

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

As Engrossed: H4/4/19

A Bill

SENATE BILL 551

5 By: Senator J. English
6 By: Representative Capp
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING RESTRICTIVE
10 COVENANTS; TO AUTHORIZE THE TERMINATION OF CERTAIN
11 RESTRICTIVE COVENANTS; AND FOR OTHER PURPOSES.
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Subtitle

15 TO AMEND THE LAW CONCERNING RESTRICTIVE
16 COVENANTS; AND TO AUTHORIZE THE
17 TERMINATION OF CERTAIN RESTRICTIVE
18 COVENANTS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. DO NOT CODIFY. Legislative intent.

24 The General Assembly finds that:

25 (1) The restraints imposed by a restrictive covenant on real
26 property may be harmful to a property owner desiring to adapt his or her
27 property due to changed circumstances, particularly when the restriction is
28 obsolete and the damages incurred by the removal of the restrictive covenant
29 are likely to be nominal;

30 (2) Many restrictive covenants on real property no longer serve
31 the purpose for which they were intended due to changed circumstances over
32 time;

33 (3) A restrictive covenant is especially burdensome when the
34 right to enforce the restriction exists by numerous property owners who may
35 be:

36 (A) Difficult to readily identify or contact in order for



1 the owner of the restricted property to secure an amendment, termination, or
2 release of the restrictive covenant; or

3 (B) Unwilling to grant the owner of the restricted
4 property an amendment, termination, or release of the restrictive covenant;
5 or

6 (C) Demanding unreasonable consideration from the owner of
7 the restricted property for an amendment, termination, or release of the
8 restrictive covenant; and

9 (4) An undue burden is placed upon the owner of the property
10 seeking judicial and equitable relief from the burdens imposed upon the
11 property when the right to enforce a restrictive covenant is held by numerous
12 property owners who may be difficult to readily identify or contact.

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14 SECTION 2. Arkansas Code § 18-12-103, concerning restrictive
15 covenants, is amended to add an additional subsection to read as follows:

16 (d)(1) An action, suit, or proceeding shall not be maintained at law
17 or in equity in any court to enforce a restrictive covenant if:

18 (A) The instrument creating the restrictive covenant has
19 been recorded for more than thirty (30) years in the office of the recorder
20 of the county in which the property is located;

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

28 (C) The restrictive covenant can be enforced by two
29 hundred (200) or more property owners;

30 (D) The property owners having the right to enforce the
31 restrictive covenant are not readily identifiable from the instrument
32 creating the restrictive covenant;

33 (E)(i) The instrument creating the restrictive covenant
34 mentions a property owners' association or gives a right of enforcement to a
35 property owners' association and the property owners' association is no
36 longer in existence and has not been in existence for the past two (2) years.

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

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

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

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

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

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

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

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

28 (3)(A) However, if the requirements under subdivision (d)(1) of
29 this section are not met, the property owner burdened by the restrictive
30 covenant may request an expedited judicial hearing for declaratory judgment
31 seeking termination or cancellation of the restrictive covenant based on the
32 provisions of subdivision (d)(1) of this section as long as the restrictive
33 covenant can be enforced by two hundred (200) or more property owners as
34 provided by subdivision (d)(1)(C) of this section and there is not a property
35 owners' association in existence as provided in subdivision (d)(1)(E) of this
36 section.

1 (B) A hearing on an action filed under subdivision
2 (d)(3)(A) of this section shall be held not less than thirty (30) days nor
3 more than forty-five (45) days:

4 (i) After service of notice on the property owners
5 having the right to enforce the restrictive covenant; or

6 (ii) From the date of the publication of the warning
7 order authorized by subdivision (d)(3)(C) of this section.

8 (C) Notice of the hearing may be served by warning order
9 to the property owners having the right to enforce the restrictive covenant
10 in the manner provided in Rule 4(g)(3) of the Arkansas Rules of Civil
11 Procedure if:

12 (i) The property owner burdened by the restrictive
13 covenant is required to give notice to two hundred (200) or more property
14 owners having the right to enforce the restrictive covenant; and

15 (ii) There is reasonable cause to believe it is
16 impossible or extremely burdensome to identify the property owners upon whom
17 notice is required to be served.

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

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

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

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

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

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

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5 /s/J. English
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