

## [PROPOSED] MEMORANDUM

To: All Registration Districts of the Land Court  
From: Christina T. Geaney, Chief Title Examiner  
Date: TBD  
Re: **Prohibited Restrictions Under G.L. c. 184, § 23B; Mandatory Legends to Be Added to Newly Issued Certificates of Title; Land Court Standing Order -21**

Chapter 184 of the Massachusetts General Laws, § 23B (“§ 23B”) provides the following:

A provision in an instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, color, religion, national origin or sex shall be void. Any condition, restriction or prohibition, including a right of entry or a possibility of reverter, which directly or indirectly limits the use for occupancy of real property on the basis of race, color, religion, national origin or sex shall be void, excepting a limitation on the basis of religion on the use of real property held by a religious or denominational institution or organization or by an organization operated for charitable or educational purposes which is operated, supervised or controlled by or in connection with a religious organization.

In furtherance of the Court’s continued strict adherence to § 23B, upon the effective date of Land Court Standing Order -21, the Districts are directed to review, at the time a new original or transfer certificate (which term includes a memorandum of unit or interval ownership in the case of a condominium or time share property) is being issued by the District, all restrictions (which term includes without limitation all restrictive covenants, conditions, limitations, and rights of entry or reverter) set forth expressly on the face of the certificate of title to determine whether any restriction set forth expressly on the certificate is one which violates § 23B (a “Prohibited Restriction”). A restriction is set forth expressly when the words of the restriction are verbatim included in the text of the certificate of title. If a Prohibited Restriction is expressly set forth within the certificate, the District shall take one or more of the actions provided in this Memorandum. In addition, this Memorandum addresses the steps the District is to take (a) in the case of Prohibited Restrictions which, although they do not appear expressly within the certificate, exist within documents within the chain of title to the property, and which are noted or referenced within the certificate, and (b) when a document containing a Prohibited Restriction is presented for registration.

## **I. Prohibited Restriction Set Forth on the Face of or Referenced in the Certificate of Title or Memorandum of Unit Ownership**

Should a District, in its review of restrictions which are set forth expressly on the face of a certificate, (a) find a Prohibited Restriction, and (b) the Prohibited Restriction consists expressly, solely, and unambiguously of terms made void by § 23B (as opposed to restrictions that are a combination of prohibited and allowed terms), then without the necessity of a proceeding under G.L. c. 185, § 114, "Amendment or Alteration of Certificates," the District is authorized and directed, *without order of, or any further approval from, the Court*, and without notice to any parties, as a matter of public policy, to prepare a new certificate or memorandum without inclusion of the express language of the Prohibited Restriction; the Prohibited Restriction in such a case is not to be carried forward to the new certificate of title.

In case of doubt, District personnel may seek guidance from the Chief Title Examiner or her designee.

Should (a) the District's review identify a Prohibited Restriction set forth expressly in the certificate that is combined with an allowed restriction, or that is not unambiguously made void in its entirety by § 23B, or (b) the District becomes aware that documents referenced in the certificate (including in its memorandum of encumbrances) by document number, recording reference or otherwise, contain a Prohibited Restriction, the Assistant Recorder of the District is instructed to submit promptly a "Complaint to Declare Certain Provisions Void Under Chapter 184, § 23B," using whenever possible the form of complaint provided by the Court, requesting authority to make an amendment to the certificate, or other appropriate order of the court. The § 23B Complaint is to be mailed to the Land Court, with a mailing address of Three Pemberton Square, Fifth Floor, Boston, MA 02108, Attention: Chief Title Examiner, and also emailed to [LandCourt.Title@jud.state.ma.us](mailto:LandCourt.Title@jud.state.ma.us) with reference to the Land Court Plan Number(s) for the land involved. Following receipt of the § 23B Complaint, after such proceedings as are indicated, the Court will issue an appropriate Order of Court to the District. Absent approval from the Court, the District shall not prepare a new transfer certificate of title until the issuance of an Order of Court.

All other restrictions that are not a Prohibited Restriction appearing on the face of the certificate of title are to be carried forward onto the face of the new transfer certificate of title.

