



HOUSE BILL 642: Marketable Title Act-Restrictive Covenants.

2023-2024 General Assembly

Committee:	House Judiciary 2. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	May 3, 2023
Introduced by:	Rep. Stevens	Prepared by:	Anna Parsons*
Analysis of:	First Edition		Susan Sitze Staff Attorneys

OVERVIEW: *House Bill 642 would modify the Real Property Marketable Title Act exception for residential-use covenants.*

CURRENT LAW: The Real Property Marketable Title Act (Act), Chapter 47B of the General Statutes, provides that if a person claims title to real property under a chain of record title for 30 years, and no other person has filed a notice of any claim of interest in the real property during the 30-year period, then all conflicting claims based upon any title transaction prior to the 30-year period shall be extinguished.

G.S. 47B-3 contains a list of exceptions that allow some interests to survive longer than 30 years. Currently, one of these exceptions, G.S. 47B-3(13), establishes that marketable record title does not extinguish the following rights:

"Covenants applicable to a general or uniform scheme of development which restrict the property to residential use only, provided said covenants are otherwise enforceable. The excepted covenant may restrict the property to multi-family or single-family residential use or simply to residential use. Restrictive covenants other than those mentioned herein which limit the property to residential use only are not excepted from the provisions of Chapter 47B."

BILL ANALYSIS: House Bill 642 would modify the language in the G.S. 47B-3(13) exception to apply to all "restrictive covenants applicable to a general or uniform scheme of single-family or multifamily residential development" instead of only applying to covenants that restrict property to residential use.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: The North Carolina Supreme Court recently decided *C. Investments 2, LLC v. Auger*, 383 N.C. 1 (2022), where a limited-liability company that owned seven lots in a residential subdivision brought an action to extinguish nine restrictive covenants on the lots under the Act. The owners of the other lots in the subdivision argued the nine restrictive covenants, which addressed residential use, allowable buildings, setbacks, temporary structures, right of ways, and lot sizes, were protected from extinguishment by the exception in G.S. 47B-3(13) because they were part of a general or uniform scheme of residential development.

The Court held that the plain language of the exception in G.S. 47B-3(13) exempted only the covenant that restricted the lots to residential use. The remaining eight covenants did not survive extinguishment because they did not concern restricting the property to residential use only.

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