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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/AE/2R	.	Floor: SEN1/RC
05/04/2017 10:15 PM	.	05/05/2017 06:09 PM
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Senator Passidomo moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 702.12, Florida Statutes, is created to  
read:

702.12 Actions in foreclosure.-

(1) (a) A lienholder, in an action to foreclose a mortgage,  
may submit any document the defendant filed in the defendant's  
bankruptcy case under penalty of perjury for use as an admission  
by the defendant.



12           (b) A rebuttable presumption that the defendant has waived  
13 any defenses to the foreclosure is created if a lienholder  
14 submits documents filed in the defendant's bankruptcy case  
15 which:

16           1. Evidence the defendant's intention to surrender to the  
17 lienholder the property that is the subject of the foreclosure;

18           2. Have not been withdrawn by the defendant; and

19           3. Show that a final order has been entered in the  
20 defendant's bankruptcy case which discharges the defendant's  
21 debts or confirms the defendant's repayment plan that provides  
22 for the surrender of the property.

23           (2) Pursuant to s. 90.203, a court shall take judicial  
24 notice of any order entered in a bankruptcy case upon the  
25 request of a lienholder.

26           (3) This section does not preclude the defendant in a  
27 foreclosure action from raising a defense based upon the  
28 lienholder's action or inaction subsequent to the filing of the  
29 document filed in the bankruptcy case which evidenced the  
30 defendant's intention to surrender the mortgaged property to the  
31 lienholder.

32           (4) This section applies to any foreclosure action filed on  
33 or after October 1, 2017.

34           Section 2. Subsection (6) of section 125.022, Florida  
35 Statutes, is amended to read:

36           125.022 Development permits.—

37           (6) A county may not delegate its police power to a third  
38 party by restriction, covenant, or otherwise. The imposition by  
39 a county of a recorded or unrecorded restriction or covenant as  
40 a condition of a county's approval or issuance of a development



892280

41 permit does not preclude the county from exercising its police  
42 power to later amend, release, or terminate the restriction or  
43 covenant. Any such amendment, release, or termination of the  
44 restriction or covenant must follow the procedural requirements  
45 in s. 125.66(4). ~~This section does not prohibit a county from~~  
46 ~~providing information to an applicant regarding what other~~  
47 ~~state or federal permits may apply.~~

48 Section 3. Subsection (6) of section 166.033, Florida  
49 Statutes, is amended to read:

50 166.033 Development permits.-

51 (6) A municipality may not delegate its police power to a  
52 third party by restriction, covenant, or otherwise. The  
53 imposition by a municipality of a recorded or unrecorded  
54 restriction or covenant as a condition of a municipality's  
55 approval or issuance of a development permit does not preclude a  
56 municipality from exercising its police power to later amend,  
57 release, or terminate the restriction or covenant. Any such  
58 amendment, release, or termination of the restriction or  
59 covenant must follow the procedural requirements in s.  
60 166.041(3)(c). ~~This section does not prohibit a municipality~~  
61 ~~from providing information to an applicant regarding what other~~  
62 ~~state or federal permits may apply.~~

63 Section 4. Section 712.04, Florida Statutes, is amended to  
64 read:

65 712.04 Interests extinguished by marketable record title.-

66 (1) Subject to s. 712.03, a marketable record title is free  
67 and clear of all estates, interests, claims, covenants,  
68 restrictions, or charges, the existence of which depends upon  
69 any act, title transaction, event, zoning requirement, building



892280

70 or development permit, or omission that occurred before the  
71 effective date of the root of title. Except as provided in s.  
72 712.03, all such estates, interests, claims, covenants,  
73 restrictions, or charges, however denominated, whether they are  
74 or appear to be held or asserted by a person sui juris or under  
75 a disability, whether such person is within or without the  
76 state, natural or corporate, or private or governmental, are  
77 declared to be null and void. However, this chapter does not  
78 affect any right, title, or interest of the United States,  
79 Florida, or any of its officers, boards, commissions, or other  
80 agencies reserved in the patent or deed by which the United  
81 States, Florida, or any of its agencies parted with title.

82 (2) This section may not be construed to alter or  
83 invalidate a zoning ordinance, land development regulation,  
84 building code, or other ordinance, rule, regulation, or law if  
85 such ordinance, rule, regulation, or law operates independently  
86 of matters recorded in the official records.

87 Section 5. Section 712.001, Florida Statutes, is created to  
88 read:

89 712.001 Short title.—This chapter may be cited as the  
90 “Marketable Record Title Act.”

91 Section 6. Section 712.01, Florida Statutes, is reordered  
92 and amended to read:

93 712.01 Definitions.—As used in this chapter, the term law:

94 (1) “Community covenant or restriction” means any agreement  
95 or limitation contained in a document recorded in the public  
96 records of the county in which a parcel is located which:

97 (a) Subjects the parcel to any use restriction that may be  
98 enforced by a property owners’ association; or



892280

99           (b) Authorizes a property owners' association to impose a  
100 charge or assessment against the parcel or the parcel owner.

