

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 1354

5 By: Representative Vines
6 By: Senator Burnett
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE REQUIREMENTS FOR AMENDING
10 COVENANTS RESTRICTING THE USE OR DEVELOPMENT OF REAL
11 PROPERTY; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO CLARIFY THE REQUIREMENTS FOR AMENDING
16 COVENANTS RESTRICTING THE USE OR
17 DEVELOPMENT OF REAL PROPERTY.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. DO NOT CODIFY. Findings and legislative intent.

23 (a) The General Assembly finds that:

24 (1) The decision of the Arkansas Court of Appeals in Rausch
25 Coleman Homes, LLC v. Brech, 2009 Ark. App. 225, 303 S.W.3d 456 (Ark. App.
26 2009) unduly restricts the use and development of real property; and

27 (2) It is in the best interests of the people of the State of
28 Arkansas to foster the ability of landowners to amend private covenants to
29 obtain the best possible use of the landowners' real property.

30 (b) It is the intent of the General Assembly by passing this act to
31 encourage and promote the use and economic development of land in the State
32 of Arkansas by clarifying the requirements for amending covenants restricting
33 the use or development of real property.
34

35 SECTION 2. Arkansas Code § 18-12-103 is amended to read as follows:
36 18-12-103. Restrictive covenants.



1 (a) As used in this section:

2 (1) "Affected property owners" means:

3 (A) With respect to an instrument creating a restrictive
 4 covenant, each owner of the real property; and

5 (B) With respect to an instrument amending a restrictive
 6 covenant:

7 (i) The number, percentage, or amount in land area
 8 of property owners required by the instrument to amend a restrictive
 9 covenant; or

10 (ii) If the instrument does not specify the
 11 requirements to amend the restrictive covenant, the property owners of more
 12 than fifty percent (50%) of the land area subject to the restrictive
 13 covenant; and

14 (2) "Restrictive covenant" means a restriction on the use or
 15 development of real property regardless of whether the restriction is created
 16 by a covenant in a deed or bill of assurance, or by any other instrument.

17 (b) ~~No~~ An instrument creating a restrictive ~~or protective~~ covenants
 18 affecting the use of real property nor any instrument purporting to restrict
 19 the use of real property shall be valid ~~or~~ covenant is not effective against
 20 a subsequent purchaser or owner of to restrict the use or development of real
 21 property unless the ~~restrictive or protective covenants or~~ instrument
 22 purporting to restrict the use or development of the real property is
 23 executed by the affected property owners ~~of the real property~~ and recorded in
 24 the office of the recorder of the county in which the property is located.

25 (c) If the instrument creating a restrictive covenant contains
 26 separate sections stating the duration of the covenant and the requirements
 27 for amending the covenant, the section or sections stating the duration of
 28 the covenant shall be read independently of the section or sections stating
 29 the requirements for amending the covenant so that the duration of the
 30 covenant does not limit the ability to amend a restrictive covenant at any
 31 time.

32 (d) A restrictive covenant may be amended by the affected property
 33 owners as defined in subdivision (a)(1)(B) of this section:

34 (1) At any time unless the instrument creating the restrictive
 35 covenant establishes a time period not to exceed ten (10) years during which
 36 amendment is not permitted; and

1 (2) After ten (10) years from the date that the instrument
2 containing the restrictive covenant was recorded in the office of the
3 recorder of the county in which the property is located regardless of whether
4 the instrument creating the restrictive covenant establishes a time period
5 during which amendment is not permitted.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36