

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 494

BY SENATORS OLIVERIO AND TRUMP

[Introduced January 18, 2024; referred
to the Committee on Government Organization; and
then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §36-3A-1, §36-3A-2, §36-3A-3, §36-3A-4, §36-3A-5, §36-3A-6, §36-3A-7, §36-
3 3A-8, and §36-3A-9, all relating to creating the Uniform Unlawful Restriction in Land
4 Records Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. UNIFORM UNLAWFUL RESTRICTION IN LAND RECORDS ACT.

§36-3A-1. Title.

1 This article may be cited as the Uniform Unlawful Restrictions in Land Records Act.

§36-3A-2. Definitions.

1 In this article:

2 (a) "Amendment" means a document that removes an unlawful restriction.

3 (b) "Document" means a record recorded or eligible to be recorded in land records.

4 (c) "Governing instrument" means a document recorded in land records that:

5 (1) Establishes a governing body responsible for management of common areas or
6 facilities used by more than one owner of a property interest affected by the document; and

7 (2) Requires contribution, enforceable by a lien on a separate property interest, of a share
8 of taxes, insurance premiums, maintenance, or improvement of, or services or other expenses
9 for the common benefit of, the real property described in the document.

10 (d) "Index" means a system that enables a search for a document in land records.

11 (e) "Land records" means documents and indexes maintained by a recorder.

12 (f) "Owner" means a person that has a fee interest in real property.

13 (g) "Person" means an individual, estate, business or nonprofit entity, government or
14 governmental subdivision, agency, or instrumentality, or other legal entity.

15 (h) "Record", used as a noun, means information:

16 (1) Inscribed on a tangible medium; or

17 (2) Stored in an electronic or other medium and retrievable in perceivable form.

18 (i) "Recorder" means an officer authorized under other law of this state to accept a
19 document for recordation in land records.

20 (j) "Remove" means eliminate any apparent or purportedly continuing effect on title to real
21 property.

22 (k) "Unlawful restriction" means a prohibition, restriction, covenant, or condition in a
23 document that purports to interfere with or restrict the transfer, use, or occupancy of real property:

24 (1) On the basis of race, color, religion, national origin, sex, familial status, disability, or
25 other personal characteristics; and

26 (2) In violation of other law of this state or federal law.

§36-3A-3. Amendment by owner.

1 Except with respect to property to which §36-3A-4 of this code applies, an owner of real
2 property subject to an unlawful restriction may submit to the recorder for recordation in the land
3 records an amendment to remove the unlawful restriction, but only as to the owner's property.

§36-3A-4. Amendment by association of owners.

1 (a) The governing body of an association of owners identified in a governing instrument
2 may, without a vote of the members of the association, amend the governing instrument to remove
3 an unlawful restriction.

4 (b) A member of an association of owners may request, in a record that sufficiently
5 identifies an unlawful restriction in the governing instrument, that the governing body exercise its
6 authority under subsection (a) of this section. Not later than 90 days after the governing body
7 receives the request, the governing body shall determine reasonably and in good faith whether
8 the governing instrument includes the unlawful restriction. If the governing body determines the
9 governing instrument includes the unlawful restriction, the governing body not later than 90 days
10 after the determination shall amend the governing instrument to remove the unlawful restriction.

11 (c) Notwithstanding any provision of the governing instrument or other law of this state,
12 the governing body may execute an amendment under this section.

13 (d) An amendment under this section is effective notwithstanding any provision of the
14 governing instrument or other law of this state that requires a vote of the members of the
15 association of owners to amend the governing instrument.

§36-3A-5. Requirements and limitations of amendment.

1 (a) An amendment under this article shall identify the owner, the real property affected,
2 and the document containing the unlawful restriction. The amendment shall include a conspicuous
3 statement in substantially the following form:

4 "This amendment removes from this deed or other document affecting title to real property
5 an unlawful restriction as defined under the Uniform Unlawful Restrictions in Land Records Act.
6 This amendment does not affect the validity or enforceability of a restriction that is not an unlawful
7 restriction."

8 (b) The amendment shall be executed and acknowledged in the manner required for
9 recordation of a document in the land records pursuant to §7-1-3 of this code. The amendment
10 shall be recorded in the land records of each clerk of the county commission in which the
11 document containing the unlawful restriction is recorded.

12 (c) The amendment does not affect the validity or enforceability of any restriction that is
13 not an unlawful restriction.

14 (d) The amendment or a future conveyance of the affected real property is not a
15 republication of a restriction that otherwise would expire by passage of time under other law of
16 this state.

§36-3A-6. Optional form for amendment by owner.

1 The following form may be used by an owner to make an amendment under §36-3A-3 of
2 this code:

3 **Amendment by Owner to Remove an Unlawful Restriction**

4 This Amendment is recorded under §36-3A-1 et seq. of this code by an Owner of an
5 interest in real property subject to an unlawful restriction as defined pursuant to §36- 3A-2 of this
6 code.

7 (1) Name of Owner: _____

8 (2) Owner’s property that is subject to the unlawful restriction is described as follows:

9 Address: _____

10 Legal Description: _____

11 (3) This Amendment amends the following document:

12 Title of document being amended: _____

13 Recording date of document being amended: _____

14 Recording information (book/page or instrument number): _____

15 This Amendment removes from the document described in paragraph (3) all unlawful
16 restrictions as defined under the Act. Removal of an unlawful restriction through this Amendment
17 does not affect the validity and enforceability of any other restriction that is not an unlawful
18 restriction as defined under the Act, at the time of filing this Amendment. This Amendment is not
19 effective if the property is subject to a governing instrument as defined under §36-3A-1 et seq. of
20 this code.

21 THE STATE OF WEST VIRGINIA,

22 COUNTY OF _____, To-wit:

23 I, _____, a notary public of said county; (or other officer or person
24 authorized to take acknowledgments), do certify that _____, whose name
25 (or names) is (or are) signed to the attached motion, dated the _____ day of _____,
26 _____ , has (or have) this day acknowledged the same before me, in my said
27 _____.

28 Given under my hand this _____ day of _____,

29 _____

30 Notary Public, State of West Virginia

31 Notary's printed name:

32 My commission expires:

§36-3A-7. Duty and liability of recorder.

1 (a) The county commission clerk shall record an amendment submitted under this article,
2 add the amendment to the index, and cross reference the amendment to the document containing
3 the unlawful restriction.

4 (b) The county commission clerk and the county in which the unlawful restriction
5 amendment was recorded are not liable for recording an amendment under this article.

§36-3A-8. Uniformity of application and construction.

1 In applying and construing this uniform act, a court shall consider the promotion of
2 uniformity of the law among jurisdictions that enact it.

§36-3A-9. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits, or supersedes the Electronic Signatures in Global and National
2 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede 15 U.S.C.
3 Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C.
4 Section 7003(b).