101           (4) ~~(1)~~ The term "Person" includes the as used herein  
102 ~~denotes~~ singular or plural, natural or corporate, private or  
103 governmental, including the state and any political subdivision  
104 or agency thereof as the context for the use thereof requires or  
105 denotes and including any property owners' homeowners'  
106 association.

107           (6) ~~(2)~~ "Root of title" means any title transaction  
108 purporting to create or transfer the estate claimed by any  
109 person ~~and~~ which is the last title transaction to have been  
110 recorded at least 30 years before ~~prior to~~ the time when  
111 marketability is being determined. The effective date of the  
112 root of title is the date on which it was recorded.

113           (7) ~~(3)~~ "Title transaction" means any recorded instrument or  
114 court proceeding that ~~which~~ affects title to any estate or  
115 interest in land and that ~~which~~ describes the land sufficiently  
116 to identify its location and boundaries.

117           (5) ~~(4)~~ "Property owners' association" ~~The term "homeowners'~~  
118 ~~association"~~ means a homeowners' association as defined in s.  
119 720.301, a corporation or other entity responsible for the  
120 operation of property in which the voting membership is made up  
121 of the owners of the property or their agents, or a combination  
122 thereof, and in which membership is a mandatory condition of  
123 property ownership, or an association of parcel owners which is  
124 authorized to enforce a community covenant or restriction ~~use~~  
125 ~~restrictions~~ that is ~~are~~ imposed on the parcels.

126           (3) ~~(5)~~ The term "Parcel" means real property that ~~which~~ is  
127 used for residential purposes and that is subject to exclusive



128 ownership and ~~which is subject~~ to any covenant or restriction of  
129 a property owners' homeowners' association.

130 ~~(2) (6) The term~~ "Covenant or restriction" means any  
131 agreement or limitation contained in a document recorded in the  
132 public records of the county in which a parcel is located which  
133 subjects the parcel to any use or other restriction or  
134 obligation ~~which may be enforced by a homeowners' association or~~  
135 ~~which authorizes a homeowners' association to impose a charge or~~  
136 ~~assessment against the parcel or the owner of the parcel or~~  
137 ~~which may be enforced by the Florida Department of Environmental~~  
138 ~~Protection pursuant to chapter 376 or chapter 403.~~

139 Section 7. Section 712.05, Florida Statutes, is amended to  
140 read:

141 712.05 Effect of filing notice.-

142 (1) A person claiming an interest in land or other right  
143 subject to extinguishment under this chapter ~~a homeowners'~~  
144 ~~association desiring to preserve a covenant or restriction~~ may  
145 preserve and protect such interest or right ~~the same~~ from  
146 extinguishment by the operation of this chapter ~~act~~ by filing  
147 for record, at any time during the 30-year period immediately  
148 following the effective date of the root of title, a written  
149 notice in accordance with s. 712.06 ~~this chapter~~.

150 (2) A property owners' association may preserve and protect  
151 a community covenant or restriction from extinguishment by the  
152 operation of this chapter by filing for record, at any time  
153 during the 30-year period immediately following the effective  
154 date of the root of title:

155 (a) A written notice in accordance with s. 712.06; or

156 (b) A summary notice in substantial form and content as



892280

157 required under s. 720.3032(2). Failure of a summary notice to be  
158 indexed to the current owners of the affected property does not  
159 affect the validity of the notice or vitiate the effect of the  
160 filing of such notice.

161 (3) A ~~Such~~ notice under subsection (1) or subsection (2)  
162 preserves an interest in land or other ~~such claim of right~~  
163 subject to extinguishment under this chapter, or a ~~such~~ covenant  
164 or restriction or portion of such covenant or restriction, for  
165 not less than ~~up to~~ 30 years after filing the notice unless the  
166 notice is filed again as required in this chapter. A person's  
167 disability or lack of knowledge of any kind may not delay the  
168 commencement of or suspend the running of the 30-year period.  
169 Such notice may be filed for record by the claimant or by any  
170 other person acting on behalf of a claimant who is:

- 171 (a) Under a disability;
  - 172 (b) Unable to assert a claim on his or her behalf; or
  - 173 (c) One of a class, but whose identity cannot be
- 174 established or is uncertain at the time of filing such notice of  
175 claim for record.

176  
177 ~~Such notice may be filed by a homeowners' association only if~~  
178 ~~the preservation of such covenant or restriction or portion of~~  
179 ~~such covenant or restriction is approved by at least two thirds~~  
180 ~~of the members of the board of directors of an incorporated~~  
181 ~~homeowners' association at a meeting for which a notice, stating~~  
182 ~~the meeting's time and place and containing the statement of~~  
183 ~~marketable title action described in s. 712.06(1)(b), was mailed~~  
184 ~~or hand delivered to members of the homeowners' association at~~  
185 ~~least 7 days before such meeting. The property owners'~~



186 ~~homeowners'~~ association or clerk of the circuit court is not  
187 required to provide additional notice pursuant to s. 712.06(3).  
188 The preceding sentence is intended to clarify existing law.

