

HCS SS SCS SB 168 -- RESTRICTIVE REAL ESTATE COVENANTS AND  
DEFECTIVE RESIDENTIAL CONSTRUCTION

SPONSOR: Dolan (Pratt)

COMMITTEE ACTION: Voted "do pass" by the Committee on Local  
Government by a vote of 15 to 1.

This substitute requires that any restrictive real estate covenant included in an association's governing document will be removed by the board of directors of that association. If the association fails to remove a restrictive covenant within 30 days of receiving a written request to do so, injunctive relief may be granted to any individual or organization requesting the removal. This provision has an effective date of January 1, 2006.

The substitute also establishes a procedural prerequisite for filing a lawsuit for defective residential construction. In its main provisions, the substitute:

- (1) Requires contractors to provide written notice to homeowners, including homeowners' associations, upon entering contracts of the right to offer to cure construction defects before homeowners may file legal actions, and specifies the required notice language;
- (2) Clarifies that if a homeowner countersues a contractor in a suit originally filed by the contractor against the homeowner, the procedural prerequisites do not apply;
- (3) Requires homeowners to provide a written notice to contractors detailing the alleged defective construction prior to filing a lawsuit;
- (4) Requires contractors to respond timely in writing, offering an inspection followed by repair, monetary compensation, or disputation of the claim; offering timely repair; offering repair and compensation; offering monetary compensation; or disputing the claim. If the contractor disputes the claim or fails to timely respond, the homeowner may file suit. If the homeowner rejects a contractor's offer, the homeowner must notify the contractor, and then the homeowner can file suit. If the homeowner accepts a contractor's offer that includes repair, the homeowner must provide reasonable access to the premises;
- (5) Authorizes the homeowner to take immediate action to prevent imminent injury to persons or additional significant and material damage to the residence without violating the procedural prerequisites; and
- (6) Outlines the option of mediation if agreed upon by the homeowner and contractor.

FISCAL NOTE: No impact on state funds in FY 2006, FY 2007, and FY 2008.

PROPOSERS: Supporters say that the bill provides protections for both homeowners and homebuilders, gives builders a better method to serve their clients' needs, and provides both parties the opportunity to avoid litigation, thereby saving money.

Testifying for the bill were Representative Pratt; and St. Louis Homebuilders Association.

OPPOSERS: Those who oppose the bill say that requiring homeowners' and community association board members to notify all homeowner/members and receive consent undermines the board members' responsibility as elected representatives.

Testifying against the bill was Community Associations Institute.

OTHERS: Others testifying on the bill say there are still some changes that need to be made for consistency.

Others testifying on the bill was Board of Governors of the Missouri Bar.

Julie Jinkens McNitt, Legislative Analyst