

Alabama Ct Says HOA Action to Enforce Restrictive Covenant is Barred by 6 Yr. Statute of Limitations
Alabama Appellate Court decision (September 16, 2016)

In this case, in 2007, a homeowner purchased a property in a development that was subject to restrictive covenants created by the original developer of the subdivision. Shortly after purchasing the property, the homeowner removed a wall that enclosed the pool area on the property and made some other improvements without the approval of the governing association's Architectural Review Committee in violation of the restrictive covenants that the homeowner was required to comply with.

The evidence introduced at trial established that the homeowner first removed the wall and did some of the other work in December 2007, and the work continued into the spring of 2008. Commencing in June of 2009, the association sent the first of several letters to the homeowner demanding that the wall, which had been removed without approval from the association, be rebuilt in accordance with the approved plan that had been submitted by the original owner of the property back in 2000. After the homeowner failed to comply with the association's demands for the rebuilding of the wall, in January of 2014, the association filed an action seeking injunctive relief (an order compelling the homeowner to rebuild the wall) and attorney fees. In defense of the action, the homeowner contended that the association's action was barred by an Alabama statute of limitations provision (Alabama Code 1975, §6-2-34(6)) that requires "actions for the use and occupation of land" to be commenced within 6 years.

The trial court ruled in favor of the association concluding that the six year statutory limitations period that the homeowner contended precluded the association's action did not apply to actions to enforce restrictive covenants. The trial court further ruled that neither the doctrines of laches or the balancing of relative-hardships (additional defenses alleged by the homeowner) applied. Thus, the trial court granted the requested injunctive relief in favor of the association and ordered the homeowner to: (i) remove the improvements that he had constructed without the association's approval; (ii) reconstruct the wall that had been removed; (iii) install new landscaping to replace what had been removed; and (iv) pay for the association's attorney fees.

Dissatisfied with the trial court judgment, the homeowner filed an appeal in which he contended that the association's action was barred by the six year statute of limitations. The appellate court found that the question of whether statutes of limitations are applicable to actions to enforce restrictive covenants depends in large part on the specific language contained in the statute and case law within the state. In looking at the Alabama statute in question, the court noted that the language of the statute under consideration stated, "This chapter shall apply to and govern claims in all courts, and shall apply whether the claim upon which an action is commenced is based upon a debt or obligation of either legal or equitable nature." Given the broad language in the statute, because the association's claim against the homeowner was based on covenants that restricted "the use and occupation of land," the six year statute of limitations was applicable. Thus, because the association's cause of action against the homeowner arose when the homeowner first began removing the wall in December of 2007 without the association's approval, the six year limitations period expired in December of 2013, and the action commenced by the association in January of 2014 was time barred. Accordingly, the trial court's judgment was reversed.

See case decision: [Bekken_v._Greystone_Resident](#)