



JOAN BALLWEG

STATE SENATOR · 14TH SENATE DISTRICT

Senate Bill 439: Discriminatory Covenants and Deeds
Senate Committee on Government Operations
Testimony of Senator Joan Ballweg
Tuesday, December 19, 2023

Thank you, Chairman Stroebel and members of the committee, for hearing Senate Bill 439.

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.

SB 439 is supported by the Wisconsin Realtors Association, City of Milwaukee, and the Wisconsin Land Title Association.

Thank you for your consideration of SB 439, and I am happy to answer any questions.



TODD NOVAK

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Madison, WI 53708-8953

DATE: Tuesday, December 19th, 2023
RE: Testimony on Senate Bill 439
TO: Senate Committee on Government Operations
FROM: State Representative Todd Novak

Thank you Chairman Stroebel and members of the Senate Committee on Government Operations for holding this public hearing on Senate Bill 439 (SB 439), 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 other protected classes from owning, renting, transferring, living in and using real property.

Fortunately, the United Supreme Court rule, the 1968 Fair housing Act and Wisconsin's Open Housing Law 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 SB 439.



STATE SENATOR LaTonya Johnson

WISCONSIN STATE SENATE

6TH DISTRICT

Senate Committee on Government Operations

Senate Bill 439

December 19, 2023

Dear Committee Members,

I am here today to testify in support of Senate Bill 439, which will eliminate discriminatory restrictions, like racially restrictive covenants, in our state's real estate instruments.

First and foremost, the bill makes void and unenforceable any discriminatory restrictions on existing deeds and would prohibit the drafting, filing, or recording of such restrictions going forward. It would also give current owners the ability to have these deplorable reminders of systemic racism stricken from their deeds. The bill enables county registers of deeds to either reject a filing that contains a discriminatory restriction or obscure it so it is no longer visible.

Lastly, the bill provides a further disincentive to this despicable practice by creating a civil cause of action for relief against a person who drafts a deed including a discriminatory restriction, making them liable for the plaintiff's costs and attorneys fees.

Although the Fair Housing Act made racially restrictive covenants illegal in 1968, there's no law that says racial restrictions are prohibited in Wisconsin property deeds, and many families have been disturbed to find them buried in the deed of a home they hope to buy.

According to the Journal Sentinel, by the 1940s, at least 16 of the 18 Milwaukee County suburbs used restrictive covenants to exclude Black families from residential areas, so this is a very real and ugly part of our state's history, and of Milwaukee County's in particular. That is why I was really glad to see that this effort has so much local support. The City of Wauwatosa—which was profiled regarding its history of racial covenants in February—has helped lead the charge on this issue by unanimously calling on the legislature to pass legislation to cleanse this stain on our state's real estate history.

While these bigoted practices may feel like a thing of the past, as we have seen from recent events, our state still has a long way to go when it comes to embracing diversity and inclusion in our communities and on our campuses. So, I hope this bipartisan bill will be the beginning of more efforts to erase divisions and bring our state together.

In addition to my co-authors, I would like to thank the Wisconsin Realtors Association, the Wisconsin Land Title Association, and the City of Milwaukee for registering in support of this important legislation.

Thank you again for the opportunity to submit this testimony, and thank you to committee members for your consideration of this bill.



To: Senate Committee on Government Operations
From: Cori Lamont, Senior Director of Legal and Public Affairs
Date: December 19, 2023
RE: SB 439/AB 444: Addressing Discriminatory Covenants and Deed Restrictions in Wisconsin

The WRA supports SB 439/AB 444 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.

SB 439/AB 444

- 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 SB 439/AB 444.