



# TODD NOVAK

STATE REPRESENTATIVE • 51<sup>ST</sup> ASSEMBLY DISTRICT

(608) 237-9151

Toll-Free: (888) 534-0051

Rep.Novak@legis.wi.gov

P.O. Box 8953

Madison, WI 53708-8953

DATE: Tuesday, January 9<sup>th</sup>, 2024  
RE: Testimony on Assembly Bill 444  
TO: Assembly Committee on Housing and Real Estate  
FROM: State Representative Todd Novak

---

Thank you Chairman Brooks and members of the Assembly Committee on Housing and Real Estate for holding this public hearing on Assembly Bill 444 (AB 444), relating to declaring discriminatory restrictions in instruments that affect real property void and unenforceable and allowing an owner of real property to discharge and release such a discriminatory restriction.

I co-authored this bill with Senator Ballweg after being approached by stakeholders earlier this session. In Wisconsin and throughout the United States, discriminatory covenants and deed restrictions historically restricted based on race the ability for now legally protected classes from owning, renting, transferring, living in and using real property.

Fortunately, the United Supreme Court, the 1968 Fair Housing Act and Wisconsin's Open Housing Law have made this practice illegal.

While discriminatory deeds and covenants are illegal and thus no longer enforceable, its lasting impact can still be felt in neighborhoods and communities throughout Wisconsin. Despite the restrictions remaining unenforceable, this language was not erased and it can still be found in title records.

This bill creates a legal process where an owner of real property affected by a deed or other instrument containing a discriminatory restriction can record a certification with the register of deeds to discharge and release the restriction from the property.

It is important that we address the abhorrent and painful housing practices of our past and make these changes to ensure that we continue to ensure openness and fairness in the housing market.

Thank you for your consideration of AB 444.



**JOAN BALLWEG**

STATE SENATOR · 14<sup>TH</sup> SENATE DISTRICT

**Assembly Bill 444: Discriminatory Covenants and Deeds  
Assembly Committee on Housing and Real Estate  
Testimony of Senator Joan Ballweg  
January 9, 2024**

Thank you, Chair Brooks and members of the committee, for hearing Assembly Bill 444.

Across Wisconsin, discriminatory covenants and deed restrictions historically restricted people based on race and other protected classes from owning, renting, transferring, living in and using real property. This abhorrent practice was eventually found to be unenforceable by the United States Supreme Court. The 1968 Fair Housing Act and Wisconsin's Open Housing Law also rendered these restrictions illegal. Despite the restrictions remaining unenforceable, this language was not erased and it can still be found in title records.

Researchers at UW-Milwaukee are working on documenting and mapping racial covenants in Milwaukee County. One example of a restrictive racial covenant in a Milwaukee subdivision from 1946 states: "At no time shall any such property or any buildings thereon be occupied, or used by any person other than of the white race. This provision shall not apply to domestic servants who may be employed by the owner or occupant of any such tract or building located thereon." This language can be shocking for a homeowner or a property buyer to find.

This bill creates a legal process where an owner of real property affected by a deed or other instrument containing a discriminatory restriction can record a certification with the register of deeds to discharge and release the restriction from the property.

Assembly Bill 444 is supported by the Wisconsin Realtors Association, City of Milwaukee, Zillow Group, Inc. and the Wisconsin Land Title Association.

Thank you for your consideration of Assembly Bill 444.



**To:** Assembly Committee on Housing and Real Estate  
**From:** Cori Lamont, Vice President of Legal and Public Affairs  
**Date:** January 9, 2024  
**RE:** AB 444/SB 439 - Addressing Discriminatory Covenants and Deed Restrictions in Wisconsin

---

The Wisconsin REALTORS® Association (WRA) supports AB 444/SB 439 creating a process that allows a property owner to act when a discriminatory restriction or covenant is recorded on their land.

### **Background**

"No Persons other than the white race shall own or occupy any building on said tract, but this covenant shall not prevent occupancy of persons of a race other than the white race who are domestic servants of the owner or occupant of said buildings." (Crestview Acres 12, Greendale, recorded July 29, 1958)

Offensive, discriminatory covenants based on race and other protected classes appear in deeds and subdivision restrictions and covenants throughout Wisconsin. **While illegal, this language haunts the title records and title commitment** reports received by buyers looking to purchase these properties.

The **1968 Fair Housing Act and Wisconsin's Open Housing Law prohibit** these covenants **but does not erase discriminatory restrictions** from property deeds and title records. Seeing the language **stuns and offends potential buyers** turning the home buying process which is already fraught with emotion.

