

STORAGE NAME: h0395a.rpp

DATE: March 6, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Real Property & Probate
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 395

RELATING TO: Preservation of Covenants or Restrictions

SPONSOR(S): Representative Sembler

STATUTE(S) AFFECTED: Sections 712.01, 712.03, 712.05, and 712.06, Florida Statutes

COMPANION BILL(S): SB 528

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Real Property & Probate YEAS 7 NAYS 0
 - (2)
 - (3)
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 - (5)
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I. SUMMARY:

HB 395 provides a procedure for homeowners' associations to prevent ch. 712, F.S., from operating to extinguish certain covenants and restrictions in real property.

HB 395 provides that covenants and restrictions may be preserved if the homeowners' association files a notice with the recording clerk at some point during the 30 year period following the effective date of the root of title. In order for the homeowners' association to file, HB 395 requires that the homeowners' association must have approval of 67 percent of all parcel owners whose parcels are encumbered by and subject to the covenants or restrictions being preserved. Once filed, the notice has the effect of preserving the covenants and restrictions for 30 years from the time of filing. The 30 year period can start anew with any subsequent refiling.

The bill has an October 1, 1997 effective date.

The bill should have no fiscal impact on state and local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, ch. 712, F.S., provides that a property owner who, alone or together with his predecessors in title, has been vested in land of record for thirty years or more, shall have a marketable record title to that estate, free and clear of all claims except those described in the chapter.

Generally, claims currently preserved in ch. 712, F.S., are claims which are sufficiently referenced in the chain of title, or claims preserved by providing notice in accordance with section 712.06, Florida Statutes.

It is unclear whether a claim of a covenant or restriction made by a homeowners' association could be preserved through notice.

B. EFFECT OF PROPOSED CHANGES:

HB 395 provides a definition of homeowners' association and provides a procedure for a homeowners' association to file notice for the purpose of preserving covenants and restrictions. Therefore, the right of a homeowners' association to preserve covenants and restrictions would be made more clear with the passage of HB 395.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

- (2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Homeowners' associations must pay mailing costs and service charges in accordance with s. 28.24(11), F.S., in order to file notice pursuant to HB 395.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill provides a homeowners' association with a procedure that enables the homeowners' association to preserve certain covenants and restrictions regarding real property.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

Section 1.

Subsection (1) of s. 712.01, F.S., is amended to include "homeowners' association" within the definition of "person."

Subsection (4) is added to s. 712.01, F.S., to define "homeowners' association" as "an association of parcel owners in which the membership, either by a parcel owner or by an association in which parcel owners are members, is a condition of ownership of a parcel and which is either authorized to enforce use restrictions that are imposed on the parcel or to impose a charge or assessment against the parcel or the owner of the parcel that, if unpaid, may become a lien on the parcel."

Subsection (5) is added to s. 712.01, F.S., to define "parcel" as "real property which is used for residential purposes that is subject to exclusive ownership and which is subject to any covenant or restriction of a homeowners' association."

Subsection (6) is added to define "covenant or restriction" as "any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which subjects the parcel to any use restriction which may be enforced by a homeowners' association to impose a charge or assessment against the parcel or the owner of the parcel."

Section 2.

Subsection (2) of s. 712.03, F.S., is amended to include covenants or restrictions as exceptions to marketability which may be preserved by filing notice.

Section 3.

Subsection (1) of s. 712.05, F.S., is amended to include that a homeowners' association may file notice to preserve a covenant or restriction only if the homeowners' association has the approval of 67 percent of the parcel owners whose parcels are encumbered by the covenants or restrictions being preserved.

Section 4.

Subsection (1) of s. 712.06, F.S., is amended to indicate what information must be included in a notice for the notice to be effective. The notice must include the name and address of the homeowners' association. The notice must also include a copy of the covenant or restriction complete with a description of the encumbered property sufficient to identify it.

Subsection (3) of s. 712.06, F.S., is amended to include that a county clerk shall not be required to give notice regarding a covenant or restriction to a purported owner if the notice pertains solely to the preservation of a covenant or restriction.

Section 5.

This section provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None .

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Revenues generated by service filing fees may increase.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Use restrictions on land have an effect on land values.

2. Direct Private Sector Benefits

Under HB 395, homeowners' associations will be able to preserve covenants and restrictions which, in the opinion of at least 67 percent of the members of the association, are beneficial to the community served by the association.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Under the language of HB 395, a homeowners' association can preserve use restrictions which authorize a homeowners' association to impose assessments against parcels or owners of parcels. The authority to impose assessments is not a traditional interest in land.

In addition, since HB 395 has a broader definition of "homeowners' association" than the definition contained in ch. 617, F.S., it is possible that HB 395 will facilitate the continued existence of associations that do not conform to the ch. 617, F.S., definition. The principal difference in the definitions is that ch. 617, F.S., requires a homeowners' association to be a Florida corporation, whereas HB 395 does not.

Section 712.06(3), Florida Statutes, requires the clerk of the circuit court, where notice pursuant to s. 712.03, F.S., has been filed, to send a copy of the filed notice to the purported owner of the affected property. HB 395 creates an exception to this requirement when the notice pertains solely to the preservation of a covenant or restriction.

HB 395 allows "any person claiming an interest in land or desiring to preserve any covenant or restriction or any portion of a covenant or restriction," to file a notice pursuant to section 712.06, Florida Statutes. This language could be construed to allow any person, even a person without any connection to the affected property, to file a notice to preserve covenants or restrictions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Amendment 1 traveling with the bill corrects a technical error on page 2, line 11 of the bill. The words "use any" are stricken and replaced by the words "any use."

VII. SIGNATURES:

COMMITTEE ON Real Property & Probate:
Prepared by:

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