



RESOLUTION No. 23-209

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION AUTHORIZING THE NEVADA COUNTY RECORDER TO ESTABLISH A RESTRICTIVE COVENANT PROGRAM AND COLLECT THE \$2.00 FEE IMPOSED BY GOVERNMENT CODE SECTION 27388.2(A) TO RECOVER THE REASONABLE REGULATORY COST OF PERFORMING INSPECTIONS AND AUDITS TO REDACT UNLAWFULLY RESTRICTIVE AND DISCRIMINATORY COVENANTS

WHEREAS, residential racial segregation was enforced throughout the United States, including in California, by a combination of government policies and judicially enforced private agreements;

WHEREAS, one mechanism used to maintain residential segregation was the “racially restrictive covenant,” which is an agreement prohibiting the homeowner from selling or renting the property to members of a specific race, ethnic, or religious background;

WHEREAS, in 1948, the companion cases of *Shelley v. Kramer* and *Hurd v. Hodge*, the United States Supreme Court held that state court enforcement of racially restrictive property covenants violated the due process and equal protection clauses of the 14th Amendment to the United States Constitution;

WHEREAS, while the Supreme Court ruling made such covenants unenforceable, subsequent state legislation, in California and elsewhere, made racial discrimination in housing accommodations, including by the use of exclusionary covenants, unlawful;

WHEREAS, although originally targeting racial discrimination, these laws have subsequently been amended to include discrimination on other grounds, such as gender, religion, and sexual orientation, among others (Government Code § 12955);

WHEREAS, despite their unlawfulness and unenforceability, these offensive exclusionary restrictions still appear in existing CC&Rs that are transferred from property sellers to buyers, unless the restrictions have been previously stricken, modified, or recorded over;

WHEREAS, in 2021, the California Legislature, by a supermajority vote of both houses, passed AB 1466 which requires all Recorders in California to establish a regulatory inspection and audit program to identify and redact unlawfully restrictive covenants, make regular audit reports to the Legislature, and authorized the Recorders to recover a \$2 recording fee on all property recordings pursuant to Government Code section 28388.2(a) to cover their reasonable regulatory costs for performing the inspections and audits mandated by the State; and

WHEREAS, as mandated by Government Code Section 12956.3, the Nevada County Recorder’s Office, in coordination with the County Counsel’s Office, has established a Restrictive Covenant Modification Program to search through historic recorded documents in Nevada County to provide historic record investigations, inspections, and audit services to remove unlawful restrictive covenants and report back to the Legislature; and

WHEREAS, Government Code 27388.2 authorizes a county recorder to impose a fee in an amount of two dollars (\$2) effective July 1, 2023 for every real estate instrument, paper, or notice required or permitted by law to be recorded by the county unless the document(s) are exempt from SB2 fees, up until December 31, 2027, unless the fee is reauthorized by law; and

WHEREAS, the current Recorder fees do not provide sufficient resources to adequately fund the Restrictive Covenant Modification Program to remove unlawful and discriminatory records;

