

LFC Requester:	Sam Lesemann
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Jan. 28, 2025 *Check all that apply:*
Bill Number: HB 114 Original Correction
 Amendment Substitute

Sponsor: Eleanor Chávez **Agency Name and Code** 218 AOC
Short Title: Ban Discriminatory Restrictive Covenants **Number:** _____
Person Writing Lisa Giandomenico
Phone: 505-470-6867 **Email** aoclxcg@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Section 1 of HB 114 amends Section 28-1-7 NMSA 1978, Subsection (G)(4), within the Human Rights Act (HRA), to provide that it is an unlawful discriminatory practice for any person to submit a deed or other written instrument to the county clerk for recording with an attached restrictive covenant, the intent or effect of which is to restrict ownership, residency or use of real property because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation or physical or mental handicap.

Section 2 of HB 114 also enacts a new statutory section (Unlawful Restrictive Covenants – Recording) within Chapter 47 (property law), Article 1 (conveyances and general provisions), to provide and require the following:

- **Subsection A:** provides that a covenant attached to real property that contains language with the intent or effect to restrict ownership, residency or use of real property based on a person’s race religion, national origin or any other class that is protected by the HRA is void as against public policy.
- **Subsection B:** prohibits a deed or other written instrument relating to real property from using gender-specific language when referring to grantors or grantees.
- **Subsection C:** prohibits a deed or other written instrument that contains a covenant or language that meets the description in Subsection A or B from being recorded. This section also permits a county clerk to reject an instrument if it contains a covenant or language that meets the description in Subsection A or B.
- **Subsection D:** empowers and requires an attorney or any other person to remove a covenant or language that meets the description in Subsection A or B from the description of real property when preparing a deed or other instrument of writing to be recorded in the office of the county clerk. It also permits the deed to contain the following disclaimer: “It is the policy of the state of New Mexico that there be no discrimination in the ownership, residency or use of real property. Any covenants that would restrict such ownership in violation of state or federal law is hereby void as against public policy.”
- **Subsection E:** permits a person with an ownership or financial interest in real property to re-record a deed so that the deed conforms to the requirements of the new statutory section.

Background:

In real property law, restrictive covenants regulate how a property can be used or owned. They “run with the land” and are recorded in deeds, declarations of restrictive covenants, and other documents. Restrictive covenants are also found in recorded declarations of covenants, conditions, and restrictions (CCRs) that govern how a community’s real estate can be used.

Prior to 1948, some property deeds and other recorded documents restricted the ownership of property based on a prospective purchaser’s race, religion, national origin or other immutable

characteristics. In 1948, in *Shelley v. Kraemer*, 334 U.S. 1, the United States Supreme Court ruled that discriminatory deed restrictions and covenants were illegal and unenforceable.

Congress later passed the federal Fair Housing Act, as amended in 1974 and 1988, making it illegal to refuse to sell or rent a dwelling to any person based on the person's race, color, religion, sex, familial status, or national origin. 42 U.S.C. §3604. The Fair Housing Act also prohibited discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities, because of race, color, religion, sex, familial status, or national origin.

The HRA was enacted in 1969 to ensure that all New Mexicans are protected from discrimination in employment, housing, credit, and public accommodation. The Human Rights Commission is responsible for enforcing the HRA. See also NMSA 1978, Section 28-1-12.

Although statutes and court rulings nullified the effect of discriminatory restrictive covenants, the Fair Housing Act and HRA do not explicitly prohibit such covenants. Historically, discriminatory restrictive covenants enabled segregation in neighborhoods and schools. Today, discriminatory restrictive covenants still exist in the public record due to the objective of the public recording system to preserve property ownership and information.

HB 114 does not contain an effective date and would be effective on **June 20, 2025**, 90 days following the adjournment of the Legislature, if signed into law.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any petitions, hearings, trials, and appeals in the courts, pursuant to the HRA, as well as challenges to this law. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

HB 114 does not create significant issues for the courts.

Currently, county clerks, title companies, attorneys, and others are not empowered or required to reject discriminatory restrictive covenants from being recorded in the counties of the state. HB 114 makes the recording of discriminatory restrictive covenants an unlawful practice under the HRA and prevents future discriminatory restrictive covenants from being recorded in any real estate instrument or document. The bill also provides for the re-recording of deeds by current owners who seek to eliminate discriminatory restrictive covenants in their previously recorded property deeds.

PERFORMANCE IMPLICATIONS – None.

ADMINISTRATIVE IMPLICATIONS – None identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP – None identified.

TECHNICAL ISSUES – None identified.

OTHER SUBSTANTIVE ISSUES – None.

ALTERNATIVES – None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The consequence of not enacting Section 1 of this bill is that recording an instrument with discriminatory restrictive covenants will not become an “unlawful discriminatory practice” under the HRA. Previously recorded instruments with discriminatory restrictive covenants will remain in the public record, but those covenants will continue to be unenforceable.

The consequences of not enacting Section 2 of this bill are (1) that unlawful, unenforceable discriminatory restrictive covenants may get recorded in real property records; and (2) that property owners may have difficulty re-recording property deeds to eliminate prior discriminatory restrictive covenants since no mechanism for re-recording deeds without discriminatory covenants currently exists.

AMENDMENTS – None.