## **II. Prohibited Restriction Not Set Forth on the Face of Certificate of Title or Memorandum of Unit Ownership, But Contained in a Document Presented for Registration**

Should a District, in its review of a document presented for registration after the effective date of Land Court Standing Order \_-21, find in that document a Prohibited Restriction, the District whenever possible is to call to the attention of the party presenting the document the presence in the document of the Prohibited Restriction, and request that the document be withdrawn prior to registration and be resubmitted for registration with the Prohibited Restriction removed. Should the presenter of the document decline to withdraw the document containing the Prohibited Restriction, the document, if it is otherwise a document entitled to registration, shall be registered, and the Assistant Recorder of the District is instructed to submit promptly a "Complaint to Declare Certain Provisions Void Under Chapter 184, § 23B," using whenever possible the form of complaint provided by the Court, requesting an amendment of record to the document and, if appropriate, to the certificate. The § 23B Complaint is to be mailed to the Land Court, with a mailing address of Three Pemberton Square, Fifth Floor, Boston, MA 02108, Attention: Chief Title Examiner, and also emailed to [LandCourt.Title@jud.state.ma.us](mailto:LandCourt.Title@jud.state.ma.us) with reference to the Land Court Plan Number(s) for the land involved. Following receipt of the § 23B Complaint, after such proceedings as are indicated, the Court will issue to the District an appropriate Order of Court. Absent approval from the court, the District shall not prepare a new transfer certificate of title, if one is called for, until the issuance of an Order of Court.

## **III. Complaints Under Chapter 184, § 23B Filed by Owners or Others Having Interest in Registered Land**

As provided in Land Court Standing Order \_-21, an owner of registered land or another person having an interest in registered land may file a § 23B Complaint requesting that a Prohibited Restriction affecting the registered land be declared void, or that the court take other appropriate action. An owner or person in interest may file the § 23B Complaint, using whenever possible the form of complaint provided by the Court, with the Registered Land Desk at the District, or by mailing it to the Land Court, with a mailing address of Three Pemberton Square, Fifth Floor, Boston, MA 02108, Attention: Chief Title Examiner and emailed to [LandCourt.Title@jud.state.ma.us](mailto:LandCourt.Title@jud.state.ma.us) with reference to the Land Court Plan Number(s) for the land involved. There is no court fee for filing a § 23B Complaint. The District should assist an owner or other person in interest in obtaining the reference to the Land Court Plan Number(s) and other record information needed to prepare and file the § 23B Complaint.

A § 23B Complaint filed with the District by an owner or other person in interest is to be date-stamped by the District, and mailed and emailed to the above referenced addresses, to the attention of the Chief Title Examiner, with reference to the Land Court Plan number(s). Following receipt of the § 23B Complaint, after such proceedings as are indicated, the Court will issue an appropriate Order of Court to the District.

#### **IV. Preparation of Transfer Certificates of Title and Memoranda of Unit Ownership**

Pursuant to the Land Court Standing Order \_-21, the Districts are directed to insert above the sentence beginning with “WITNESS, GORDON H. PIPER, ESQ., CHIEF JUSTICE OF THE LAND COURT. . .”, a legend, using substantially the following language, on all original and transfer certificates of title and memoranda of unit ownership newly issued after the effective date of that Standing Order:

Any term or provision in any instrument or document noted on or referred to in this [certificate of title] [memorandum of unit ownership] affecting anyone’s right, title or interest in the land described in this [certificate of title] [memorandum of unit ownership] which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease of that land to individuals of a specified race, color, religion, national origin or sex is void. Any condition, restriction or prohibition, including a right of entry or a possibility of reverter, contained in any instrument or document noted on or referred to in this [certificate of title] [memorandum of unit ownership] which directly or indirectly limits the use for occupancy of real property on the basis of race, color, religion, national origin or sex is void, excepting a limitation on the basis of religion on the use of real property held by a religious or denominational institution or organization or by an organization operated for charitable or educational purposes which is operated, supervised or controlled by or in connection with a religious organization.

Any questions concerning this Memorandum should be directed to the Land Court Chief Title Examiner or her designee.