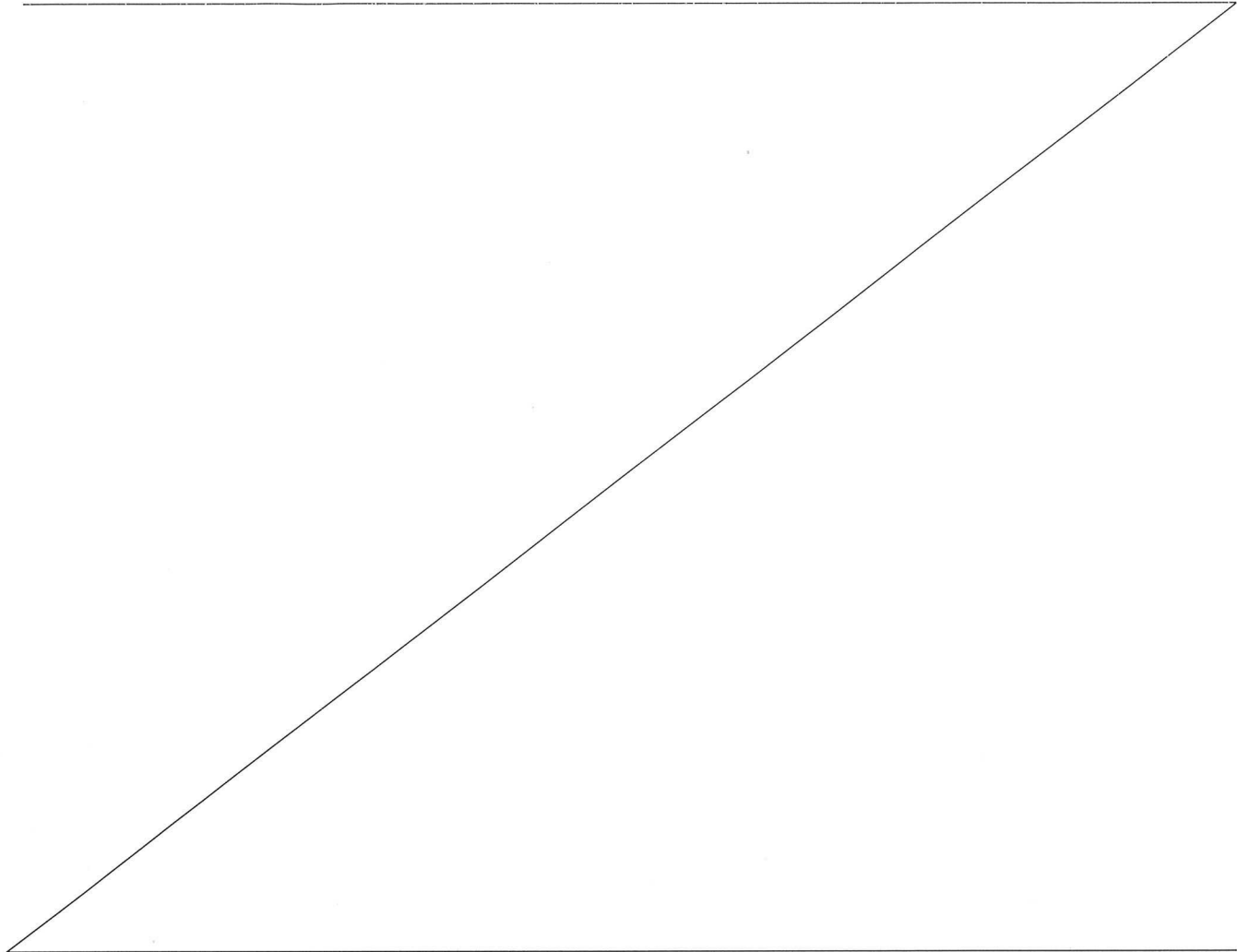
WHEREAS, the State Legislature's amendment of Government Code section 27388.2 allows Recorders to charge a fee of two dollars (\$2) for recording the first page of every real estate instrument, paper, or notice required or permitted by law to be recorded per each single transaction per parcel of real property, unless otherwise exempted by state law, and that change in state statute was approved by more than a two-thirds vote of all members elected to each of the two houses of the Legislature in compliance with Section 3(a) of Article XIII A of the California Constitution (AB 1466 Fee).

WHEREAS, the AB 1466 fee is necessary to provide adequate funds to cover the reasonable regulatory costs of providing the state mandated inspection and audit services performed by the Restrictive Covenant Modification Program in the County;

WHEREAS, to ensure the amount of the AB 1466 fee is no more than necessary to cover the reasonable cost of this state mandated program, Government Code section 27388.2 prohibits the Recorder from charging the AB 1466 fee after December 31, 2027 unless further findings are made in compliance with the California Constitution;

WHEREAS, the manner in which the State Legislature has allocated the \$2 AB 1466 Fee to a payor bears a fair or reasonable relationship to the payor's benefits received from the inspection and audit which will result in the removal of unlawful and discriminatory covenants countywide and comply with federal and state constitutional laws;

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Board of Supervisors of County of Nevada hereby approves the Nevada County Clerk-Recorder's imposition of a fee in an amount of two dollars (\$2.00) effective July 1, 2023 for every real estate instrument, paper, or notice required or permitted by law to be recorded by the county unless the document(s) are exempt from SB2 fees, up until December 31, 2027, unless the fee is reauthorized by law.



PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 23rd day of May, 2023, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward C. Scofield, Lisa Swarthout, Susan Hoek and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


Edward C. Scofield, Chair

5/23/2023 cc: CRR*
AC*