189 (4)~~(2)~~ It is ~~shall~~ not ~~be~~ necessary for the owner of the  
190 marketable record title, as described in s. 712.02 herein  
191 ~~defined~~, to file a notice to protect his or her marketable  
192 record title.

193 Section 8. Subsections (1) and (3) of section 712.06,  
194 Florida Statutes, are amended to read:

195 712.06 Contents of notice; recording and indexing.—

196 (1) To be effective, the notice referred to in s. 712.05,  
197 other than the summary notice referred to in s. 712.05(2)(b),  
198 must ~~shall~~ contain:

199 (a) The name or description and mailing address of the  
200 claimant or the property owners' ~~homeowners'~~ association  
201 desiring to preserve any covenant or restriction ~~and the name~~  
202 ~~and particular post office address of the person filing the~~  
203 ~~claim or the homeowners' association.~~

204 (b) The name and mailing ~~post office~~ address of an owner,  
205 or the name and mailing ~~post office~~ address of the person in  
206 whose name the ~~said~~ property is assessed on the last completed  
207 tax assessment roll of the county at the time of filing, who,  
208 for purpose of such notice, shall be deemed to be an owner;  
209 ~~provided~~, however, if a property owners' ~~homeowners'~~ association  
210 is filing the notice, ~~then~~ the requirements of this paragraph  
211 may be satisfied by attaching to and recording with the notice  
212 an affidavit executed by the appropriate member of the board of  
213 directors of the property owners' ~~homeowners'~~ association  
214 affirming that the board of directors of the property owners'





892280

215 ~~homeowners'~~ association caused a statement in substantially the  
216 following form to be mailed or hand delivered to the members of  
217 that property owners' ~~homeowners'~~ association:

218  
219 STATEMENT OF MARKETABLE TITLE ACTION

220  
221 The [name of property owners' ~~homeowners'~~ association] (the  
222 "Association") has taken action to ensure that the [name of  
223 declaration, covenant, or restriction], recorded in Official  
224 Records Book . . . ., Page . . . ., of the public records of . . . .  
225 County, Florida, as may be amended from time to time, currently  
226 burdening the property of each and every member of the  
227 Association, retains its status ~~as the source of marketable~~  
228 ~~title~~ with regard to the affected real property ~~the transfer of~~  
229 ~~a member's residence~~. To this end, the Association shall cause  
230 the notice required by chapter 712, Florida Statutes, to be  
231 recorded in the public records of . . . . County, Florida. Copies  
232 of this notice and its attachments are available through the  
233 Association pursuant to the Association's governing documents  
234 regarding official records of the Association.

235  
236 (c) A full and complete description of all land affected by  
237 such notice, which description shall be set forth in particular  
238 terms and not by general reference, but if said claim is founded  
239 upon a recorded instrument or a covenant or a restriction, ~~then~~  
240 the description in such notice may be the same as that contained  
241 in such recorded instrument or covenant or restriction, provided  
242 the same shall be sufficient to identify the property.

243 (d) A statement of the claim showing the nature,



244 description, and extent of such claim or other right subject to  
245 extinguishment under this chapter or, in the case of a covenant  
246 or restriction, a copy of the covenant or restriction, except  
247 that it is ~~shall~~ not ~~be~~ necessary to show the amount of any  
248 claim for money or the terms of payment.

249 (e) If such claim or other right subject to extinguishment  
250 under this chapter is based upon an instrument of record or a  
251 recorded covenant or restriction, such instrument of record or  
252 recorded covenant or restriction shall be deemed sufficiently  
253 described to identify the same if the notice includes a  
254 reference to the book and page in which the same is recorded.

255 (f) Such notice shall be acknowledged in the same manner as  
256 deeds are acknowledged for record.

257 (3) The person providing the notice referred to in s.  
258 712.05, other than a notice for preservation of a community  
259 covenant or restriction, shall:

260 (a) Cause the clerk of the circuit court to mail by  
261 registered or certified mail to the purported owner of said  
262 property, as stated in such notice, a copy thereof and shall  
263 enter on the original, before recording the same, a certificate  
264 showing such mailing. For preparing the certificate, the  
265 claimant shall pay to the clerk the service charge as prescribed  
266 in s. 28.24(8) and the necessary costs of mailing, in addition  
267 to the recording charges as prescribed in s. 28.24(12). If the  
268 notice names purported owners having more than one address, the  
269 person filing the same shall furnish a true copy for each of the  
270 several addresses stated, and the clerk shall send one such copy  
271 to the purported owners named at each respective address. Such  
272 certificate shall be sufficient if the same reads substantially



892280

273 as follows:

274

275 I hereby certify that I did on this ....., mail by  
276 registered (or certified) mail a copy of the foregoing notice to  
277 each of the following at the address stated:

278

279 ... (Clerk of the circuit court)...