### **AB 444/ SB 439**

- Reiterates Wisconsin law prohibits discriminatory restrictions
- Allows **only a property owner** to record a statutory form with the register of deeds to discharge and release the restriction from the title
- Requires the statutory form to be provided by the state
- Compels the register of deeds to accept the statutory form if: the form is notarized; contains a legal description; contains the date of the recording of the instrument containing the restriction along with the volume and page number; and complies with other recording requirements
- **Does not delete** the discriminatory restriction from the land title
- Is a **voluntary process** available only to the property owner

This legislation is intended to empower the property owner to take action when a discriminatory restriction is recorded on their land record.

We respectfully request your support for AB 444/SB 439.

Greendale

Subdivision: Crestview Acres #2

"5. No Persons other than the white race shall own or occupy any building on said tract, but this covenant shall not prevent occupancy of persons of a race other than the white race who are domestic servants of the owner or occupant of said building."

Vol. 3058 Page 602

Owner: Elroy H. Barbian

Date Recorded: July 29, 1958

Length of Term: Jan. 1, 1975

Subdivision: Crestview Heights

The first racial restriction in Wauwatosa was placed on the Washington Highlands Subdivision in 1919. This covenant stated:

"At no time shall the land included in Washington Highlands or any part thereof, or any building thereon be purchased, owned, leased or occupied by any person other than of white race. This prohibition is not intended to include domestic servants while employed by the owner or occupied by and [sic] land included in the tract." (Vol. 803, Page 205)

Bayside

Subdivision: Continuation of Bayside

"4. That all the sections within which the aforementioned lots are located shall be maintained exclusively as a first-class residential section to be owned, used, and occupied only by members of the white race, unless the majority of the owners at any time owning property in said sections otherwise consent in writing. It is not intended hereby, however, to so restrict the occupancy of any part of said premises, or any part thereof, by domestic employees of a different race employed by an owner or occupant of said premises."

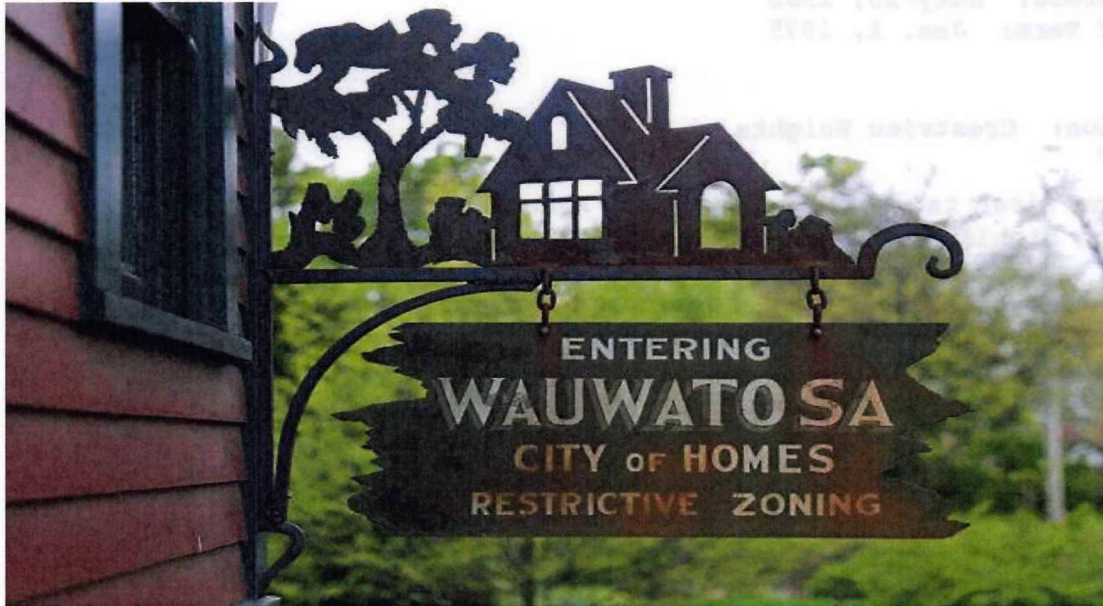
# Racial restrictions still exist in Wisconsin property deeds. Wauwatosa is pushing the state to remove them.



**Quinn Clark**

Milwaukee Journal Sentinel

[View Comments](#)



In some Wauwatosa property deeds, homeowners can still find restrictions that ban anyone who is not white from living there. The city's equity and inclusion commission is asking for statewide legislation to remove this racist language that, experts say, has had far-reaching detrimental effects.

The first racial restriction, or covenant, in Wauwatosa, placed on the Washington Highlands Subdivision in 1919, stated:

"At no time shall the land included in Washington Highlands or any part thereof, or any building thereon be purchased, owned, leased or occupied by any person other than of white race. This prohibition is not intended to include domestic servants while employed by the owner or occupied by and (sic) land included in the tract."

