

Supreme Court Marks Sea Change in Rules to Amend Restrictions in Subdivisions

Amundsen Davis Real Estate Alert
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The Missouri Supreme Court recently changed the law regarding the amendment of restrictions of the use of property in residential subdivisions. Now, a bare majority of lot owners in a subdivision can vote to do any number of things. Are you a homeowner with pets? Now, your neighbors can prohibit them. Do you live in a subdivision overrun with rentals? Now you and your neighbors can vote to prohibit rentals or AirBnB. Are you a residential developer? Without proper planning, the very homeowners you sell to can restrict your future development once you lose control of the subdivision.

On August 13, 2019, the Missouri Supreme Court issued its ruling in *Trustees of Clayton Terrace Subdivision v. 6 Clayton Terrace, LLC*, in which it overruled long-standing rules regarding the amendment of residential subdivision restrictions. Seasoned residential developers in Missouri are aware of the rule that amendments to subdivision indentures to create new restrictions require the unanimous approval from all lot owners in the subdivision. Subdivision trustees may also have run into this rule when attempting adopt or enforce new subdivision restrictions regarding the types of structures allowed, limiting rentals, or adopting development standards. This rule stems from the case of *Van Deusen v. Ruth*, a Missouri Supreme Court case from 1938. That rule is no longer applicable in Missouri after *Clayton Terrace*.

Under the new rule, the amendment of a subdivision indenture follows the language of the amendment procedure in the indenture itself. Many of these indentures in the St. Louis region allow for the indenture to be “amended” or “extended” with the approval of a majority of the lot owners. Under the rule adopted by the Supreme Court, this language will allow the indentures to be amended to add any sort of restrictions, and possibly other provisions of the indenture, with a bare majority.

This change in the law can have serious implications for subdivision developers. Care must be taken to ensure that a development can be completed as planned. For example, under the new rule, the new lot owners could vote to significantly change the standards for the remaining to-be-built homes in a subdivision after a majority of lots have been built and sold. The traditional recourse that a developer would have against a municipality would not apply to a subdivision

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association. Before closing on another lot, developers should consult an attorney regarding their planned indentures.

Subdivision trustees and HOA presidents also need to be aware of this change in the law. Previously, Missouri courts have refused to allow restrictions to be expanded by a simple majority, but now that is the law in Missouri. Subdivisions and HOAs have significantly more power and flexibility to amend the restrictions on property. A subdivision that has problems with rentals can now prohibit rentals, or place restrictions to manage rentals. An older subdivision that is facing rehabilitation and redevelopment of existing homes can manage that redevelopment with restrictions. The same can be done with a multitude of other issues facing subdivisions, such as AirBnB and vacation rentals, fences, livestock, and other nuisance activities.

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