280 of .... County, Florida,

281 By... (Deputy clerk)...

282

283 The clerk of the circuit court is not required to mail to the  
284 purported owner of such property any such notice that pertains  
285 solely to the preserving of any covenant or restriction or any  
286 portion of a covenant or restriction; or

287 (b) Publish once a week, for 2 consecutive weeks, the  
288 notice referred to in s. 712.05, with the official record book  
289 and page number in which such notice was recorded, in a  
290 newspaper as defined in chapter 50 in the county in which the  
291 property is located.

292 Section 9. Section 712.11, Florida Statutes, is amended to  
293 read:

294 712.11 Covenant revitalization.—A property owners'  
295 ~~homeowners'~~ association not otherwise subject to chapter 720 may  
296 use the procedures set forth in ss. 720.403-720.407 to revive  
297 covenants that have lapsed under the terms of this chapter.

298 Section 10. Section 712.12, Florida Statutes, is created to  
299 read:

300 712.12 Covenant or restriction revitalization by parcel  
301 owners not subject to chapter 720.—



892280

302       (1) As used in this section, the term:  
303       (a) "Community" means the real property that is subject to  
304 a covenant or restriction that is recorded in the county where  
305 the property is located.  
306       (b) "Covenant or restriction" means any agreement or  
307 limitation imposed by a private party and not required by a  
308 governmental agency as a condition of a development permit, as  
309 defined in s. 163.3164, which is contained in a document  
310 recorded in the public records of the county in which a parcel  
311 is located and which subjects the parcel to any use restriction  
312 that may be enforced by a parcel owner.  
313       (c) "Parcel" means real property that is used for  
314 residential purposes and that is subject to exclusive ownership  
315 and any covenant or restriction that may be enforced by a parcel  
316 owner.  
317       (d) "Parcel owner" means the record owner of legal title to  
318 a parcel.  
319       (2) The parcel owners of a community not subject to ch. 720  
320 may use the procedures set forth in ss. 720.403-720.407 to  
321 revive covenants or restrictions that have lapsed under the  
322 terms of this chapter, except:  
323       (a) A reference to a homeowners' association or articles of  
324 incorporation or bylaws of a homeowners' association under ss.  
325 720.403-720.407 is not required to revive the covenants or  
326 restrictions.  
327       (b) The approval required under s. 720.405(6) must be in  
328 writing, and not at a meeting.  
329       (c) The requirements under s. 720.407(2) may be satisfied  
330 by having the organizing committee execute the revived covenants



892280

331 or restrictions in the name of the community.

332 (d) The indexing requirements under s. 720.407(3) may be  
333 satisfied by indexing the community name in the covenants or  
334 restrictions as the grantee and the parcel owners as the  
335 grantors.

336 (3) With respect to any parcel that has ceased to be  
337 governed by covenants or restrictions as of October 1, 2017, the  
338 parcel owner may commence an action by October 1, 2018, for a  
339 judicial determination that the covenants or restrictions did  
340 not govern that parcel as of October 1, 2017, and that any  
341 revitalization of such covenants or restrictions as to that  
342 parcel would unconstitutionally deprive the parcel owner of  
343 rights or property.

344 (4) Revived covenants or restrictions that are implemented  
345 pursuant to this section do not apply to or affect the rights of  
346 the parcel owner which are recognized by any court order or  
347 judgment in any action commenced by October 1, 2018, and any  
348 such rights so recognized may not be subsequently altered by  
349 revived covenants or restrictions implemented under this section  
350 without the consent of the affected parcel owner.

351 Section 11. Paragraph (e) is added to subsection (2) of  
352 section 720.303, Florida Statutes, to read:

353 720.303 Association powers and duties; meetings of board;  
354 official records; budgets; financial reporting; association  
355 funds; recalls.-

356 (2) BOARD MEETINGS.-

357 (e) At the first board meeting, excluding the  
358 organizational meeting, which follows the annual meeting of the  
359 members, the board shall consider the desirability of filing



892280

360 notices to preserve the covenants or restrictions affecting the  
361 community or association from extinguishment under the  
362 Marketable Record Title Act, chapter 712, and to authorize and  
363 direct the appropriate officer to file notice in accordance with  
364 s. 720.3032.

365 Section 12. Section 720.3032, Florida Statutes, is created  
366 to read:

367 720.3032 Notice of association information; preservation  
368 from Marketable Record Title Act.—

369 (1) Not less than once every 5 years, each association  
370 shall record in the official records of each county in which the  
371 community is located a notice specifying:

372 (a) The legal name of the association.

373 (b) The mailing and physical addresses of the association.

374 (c) The names of the affected subdivision plats and  
375 condominiums or, if not applicable, the common name of the  
376 community.

377 (d) The name, address, and telephone number for the current  
378 community association management company or community  
379 association manager, if any.

380 (e) Indication as to whether the association desires to  
381 preserve the covenants or restrictions affecting the community  
382 or association from extinguishment under the Marketable Record  
383 Title Act, chapter 712.

