

SUBJECT: Allowing Harris County justice courts to enforce deed restrictions

COMMITTEE: Judicial Affairs — committee substitute recommended

VOTE: 7 ayes — Hartnett, Alonzo, Duncan, Goodman, Nixon, Solis, Zbranek

0 nays

2 absent — Thompson, Willis

WITNESSES: For — None

Against — Randy Lee, Stewart Title and Texas Land Title Association

On — None

BACKGROUND: Houston and several other cities in Harris County do not have zoning restrictions. In order to avoid problems associated with the lack of zoning in suburban, residential neighborhoods, the deeds for land in many of these areas contain restrictive covenants related to zoning matters. In order to enforce such restrictive covenants, the homeowner's association or the county attorney may bring a suit in district court.

DIGEST: CSHB 387 would allow Harris County justice courts to have concurrent jurisdiction over cases relating to enforcement of deed restrictions which do not concern a structural change to a dwelling regardless of the amount in controversy.

The bill sets out the conditions for commencing such a suit and would allow justices of the peace to order alternative dispute resolution in such cases. Justices of the peace could consolidate cases relating to similar issues and parties. Any appeal to county court from the decision of a justice court in such cases would be by trial *de novo* (a new trial without regard to the lower court decision).

This bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

Most suits to enforce restrictive covenants involving property in Houston and other areas of Harris County deal with relatively small matters that would be handled as zoning matters in other cities. They include such matters as setting up large satellite dishes, building unusual fences, placement of storage buildings on the property and even not keeping the lawn trimmed. It is a waste of money and court resources to bring such suits in a district court when they could be handled more simply and expeditiously by justice courts. Justice courts are better suited to handle such suits because they represent geographical areas of the county so the parties would not be required to go all the way to the courthouse in downtown Houston but could settle the matter in their own area.

In most of these cases the evidence is sparse, consisting mainly of the presentation of the deed and the restriction included in it and a presentation regarding the violation of the restriction, usually including only a photograph or other physical evidence. There are no defenses to such a suit if the evidence is proper, so there is no need for the procedures of a district court. Those dissatisfied with a justice court decision could always appeal to county court.

**OPPONENTS
SAY:**

Restrictive covenants have a long history of being used as a means of discrimination. Even minor violations can be used against people whom the other property owners wish to punish or try to drive out of the neighborhood. Because of such a history and such a potential for abuse, the enforcement of such restrictions should only be handled by a court that can examine all of the aspects of the case, and a judge that has the experience to recognize when these processes might be abused.

Justices of the peace are not required to be lawyers and are generally not as sophisticated in legal matters as district or county court judges. It would be improper to allow justices of the peace to make important determinations regarding restrictive covenants.

**OTHER
OPPONENTS
SAY:**

Other cities and unincorporated areas in counties other than Harris also do not have zoning restrictions, and their residents would benefit from being able to use justice courts to enforce restrictive covenants as well.

NOTES:

The committee substitute added that the bill would only apply to Harris county, set out the evidence that must be presented by the petitioner, allowed the justice of the peace to order alternative dispute resolution rather than only mediation and added provisions relating to the consolidation of cases and appeal by trial *de novo*.