

Hall of the House of Representatives
92nd General Assembly - Regular Session, 2019
Amendment Form

Subtitle of Senate Bill No. 551

TO AMEND THE LAW CONCERNING RESTRICTIVE COVENANTS; AND TO AUTHORIZE THE
TERMINATION OF CERTAIN RESTRICTIVE COVENANTS.

Amendment No. 1 to Senate Bill 551

Amend Senate Bill No. 551 as originally introduced:

Add Representative Capp as a cosponsor of the bill

AND

Page 1, delete lines 24 and 25

AND

Page 1, line 26, delete "(2)" and substitute "(1)"

AND

Page 1, line 31, delete "(3)" and substitute "(2)"

AND

Page 1, line 34, delete "(4)" and substitute "(3)"

AND

Page 2, line 10, delete "(5)" and substitute "(4)"

AND

Page 2, delete lines 22 through 31, and substitute the following:

"(B) The instrument creating the restrictive covenant automatically renews and there is no documentation of an affirmative action to continue to enforce the restrictive covenant recorded within the last thirty (30) years in the office of the recorder of the county in which the property is located that verifies a vote to continue the enforcement of the restrictive covenant taken by a majority of the property owners who have the



right to enforce the restrictive covenant;"

AND

Page 3, line 1, delete "(E)" and substitute "(E)(i)"

AND

Page 3, line 3, delete "owners;" and substitute "owners'"

AND

Page 3, delete lines 4 through 9, and substitute the following:
"longer in existence and has not been in existence for the past two (2) years.

(ii) A property owners' association is in existence if, for the past two (2) years the property owners' association:

(a) Is a corporation or other entity duly formed and acting under the terms of its governing documents and is registered and in good standing with the Secretary of State;

(b) Has an elected governing body as required by the terms of its governing documents;

(c) Has the authority to collect and has collected the dues and assessments owed under its governing documents; or

(d) Has held meetings or performed other activities for which the property owners' association was formed.

(iii) A property owners' association having the same name as the property owners' association named in the instrument creating the restrictive covenant shall not be considered to be the property owners' association named in the instrument creating the restrictive covenant unless there is evidence that the property owners' association is the same property owners' association and has the same rights, purposes, and obligations as the property owners' association named in the instrument creating the restrictive covenant, including without limitation the right to make and collect assessments; and

(F) Conditions surrounding the real property have changed to the extent to destroy the value of the real property for the purposes for which the restrictive covenant was created and the purposes for which the restrictive covenant was created no longer exist.

(2) The provisions of subdivision (d)(1) of this section do not apply to restrictive covenants that restrict the use of real property for recreational purposes.

(3)(A) However, if the requirements under subdivision (d)(1)"

AND

Page 3, delete line 12, and substitute the following:
"seeking termination or cancellation of the restrictive covenant based on the provisions of subdivision (d)(1) of this section as long as"

AND

Page 3, delete line 14, and substitute the following:

"property owners as provided by subdivision (d)(1)(C) of this section and there is not a property owners' association in existence as provided in subdivision (d)(1)(E) of this section."

AND

Page 3, delete lines 15 through 20

AND

Page 3, delete line 22, and substitute the following:

"(d)(3)(A) of this section shall be held not less than thirty (30) days nor more that forty-five (45) days:"

AND

Page 3, line 26, delete "(d)(2)(C)" and substitute "(d)(3)(C)"

AND

Page 3, delete line 28, and substitute the following:

"to the property owners having the right to enforce the restrictive covenant in the manner provided in Rule 4(g)(3) of the Arkansas Rules of Civil Procedure if:

AND

Page 3, delete line 31, and substitute the following:

"owners having the right to enforce the restrictive covenant; and"

AND

Page 3, delete lines 33 through 36, and substitute the following:

"impossible or extremely burdensome to identify the property owners upon whom notice is required to be served.

(D) If the property owner burdened by the restrictive covenant is entitled to serve notice of the hearing by warning order under subdivision (d)(3)(C) of this section, the property owner shall still be required to serve personal notice of the hearing in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure to the following:

(i) Except for the easements located on the property of owners of real property that has been dedicated as a public street or right-of-way, property owners having a right to enforce the restrictive covenant within two hundred feet (200') of the property burdened by the restrictive covenant; and

(ii) Any property owners' association in existence as required under subdivision (d)(1)(E) of this section that may have an interest in the restrictive covenant.

(4) Subsection (d) of this section does not apply to a restrictive covenant affecting or encumbering any real property contained or located in any real estate development located in the state that:

(A) Contains more than seven thousand five hundred (7,500) residential or commercial lots platted of record in the real estate records of any single county in the state; and

(B) Is organized under and governed by a declaration or bill of assurance, as a declaration or bill of assurance may be supplemented or amended of record."

The Amendment was read _____

By: Representative Capp
DTP/DTP - 04-03-2019 13:00:00
DTP257

Chief Clerk