384 (f) A listing by name and recording information of those  
385 covenants or restrictions affecting the community which the  
386 association desires to be preserved from extinguishment.

387 (g) The legal description of the community affected by the  
388 covenants or restrictions, which may be satisfied by a reference



389 to a recorded plat.

390 (h) The signature of a duly authorized officer of the  
391 association, acknowledged in the same manner as deeds are  
392 acknowledged for record.

393 (2) Recording a document in substantially the following  
394 form satisfies the notice obligation and constitutes a summary  
395 notice as specified in s. 712.05(2)(b) sufficient to preserve  
396 and protect the referenced covenants and restrictions from  
397 extinguishment under the Marketable Record Title Act, chapter  
398 712.

399  
400 Notice of ...(name of association)... under s. 720.3032, Florida  
401 Statutes, and notice to preserve and protect covenants and  
402 restrictions from extinguishment under the Marketable Record  
403 Title Act, chapter 712, Florida Statutes.

404  
405 Instructions to recorder: Please index both the legal name  
406 of the association and the names shown in item 3.

407 1. Legal name of association: ....

408 2. Mailing and physical addresses of association: ....

409 3. Names of the subdivision plats, or, if none, common name  
410 of community: ....

411 4. Name, address, and telephone number for management  
412 company, if any: .....

413 5. This notice does .... does not .... constitute a notice  
414 to preserve and protect covenants or restrictions from  
415 extinguishment under the Marketable Record Title Act.

416 6. The following covenants or restrictions affecting the  
417 community which the association desires to be preserved from







447           702.09 Definitions.—For the purposes of ss. 702.07 and  
448 702.08, the words “decree of foreclosure” shall include a  
449 judgment or order rendered or passed in the foreclosure  
450 proceedings in which the decree of foreclosure shall be  
451 rescinded, vacated, and set aside; the word “mortgage” shall  
452 mean any written instrument securing the payment of money or  
453 advances and includes liens to secure payment of assessments  
454 arising under chapters 718 and 719 and liens created pursuant to  
455 the recorded covenants of a property owners’ ~~homeowners’~~  
456 association as defined in s. 712.01; the word “debt” shall  
457 include promissory notes, bonds, and all other written  
458 obligations given for the payment of money; the words  
459 “foreclosure proceedings” shall embrace every action in the  
460 circuit or county courts of this state wherein it is sought to  
461 foreclose a mortgage and sell the property covered by the same;  
462 and the word “property” shall mean and include both real and  
463 personal property.

464           Section 14. Subsection (1) of section 702.10, Florida  
465 Statutes, is amended to read:

466           702.10 Order to show cause; entry of final judgment of  
467 foreclosure; payment during foreclosure.—

468           (1) A lienholder may request an order to show cause for the  
469 entry of final judgment in a foreclosure action. For purposes of  
470 this section, the term “lienholder” includes the plaintiff and a  
471 defendant to the action who holds a lien encumbering the  
472 property or a defendant who, by virtue of its status as a  
473 condominium association, cooperative association, or property  
474 owners’ ~~homeowners’~~ association, may file a lien against the  
475 real property subject to foreclosure. Upon filing, the court



892280

476 shall immediately review the request and the court file in  
477 chambers and without a hearing. If, upon examination of the  
478 court file, the court finds that the complaint is verified,  
479 complies with s. 702.015, and alleges a cause of action to  
480 foreclose on real property, the court shall promptly issue an  
481 order directed to the other parties named in the action to show  
482 cause why a final judgment of foreclosure should not be entered.

483 (a) The order shall:

484 1. Set the date and time for a hearing to show cause. The  
485 date for the hearing may not occur sooner than the later of 20  
486 days after service of the order to show cause or 45 days after  
487 service of the initial complaint. When service is obtained by  
488 publication, the date for the hearing may not be set sooner than  
489 30 days after the first publication.

490 2. Direct the time within which service of the order to  
491 show cause and the complaint must be made upon the defendant.

492 3. State that the filing of defenses by a motion, a  
493 responsive pleading, an affidavit, or other papers before the  
494 hearing to show cause that raise a genuine issue of material  
495 fact which would preclude the entry of summary judgment or  
496 otherwise constitute a legal defense to foreclosure shall  
497 constitute cause for the court not to enter final judgment.

498 4. State that a defendant has the right to file affidavits  
499 or other papers before the time of the hearing to show cause and  
500 may appear personally or by way of an attorney at the hearing.

501 5. State that, if a defendant files defenses by a motion, a  
502 verified or sworn answer, affidavits, or other papers or appears  
503 personally or by way of an attorney at the time of the hearing,  
504 the hearing time will be used to hear and consider whether the



892280

505 defendant's motion, answer, affidavits, other papers, and other  
506 evidence and argument as may be presented by the defendant or  
507 the defendant's attorney raise a genuine issue of material fact  
508 which would preclude the entry of summary judgment or otherwise  
509 constitute a legal defense to foreclosure. The order shall also  
510 state that the court may enter an order of final judgment of  
511 foreclosure at the hearing and order the clerk of the court to  
512 conduct a foreclosure sale.

