1	State of Arkansas	A D:11	
2	92nd General Assembly	A Bill	
3	Regular Session, 2019		SENATE BILL 551
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5	By: Senator J. English		
6			
7		For An Act To Be Entitled	
8	AN ACT TO AMEND THE LAW CONCERNING RESTRICTIVE		
9	COVENANTS; TO AUTHORIZE THE TERMINATION OF CERTAIN		
10	RESTRICTIVE	COVENANTS; AND FOR OTHER PURPOS	SES.
11			
12			
13		Subtitle	
14	TO AME	END THE LAW CONCERNING RESTRICTI	VE
15	COVENA	ANTS; AND TO AUTHORIZE THE	
16	TERMIN	MATION OF CERTAIN RESTRICTIVE	
17	COVENA	NTS.	
18			
19			
20	BE IT ENACTED BY THE GE	NERAL ASSEMBLY OF THE STATE OF	ARKANSAS:
21			
22	SECTION 1. DO NO	T CODIFY. <u>Legislative intent.</u>	
23	The General Assem	bly finds that:	
24	<u>(1) The law</u>	w disfavors restrictions upon re	eal property,
25	especially restrictions	which prohibit the free use of	real property;
26	<u>(2) The re</u>	straints imposed by a restricti	ve covenant on real
27	property may be harmful	to a property owner desiring to	o adapt his or her
28	property due to changed	circumstances, particularly who	en the restriction is
29	obsolete and the damage	s incurred by the removal of the	<u>e restrictive covenant</u>
30	are likely to be nomina	<u>1;</u>	
31	(3) Many r	estrictive covenants on real pro	operty no longer serve
32	the purpose for which t	hey were intended due to change	d circumstances over
33	<pre>time;</pre>		
34	<u>(4) A rest</u>	rictive covenant is especially	burdensome when the
35	right to enforce the re	striction exists by numerous pro	operty owners who may
36	be:		

1	(A) Difficult to readily identify or contact in order for
2	the owner of the restricted property to secure an amendment, termination, or
3	release of the restrictive covenant; or
4	(B) Unwilling to grant the owner of the restricted
5	property an amendment, termination, or release of the restrictive covenant;
6	<u>or</u>
7	(C) Demanding unreasonable consideration from the owner of
8	the restricted property for an amendment, termination, or release of the
9	restrictive covenant; and
10	(5) An undue burden is placed upon the owner of the property
11	seeking judicial and equitable relief from the burdens imposed upon the
12	property when the right to enforce a restrictive covenant is held by numerous
13	property owners who may be difficult to readily identify or contact.
14	
15	SECTION 2. Arkansas Code § 18-12-103, concerning restrictive
16	covenants, is amended to add an additional subsection to read as follows:
17	(d)(1) An action, suit, or proceeding shall not be maintained at law
18	or in equity in any court to enforce a restrictive covenant if:
19	(A) The instrument creating the restrictive covenant has
20	been recorded for more than thirty (30) years in the office of the recorder
21	of the county in which the property is located;
22	(B)(i) The instrument creating the restrictive covenant
23	automatically renews and;
24	(i) There has not been an affirmative action to
25	continue to enforce the restrictive covenant by the property owners within
26	the last thirty (30) years; and
27	(ii) There is no documentation recorded in the
28	office of the recorder of the county in which the property is located that
29	verifies a vote to continue the enforcement of the restrictive covenant taken
30	by the majority of the property owners who have the right to enforce the
31	restrictive covenant;
32	(C) The restrictive covenant can be enforced by two
33	hundred (200) or more property owners;
34	(D) The property owners having the right to enforce the
35	restrictive covenant are not readily identifiable from the instrument
36	creating the restrictive covenant;

1	(E) The instrument creating the restrictive covenant	
2	mentions a property owners' association or gives a right of enforcement to \underline{a}	
3	property owners; association and the property owners' association is no	
4	longer in existence or has not been in existence for the previous five-year	
5	period; and	
6	(F) Conditions surrounding the real property have changed	
7	to the extent that the value of the real property for which the restrictive	
8	covenant was imposed no longer exists.	
9	(2)(A)(i) However, if the requirements under subdivision (d)(1)	
10	of this section are not met, the property owner burdened by the restrictive	
11	covenant may request an expedited judicial hearing for declaratory judgment	
12	seeking termination or cancellation of the restrictive covenant as long as	
13	the restrictive covenant can be enforced by two hundred (200) or more	
14	property owners as provided by subdivision (d)(1)(C) of this section.	
15	(ii)(a) A hearing is not required if all of the	
16	requirements under subdivision (d)(1) of this section have been met.	
17	(b) However, a property owner burdened by the	
18	restrictive covenant may request an expedited judicial hearing for	
19	declaratory judgment seeking termination or cancellation of the restrictive	
20	covenant.	
21	(B) A hearing on an action filed under subdivision	
22	(d)(2)(A) of this section shall be held not more than thirty (30) days:	
23	(i) After service of notice on the property owners	
24	having the right to enforce the restrictive covenant; or	
25	(ii) From the date of the publication of the warning	
26	order authorized by subdivision (d)(2)(C) of this section.	
27	(C) Notice of the hearing may be served by warning order	
28	in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:	
29	(i) The property owner burdened by the restrictive	
30	covenant is required to give notice to two hundred (200) or more property	
31	owners having the right to enforce the restrictive covenant;	
32	(ii) There is reasonable cause to believe it is	
33	impossible to identify the property owners upon whom notice is required to be	
34	served; or	
35	(iii) There has been a refusal of notice by an	
36	abutting property owner upon whom notice is required to be served	