START\_STATUTE33-440.  Enforceability of private covenants; amendment of declaration; definitions

A.  An owner of real property may enter into a private covenant regarding that real property and the private covenant is valid and enforceable according to its terms if all of the following apply:

1.  The private covenant is not prohibited by any other existing private covenant or declaration affecting the real property and does not violate any statute governing the subject matter of the private covenant that is in effect before September 26, 2008.

2.  The owner of the real property affected by the private covenant and any person on whom the private covenant imposes any liability or obligation have consented to the private covenant.

3.  Any consent requirements contained in the express provisions of any existing private covenant or declaration affecting the real property have been met.

B.  A private covenant is deemed not to constitute an amendment to any existing private covenant or declaration unless the private covenant expressly violates an express provision of the existing private covenant or declaration.

C.  Except during the period of declarant control, or if during the period of declarant control with the written consent of the declarant in each instance, the following apply to an amendment to a declaration:

1.  The declaration may be amended by the association, if any, or, if there is no association or board, the owners of the property that is subject to the declaration, by an affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

2.  An amendment to a declaration may apply to fewer than all of the lots or less than all of the property that is bound by the declaration and an amendment is deemed to conform to the general design and plan of the community, if both of the following apply:

(a)  The amendment receives the affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

(b)  The amendment receives the affirmative vote or written consent of all of the owners of the lots or property to which the amendment applies.

3.  Within thirty days after the adoption of any amendment pursuant to this subsection, the association or, if there is no association or board, a property owner that is authorized by the affirmative vote on or the written consent to the amendment shall prepare, execute and record a written instrument setting forth the amendment.

4.  Notwithstanding any provision in the declaration that provides for periodic renewal of the declaration, an amendment to the declaration is effective immediately on recordation of the instrument in the county in which the property is located.

D.  Subsection C of this section does not apply to a condominium as defined in section 33‑1202 or a timeshare plan or association as defined in section 33‑2202.

E.  For the purposes of this section:

1.  "Declaration" means any instrument, however denominated, that establishes restrictive covenants on the development or use of real property.

2.  "Private covenant" means any uniform or nonuniform covenant, restriction or condition regarding real property that is contained in any deed, contract, agreement or other recorded instrument affecting real property. END\_STATUTE