513         6. State that, if a defendant fails to appear at the  
514 hearing to show cause or fails to file defenses by a motion or  
515 by a verified or sworn answer or files an answer not contesting  
516 the foreclosure, such defendant may be considered to have waived  
517 the right to a hearing, and in such case, the court may enter a  
518 default against such defendant and, if appropriate, a final  
519 judgment of foreclosure ordering the clerk of the court to  
520 conduct a foreclosure sale.

521         7. State that if the mortgage provides for reasonable  
522 attorney fees and the requested attorney fees do not exceed 3  
523 percent of the principal amount owed at the time of filing the  
524 complaint, it is unnecessary for the court to hold a hearing or  
525 adjudge the requested attorney fees to be reasonable.

526         8. Attach the form of the proposed final judgment of  
527 foreclosure which the movant requests the court to enter at the  
528 hearing on the order to show cause.

529         9. Require the party seeking final judgment to serve a copy  
530 of the order to show cause on the other parties in the following  
531 manner:

532             a. If a party has been served pursuant to chapter 48 with  
533 the complaint and original process, or the other party is the



892280

534 plaintiff in the action, service of the order to show cause on  
535 that party may be made in the manner provided in the Florida  
536 Rules of Civil Procedure.

537       b. If a defendant has not been served pursuant to chapter  
538 48 with the complaint and original process, the order to show  
539 cause, together with the summons and a copy of the complaint,  
540 shall be served on the party in the same manner as provided by  
541 law for original process.

542  
543 Any final judgment of foreclosure entered under this subsection  
544 is for in rem relief only. This subsection does not preclude the  
545 entry of a deficiency judgment where otherwise allowed by law.  
546 The Legislature intends that this alternative procedure may run  
547 simultaneously with other court procedures.

548       (b) The right to be heard at the hearing to show cause is  
549 waived if a defendant, after being served as provided by law  
550 with an order to show cause, engages in conduct that clearly  
551 shows that the defendant has relinquished the right to be heard  
552 on that order. The defendant's failure to file defenses by a  
553 motion or by a sworn or verified answer, affidavits, or other  
554 papers or to appear personally or by way of an attorney at the  
555 hearing duly scheduled on the order to show cause presumptively  
556 constitutes conduct that clearly shows that the defendant has  
557 relinquished the right to be heard. If a defendant files  
558 defenses by a motion, a verified answer, affidavits, or other  
559 papers or presents evidence at or before the hearing which raise  
560 a genuine issue of material fact which would preclude entry of  
561 summary judgment or otherwise constitute a legal defense to  
562 foreclosure, such action constitutes cause and precludes the



563 entry of a final judgment at the hearing to show cause.

564 (c) In a mortgage foreclosure proceeding, when a final  
565 judgment of foreclosure has been entered against the mortgagor  
566 and the note or mortgage provides for the award of reasonable  
567 attorney fees, it is unnecessary for the court to hold a hearing  
568 or adjudge the requested attorney fees to be reasonable if the  
569 fees do not exceed 3 percent of the principal amount owed on the  
570 note or mortgage at the time of filing, even if the note or  
571 mortgage does not specify the percentage of the original amount  
572 that would be paid as liquidated damages.

573 (d) If the court finds that all defendants have waived the  
574 right to be heard as provided in paragraph (b), the court shall  
575 promptly enter a final judgment of foreclosure without the need  
576 for further hearing if the plaintiff has shown entitlement to a  
577 final judgment and upon the filing with the court of the  
578 original note, satisfaction of the conditions for establishment  
579 of a lost note, or upon a showing to the court that the  
580 obligation to be foreclosed is not evidenced by a promissory  
581 note or other negotiable instrument. If the court finds that a  
582 defendant has not waived the right to be heard on the order to  
583 show cause, the court shall determine whether there is cause not  
584 to enter a final judgment of foreclosure. If the court finds  
585 that the defendant has not shown cause, the court shall promptly  
586 enter a judgment of foreclosure. If the time allotted for the  
587 hearing is insufficient, the court may announce at the hearing a  
588 date and time for the continued hearing. Only the parties who  
589 appear, individually or through an attorney, at the initial  
590 hearing must be notified of the date and time of the continued  
591 hearing.



592 Section 15. Section 712.095, Florida Statutes, is amended  
593 to read:

594 712.095 Notice required by July 1, 1983.—Any person whose  
595 interest in land is derived from an instrument or court  
596 proceeding recorded subsequent to the root of title, which  
597 instrument or proceeding did not contain a description of the  
598 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose  
599 interest had not been extinguished prior to July 1, 1981, shall  
600 have until July 1, 1983, to file a notice in accordance with s.  
601 712.06 to preserve the interest.