This isn't unique to Wauwatosa. By the 1940s, at least 16 of the 18 Milwaukee County suburbs used such covenants to exclude Black families from residential areas, [according to records from the Metropolitan Integration Research Center](#).

**More:** [How we measure segregation and what the numbers actually tell us](#)

Although racial covenants became legally unenforceable in 1948, they weren't specifically made illegal until the [Fair Housing Act](#) in 1968. While many have expired, or have been directly removed, there's no law that says racial restrictions can't be in Wisconsin property deeds.

For years, the [commission](#), formed in 2019, has discussed how to remove racist language from property deeds. This month, they've passed a resolution that asks for state laws that would remove, or make it easier for property owners to remove, racial covenants.

"Originally we had suggested just a volunteer effort in Wauwatosa to help people do this themselves, but it appears that a much more effective tool might be statewide legislation that would remove, or allow for the removal, of such covenants by law, since the issue of property title and deeds is an issue of state law," said City Attorney Alan Kesner.

Similar legislation has passed in [Minnesota](#), [California](#) and [Oregon](#).

"They all do it in slightly different ways, so there is a lot of flexibility if the legislature wanted to create such a state law in Wisconsin," Kesner said.

**More:** [The Wauwatosa council has passed an equity and inclusion statement to guide the city. Here's what it says.](#)

The resolution must pass the city's Common Council before it is sent to state legislators.

## Racially restrictive covenants leave lasting effects, experts say



The commission's resolution cites the Mapping Racism and Resistance project, directed by University of Wisconsin-Milwaukee professors Anne Bonds and Derek Handley, which aims to document and map restrictive covenants in Milwaukee County.

"The covenants themselves are illegal, but their impacts are with us," said Bonds, a professor of geography and urban studies.

Impacts include generational and racial wealth gaps, current homes' property values and varying access to "well-established education systems," she said.

Covenants also help establish a culture and "ways of thinking about who belongs and who does not belong," said Handley, an English professor.

"You can talk to some Black Milwaukee residents, and they can tell you how they may not feel welcome in certain communities," Handley said.

While racial covenants have been unenforceable since 1948, they were still abided by for decades until the Fair Housing Act. The residual effects caused by covenants help to establish a culture where segregation is normalized, Handley said.

"Sometimes, I ask my students, 'Do you ever stop and ask why there are Black neighborhoods?'" Handley said. "What words do we use to describe ... or what do we conceptualize, when we ask whether a neighborhood is good or bad, whether a school is good or bad?"

Conversations like the ones brought forth by Wauwatosa's equity and inclusion commission are a step in the right direction, Handley said.

"We've seen instances across the nation of where properties are not appraised at the same rate because the person who's selling a house is a person of color," Handley said. "So, some of these conversations are taking place and perhaps more of them need to take place."

While Bonds called the resolution "exciting," both researchers could agree that residents should receive education on covenants, whether they are removed from deeds or not.

"I think it's very powerful for people to see the language in the documents ... where people of color, Black people are being discussed in ways ... with refuse and junk on properties, or the permitting of land uses like animals and livestock on properties," Bonds said.

Bonds and Handley hope to hold educational workshops in Wauwatosa and across Milwaukee County in coming months, also giving residents an opportunity to participate in their ongoing project.

Source: <https://www.jsonline.com/story/communities/west/2023/02/01/wauwatosa-proposes-ban-on-racial-covenants-in-wisconsin-property-deeds/69859650007/>





### ***Wisconsin Register of Deeds Association Legislative Committee***

Committee Members: Cheryl Berken, Brent Bailey, Sarah Van Camp, Tiffany Ringer, Margo Katterhagen, Staci Hoffman, JoEllyn Storz, Heather Schwersenska, Chris Planasch, Israel Ramon, Tracy Middleton, Heather Kuhn and Mary Denk

### **Re: AB444 – Discriminatory Restrictions in Recorded Documents**

The Wisconsin Register of Deeds Association (WRDA) **supports AB444**, regarding discriminatory restrictions in instruments that affect real property and allowing an owner of real property to discharge and release such a discriminatory restriction.

- The 1964 Civil Rights Act and the 1968 Fair Housing Act makes this language void and unenforceable; however, the language is offensive and hurtful to current owners.
- The proposed legislation gives a homeowner the opportunity to make void from their chain of title the discriminatory language.
- This legislation is very important in righting the wrongs from past generations.

For these reasons, **the WRDA requests your support for AB444 regarding discriminatory restrictions.**