processing

The Alameda County Clerk Recorder's Office estimates approximately 20 million real estate documents in the official record archives will need to be processed in compliance with AB 1466. Only about half of these records are currently available in our land records system in an electronic format. Our office will employ vendor services for image digitization and advanced OCR technology to process these records. We estimate that, on average, approximately 4 million documents can be processed (per year) for system import and targeted review. Assuming that vendor contracting can be completed and approved by October 1, 2022, we can estimate the following timeline for RCMP deliverables.

YEARS	DOCUMENTS	# of IMAGES (approx. 4 pages per document)
2022/23	4,000,000	16,000,000
2024	4,000,000	16,000,000
2025	4,000,000	16,000,000
2026	4,000,000	16,000,000
2027	4,000,000	16,000,000
TOTAL	20,000,000	80,000,000



Document Processing Steps

Step 1 – Document batches will be digitally scanned, saved, and imported into the existing recording system for staff review and processing.

Step 2 – Document batches will be processed through advanced OCR and related software tools to identify documents that may contain an unlawful restrictive covenant.

Step 3 – Public documents that have been OCR processed and flagged as potentially containing an unlawful restrictive covenant will be routed into the recording system workflow for formal review.

Step 4 – Documents that appear to include an unlawful restrictive covenant will be redacted under AB 1466 and a Restrictive Covenant Modification document will be prepared and directed to County Counsel for review.

Step 5 – County Counsel will approve or reject the redaction of the Restrictive Covenant Modification document within a 90-day review period.

Step 6 – If approved by County Counsel, the Clerk-Recorder's Office will record the new Restrictive Covenant Modification document. Once recorded, this document will be available to the public.



Public Tools and Reporting

- The Alameda County Clerk-Recorder's Office is working with our existing land records vendor to create new software functionality which allows public users (and staff) to flag images in our public files area which may contain an unlawful restrictive covenant. We anticipate that this feature will be implemented in early 2023. Additionally, unlawful restrictive covenants can be reported to our office by sending an email to CROCustomerService@acgov.org for staff review and potential redaction under AB 1466.
- The Alameda County Clerk-Recorder's Office currently has the ability to create reports listing all recorded Restrictive Covenant Modification documents.
- The public may use land records software in our public files area to search, view, or purchase a copy of recorded Restrictive Covenant Modification documents during normal business hours.



Resources

[Assembly Bill No. 1466](#)

[California Government Code Section 12956.3](#)

[California Government Code Section 27388.2](#)

[COVERSHEET - Racially Restrictive Covenant Modification \(Template\)](#)