602 Section 16. Section 720.403, Florida Statutes, is amended  
603 to read:

604 720.403 Preservation of ~~residential~~ communities; revival of  
605 declaration of covenants.—

606 (1) Consistent with required and optional elements of local  
607 comprehensive plans and other applicable provisions of the  
608 Community Planning Act, property owners ~~homeowners~~ are  
609 encouraged to preserve existing residential and other  
610 communities, promote available and affordable housing, protect  
611 structural and aesthetic elements of their ~~residential~~  
612 community, and, as applicable, maintain roads and streets,  
613 easements, water and sewer systems, utilities, drainage  
614 improvements, conservation and open areas, recreational  
615 amenities, and other infrastructure and common areas that serve  
616 and support the ~~residential~~ community by the revival of a  
617 previous declaration of covenants and other governing documents  
618 that may have ceased to govern some or all parcels in the  
619 community.

620 (2) In order to preserve a ~~residential~~ community and the



892280

621 associated infrastructure and common areas for the purposes  
622 described in this section, the parcel owners in a community that  
623 was previously subject to a declaration of covenants that has  
624 ceased to govern one or more parcels in the community may revive  
625 the declaration and the ~~homeowners'~~ association for the  
626 community upon approval by the parcel owners to be governed  
627 thereby as provided in this act, and upon approval of the  
628 declaration and the other governing documents for the  
629 association by the Department of Economic Opportunity in a  
630 manner consistent with this act.

631 (3) Part III of this chapter is intended to provide  
632 mechanisms for the revitalization of covenants or restrictions  
633 for all types of communities and property associations and is  
634 not limited to residential communities.

635 Section 17. Section 720.404, Florida Statutes, is amended  
636 to read:

637 720.404 Eligible ~~residential~~ communities; requirements for  
638 revival of declaration.—Parcel owners in a community are  
639 eligible to seek approval from the Department of Economic  
640 Opportunity to revive a declaration of covenants under this act  
641 if all of the following requirements are met:

642 (1) All parcels to be governed by the revived declaration  
643 must have been once governed by a previous declaration that has  
644 ceased to govern some or all of the parcels in the community;

645 (2) The revived declaration must be approved in the manner  
646 provided in s. 720.405(6); and

647 (3) The revived declaration may not contain covenants that  
648 are more restrictive on the parcel owners than the covenants  
649 contained in the previous declaration, except that the



650 declaration may:

651 (a) Have an effective term of longer duration than the term  
652 of the previous declaration;

653 (b) Omit restrictions contained in the previous  
654 declaration;

655 (c) Govern fewer than all of the parcels governed by the  
656 previous declaration;

657 (d) Provide for amendments to the declaration and other  
658 governing documents; and

659 (e) Contain provisions required by this chapter for new  
660 declarations that were not contained in the previous  
661 declaration.

662 Section 18. Subsections (1), (3), (5), and (6) of section  
663 720.405, Florida Statutes, are amended to read:

664 720.405 Organizing committee; parcel owner approval.—

665 (1) The proposal to revive a declaration of covenants and  
666 ~~an a-homeowners'~~ association for a community under the terms of  
667 this act shall be initiated by an organizing committee  
668 consisting of not less than three parcel owners located in the  
669 community that is proposed to be governed by the revived  
670 declaration. The name, address, and telephone number of each  
671 member of the organizing committee must be included in any  
672 notice or other document provided by the committee to parcel  
673 owners to be affected by the proposed revived declaration.

674 (3) The organizing committee shall prepare the full text of  
675 the proposed articles of incorporation and bylaws of the revived  
676 ~~homeowners'~~ association to be submitted to the parcel owners for  
677 approval, unless the association is then an existing  
678 corporation, in which case the organizing committee shall





679 prepare the existing articles of incorporation and bylaws to be  
680 submitted to the parcel owners.

681 (5) A copy of the complete text of the proposed revised  
682 declaration of covenants, the proposed new or existing articles  
683 of incorporation and bylaws of the ~~homeowners'~~ association, and  
684 a graphic depiction of the property to be governed by the  
685 revived declaration shall be presented to all of the affected  
686 parcel owners by mail or hand delivery not less than 14 days  
687 before the time that the consent of the affected parcel owners  
688 to the proposed governing documents is sought by the organizing  
689 committee.

690 (6) A majority of the affected parcel owners must agree in  
691 writing to the revived declaration of covenants and governing  
692 documents of the ~~homeowners'~~ association or approve the revived  
693 declaration and governing documents by a vote at a meeting of  
694 the affected parcel owners noticed and conducted in the manner  
695 prescribed by s. 720.306. Proof of notice of the meeting to all  
696 affected owners of the meeting and the minutes of the meeting  
697 recording the votes of the property owners shall be certified by  
698 a court reporter or an attorney licensed to practice in the  
699 state.

