

By Representative Sembler

1 A bill to be entitled
 2 An act relating to preservation of covenants or
 3 restrictions; amending s. 712.01, F.S.;
 4 revising and adding definitions; amending ss.
 5 712.03, 712.05, and 712.06, F.S.; protecting
 6 certain covenants or restrictions from
 7 extinguishment; providing for preservation of
 8 certain covenants or restrictions under certain
 9 circumstances; authorizing certain homeowners'
 10 associations to file for preservation of
 11 covenants or restrictions on behalf of certain
 12 parcel owners; providing a limitation; revising
 13 certain notice provisions to conform; providing
 14 an exception; providing an effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Subsection (1) of section 712.01, Florida
 19 Statutes, is amended, and subsections (4), (5), and (6) are
 20 added to said section, to read:

21 712.01 Definitions.--As used in this law:

22 (1) The term "person" as used herein denotes singular
 23 or plural, natural or corporate, private or governmental,
 24 including the state and any political subdivision or agency
 25 thereof as the context for the use thereof requires or denotes
 26 and including any homeowners' association.

27 (4) The term "homeowners' association" means an
 28 association of parcel owners in which membership, either by a
 29 parcel owner or by an association in which parcel owners are
 30 members, is a condition of ownership of a parcel and which is
 31 either authorized to enforce use restrictions that are imposed

1 on the parcel or to impose a charge or assessment against the
2 parcel or the owner of the parcel that, if unpaid, may become
3 a lien on the parcel.

4 (5) The term "parcel" means real property which is
5 used for residential purposes that is subject to exclusive
6 ownership and which is subject to any covenant or restriction
7 of a homeowners' association.

8 (6) The term "covenant or restriction" means any
9 agreement or limitation contained in a document recorded in
10 the public records of the county in which a parcel is located
11 which subjects the parcel to use any restriction which may be
12 enforced by a homeowners' association or which authorizes a
13 homeowners' association to impose a charge or assessment
14 against the parcel or the owner of the parcel.

15 Section 2. Subsection (2) of section 712.03, Florida
16 Statutes, is amended to read:

17 712.03 Exceptions to marketability.--Such marketable
18 record title shall not affect or extinguish the following
19 rights:

20 (2) Estates, interests, claims, or charges, or any
21 covenant or restriction, preserved by the filing of a proper
22 notice in accordance with the provisions hereof.

23 Section 3. Subsection (1) of section 712.05, Florida
24 Statutes, is amended to read:

25 712.05 Effect of filing notice.--

26 (1) Any person claiming an interest in land or
27 desiring to preserve any covenant or restriction or any
28 portion of a covenant or restriction may preserve and protect
29 the same from extinguishment by the operation of this act by
30 filing for record, during the 30-year period immediately
31 following the effective date of the root of title, a notice,

1 in writing, in accordance with the provisions hereof, which
2 notice shall have the effect of so preserving such claim of
3 right or such covenant or restriction or portion of such
4 covenant or restriction for a period of not longer than 30
5 years after filing the same unless again filed as required
6 herein. No disability or lack of knowledge of any kind on the
7 part of anyone shall delay the commencement of or suspend the
8 running of said 30-year period. Such notice may be filed for
9 record by the claimant or by any other person acting on behalf
10 of any claimant who is:

- 11 (a) Under a disability,
12 (b) Unable to assert a claim on his behalf, or
13 (c) One of a class, but whose identity cannot be
14 established or is uncertain at the time of filing such notice
15 of claim for record.

16
17 Such notice may be filed by a homeowners' association only if
18 the preservation of such covenant or restriction or portion of
19 such covenant or restriction is approved by a vote of not less
20 than 67 percent of all parcel owners whose parcels are
21 encumbered by and subject to the covenants or restrictions
22 being preserved.

23 Section 4. Subsections (1) and (3) of section 712.06,
24 Florida Statutes, are amended to read:

25 712.06 Contents of notice; recording and indexing.--

26 (1) To be effective, the notice above referred to
27 shall contain:

- 28 (a) The name or description of the claimant or the
29 homeowners' association desiring to preserve any covenant or
30 restriction and the name and particular post-office address of
31 the person filing the claim or the homeowners' association.

1 (b) The name and post-office address of an owner, or
2 the name and post-office address of the person in whose name
3 said property is assessed on the last completed tax assessment
4 roll of the county at the time of filing, who, for the purpose
5 of such notice, shall be deemed to be an owner.

6 (c) A full and complete description of all land
7 affected by such notice, which description shall be set forth
8 in particular terms and not by general reference, but if said
9 claim is founded upon a recorded instrument or a covenant or a
10 restriction, then the description in such notice may be the
11 same as that contained in such recorded instrument or covenant
12 or restriction, provided the same shall be sufficient to
13 identify the property.

14 (d) A statement of the claim showing the nature,
15 description, and extent of such claim or, in the case of a
16 covenant or restriction, a copy of the covenant or
17 restriction, except that it shall not be necessary to show the
18 amount of any claim for money or the terms of payment.

19 (e) If such claim is based upon an instrument of
20 record or a recorded covenant or restriction, such instrument
21 shall be sufficiently described to identify the same,
22 including reference to the book and page in which the same is
23 recorded.

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

26 (3) The clerk of the circuit court shall, upon such
27 filing, mail by registered or certified mail to the purported
28 owner of said property, as stated in such notice, a copy
29 thereof and shall enter on the original, before recording the
30 same, a certificate showing such mailing. For preparing the
31 certificate, the claimant shall pay to the clerk the service

1 charge as prescribed in s. 28.24(11) and the necessary costs
2 of mailing, in addition to the recording charges as prescribed
3 in s. 28.24(15). If the notice names purported owners having
4 more than one address, the person filing the same shall
5 furnish a true copy for each of the several addresses stated,
6 and the clerk shall send one such copy to the purported owners
7 named at each respective address. Such certificate shall be
8 sufficient if the same reads substantially as follows:

9
10 I hereby certify that I did on this, mail by
11 registered (or certified) mail a copy of the foregoing notice
12 to each of the following at the address stated:
13 ...(Clerk of the circuit court)...
14 of County, Florida,
15 By ...(Deputy clerk)...

16
17 The clerk of the circuit court is not required to mail to the
18 purported owner of such property any such notice that pertains
19 solely to the preserving of any covenant or restriction or any
20 portion of a covenant or restriction.

21 Section 5. This act shall take effect October 1, 1997.

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24 HOUSE SUMMARY

25 Protects recorded covenants or restrictions from
26 extinguishment under provisions relating to marketable
27 record titles to real property. Provides for preserving
28 recorded covenants or restrictions. Authorizes
29 homeowners' associations to file notice for preserving
30 such covenants or restrictions on behalf of parcel
31 owners. See bill for details.