

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

As Engrossed: H4/4/19  
**A Bill**

SENATE BILL 551

By: Senator J. English  
By: Representative Capp

### For An Act To Be Entitled

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

### Subtitle

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

The General Assembly finds that:

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a property owner desiring to adapt his or her property due to changed circumstances, particularly when the restriction is obsolete and the damages incurred by the removal of the restrictive covenant are likely to be nominal;

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

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

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



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

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

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

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

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

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

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

(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;

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

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

(E)(i) The instrument creating the restrictive covenant mentions a property owners' association or gives a right of enforcement to a property owners' association and the property owners' association is no 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) of this section are not met, the property owner burdened by the restrictive covenant may request an expedited judicial hearing for declaratory judgment seeking termination or cancellation of the restrictive covenant based on the provisions of subdivision (d)(1) of this section as long as the restrictive covenant can be enforced by two hundred (200) or more 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.

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

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

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

(C) Notice of the hearing may be served by warning order 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:

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

(ii) There is reasonable cause to believe it is 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.

/s/J. English