

SUBJECT: Allowing justice courts to enforce deed restrictions statewide

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 7 ayes — Thompson, Hartnett, Clark, Luna, Shields, Solis, Zbranek
0 nays
2 absent — Crabb, Garcia

WITNESSES: For — Mary Ann Deller, Cedar Creek Lake Area; Charles Lowe, Neighborhood Association of Southwest Williamson County
Against — None
On — Larry Nieman, Texas Apartment Association, Texas Building Owners and Managers Association

BACKGROUND : In 1995, the 74th Legislature enacted HB 387 by Hochberg — now § 27.034 of the Government Code — allowing justice courts in Harris County to enforce residential subdivision deed restrictions that do not concern structural changes to the dwelling. The jurisdiction of justice courts is concurrent with district courts in this area, and any appeal of a justice court decision is by trial *de novo* (a new trial without regard to the lower court decision) to a county court.

DIGEST: HB 614 would remove the population bracket and allow all justice courts in Texas to enforce residential subdivision deed restrictions that do not concern structural changes to the dwelling.
This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: HB 614 would simply extend to all Texans a convenience that was granted to residents of Harris County last session. The 74th Legislature gave homeowner associations in Harris County a powerful tool to enforce deed restrictions by going to the local justice court. Otherwise, enforcing such

deed restrictions requires litigation in district court, which is much more costly and involves a longer wait before a hearing or trial can occur.

Deed restriction cases are relatively small controversies that in many areas might be handled as zoning matters. They include such matters as setting up large satellite dishes, building unusual fences, placing of storage buildings 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 travel to the district courthouse but could settle the matter in their own area.

In most of these cases the evidence is sparse, consisting mainly showing the deed and its restriction and presenting evidence of the violation of the restriction, often only a photograph. Usually such cases are cut and dried if the factual evidence of a violation is sufficient, so there is no need for a full-blown district court proceeding. Those dissatisfied with a justice court decision can 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 this history and the 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.