700 Section 19. Subsection (3) of section 720.407, Florida  
701 Statutes, is amended to read:

702 720.407 Recording; notice of recording; applicability and  
703 effective date.—

704 (3) The recorded documents shall include the full text of  
705 the approved declaration of covenants, the articles of  
706 incorporation and bylaws of the ~~homeowners'~~ association, the  
707 letter of approval by the department, and the legal description



708 of each affected parcel of property. For purposes of chapter  
709 712, the association is deemed to be and shall be indexed as the  
710 grantee in a title transaction and the parcel owners named in  
711 the revived declaration are deemed to be and shall be indexed as  
712 the grantors in the title transaction.

713 Section 20. Notwithstanding this act, any person claiming  
714 an interest or other right in land which would be extinguished  
715 as a result of this act, including any interests or other rights  
716 where the 30-year period immediately following the effective  
717 date of the root of title has already passed, may preserve such  
718 interest from extinguishment pursuant to this act by filing for  
719 record a written notice in accordance with s. 712.06, Florida  
720 Statutes, within 1 year after the effective date of this act.

721 Section 21. This act shall take effect October 1, 2017.

722  
723 ===== T I T L E A M E N D M E N T =====

724 And the title is amended as follows:

725 Delete everything before the enacting clause  
726 and insert:

727 A bill to be entitled  
728 An act relating to real property; creating s. 702.12,  
729 F.S.; authorizing lienholders to use certain documents  
730 as an admission in an action to foreclose a mortgage;  
731 providing that submission of certain documents in a  
732 foreclosure action creates a rebuttable presumption  
733 that the defendant has waived any defenses to the  
734 foreclosure; requiring a court to take judicial notice  
735 of final orders entered in bankruptcy cases; providing  
736 construction; providing applicability; amending ss.



737 125.022 and 166.033, F.S.; prohibiting a county or  
738 municipality from delegating its police power to a  
739 third party by restriction, covenant, or otherwise;  
740 providing that the imposition by a county or  
741 municipality of a recorded or unrecorded restriction  
742 or covenant as a condition of a county's or  
743 municipality's approval or issuance of a development  
744 permit does not preclude the county or municipality  
745 from exercising its police power to later amend,  
746 release, or terminate the restriction or covenant;  
747 providing that any such amendment, release, or  
748 termination of the restriction or covenant must follow  
749 specified procedural requirements; amending s. 712.04,  
750 F.S.; providing that a marketable record title is free  
751 and clear of all covenants or restrictions, the  
752 existence of which depends upon any zoning  
753 requirement, building or development permit; providing  
754 that all such covenants or restrictions are declared  
755 to be null and void; providing construction; creating  
756 s. 712.001, F.S.; providing a short title; amending s.  
757 712.01, F.S.; defining and redefining terms; amending  
758 s. 712.05, F.S.; revising the notice filing  
759 requirements for a person claiming an interest in land  
760 and other rights; authorizing a property owners'  
761 association to preserve and protect certain covenants  
762 or restrictions from extinguishment, subject to  
763 specified requirements; providing that a failure in  
764 indexing does not affect the validity of the notice;  
765 extending the length of time certain covenants or



892280

766 restrictions are preserved; deleting a provision  
767 requiring a two-thirds vote by members of an  
768 incorporated homeowners' association to file certain  
769 notices; conforming provisions to changes made by the  
770 act; amending s. 712.06, F.S.; exempting a specified  
771 summary notice from certain notice content  
772 requirements; revising the contents required to be  
773 specified by certain notices; conforming provisions to  
774 changes made by the act; amending s. 712.11, F.S.;  
775 conforming provisions to changes made by the act;  
776 creating s. 712.12, F.S.; defining terms; authorizing  
777 the parcel owners of a community not subject to ch.  
778 720, F.S., to use specified procedures to revive  
779 certain covenants or restrictions, subject to certain  
780 exceptions and requirements; authorizing a parcel  
781 owner to commence an action by a specified date under  
782 certain circumstances for a judicial determination  
783 that the covenants or restrictions did not govern that  
784 parcel as of a specified date and that any  
785 revitalization of such covenants or restrictions as to  
786 that parcel would unconstitutionally deprive the  
787 parcel owner of rights or property; providing  
788 applicability; amending s. 720.303, F.S.; requiring a  
789 board to take up certain provisions relating to notice  
790 filings at the first board meeting; creating s.  
791 720.3032, F.S.; providing recording requirements for  
792 an association; providing a document form for  
793 recording by an association to preserve certain  
794 covenants or restrictions; providing that failure to



892280

795 file one or more notices does not affect the validity  
796 or enforceability of a covenant or restriction or  
797 alter the time before extinguishment under certain  
798 circumstances; requiring a copy of the filed notice to  
799 be sent to all members; requiring the original signed  
800 notice to be recorded with the clerk of the circuit  
801 court or other recorder; amending ss. 702.09 and  
802 702.10, F.S.; conforming provisions to changes made by  
803 the act; amending s. 712.095, F.S.; conforming a  
804 cross-reference; amending ss. 720.403, 720.404,  
805 720.405, and 720.407, F.S.; conforming provisions to  
806 changes made by the act; authorizing persons to  
807 preserve certain interest or rights in property by  
808 filing a specified notice; providing an effective  
809 date.