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CHAMBER ACTION

The Committee on Judiciary recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to homeowners' associations; amending s. 712.05, F.S.; providing that a recorded notice to preserve a claim of right or covenant or restriction, or a part thereof, may be filed by a homeowners' association upon approval by two-thirds of that association's board of directors; amending s. 712.06, F.S.; providing that content requirements of a recorded notice to preserve a claim of right may be satisfied by a homeowners' association's affidavit affirming the delivery of a statement to its members; providing a form of said statement of marketable title action; providing that recorded notice of a claim of right is deemed sufficient description of property if it cites official records describing said property by book and page; amending s. 720.303, F.S.; providing powers for associations controlled by unit owners other than the developer; amending s. 720.306, F.S.; prohibiting certain amendments



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28 | to bylaws of the associations; providing an effective
29 | date.

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31 | Be It Enacted by the Legislature of the State of Florida:

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33 | Section 1. Subsection (1) of section 712.05, Florida
34 | Statutes, is amended to read:

35 | 712.05. Effect of filing notice.--

36 | (1) Any person claiming an interest in land or a
37 | homeowners' association desiring to preserve any covenant or
38 | restriction may preserve and protect the same from
39 | extinguishment by the operation of this act by filing for
40 | record, during the 30-year period immediately following the
41 | effective date of the root of title, a notice, in writing, in
42 | accordance with the provisions hereof, which notice shall have
43 | the effect of so preserving such claim of right or such covenant
44 | or restriction or portion of such covenant or restriction for a
45 | period of not longer than 30 years after filing the same unless
46 | again filed as required herein. No disability or lack of
47 | knowledge of any kind on the part of anyone shall delay the
48 | commencement of or suspend the running of said 30-year period.
49 | Such notice may be filed for record by the claimant or by any
50 | other person acting on behalf of any claimant who is:

51 | (a) Under a disability,

52 | (b) Unable to assert a claim on his or her behalf, or

53 | (c) One of a class, but whose identity cannot be
54 | established or is uncertain at the time of filing such notice of
55 | claim for record.



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57 Such notice may be filed by a homeowners' association only if
58 the preservation of such covenant or restriction or portion of
59 such covenant or restriction is approved by at least two-thirds
60 of the members of the board of directors of an incorporated
61 homeowners' association at a meeting for which a notice, stating
62 the meeting's time and place and containing the statement of
63 marketable title action described in s. 712.06(1)(b), was mailed
64 or hand delivered to members of the homeowners' association not
65 less than 7 days prior to such meeting ~~a majority vote at a~~
66 ~~meeting of the membership where a quorum is present.~~

67 Section 2. Paragraphs (b) and (e) of subsection (1) of
68 section 712.06, Florida Statutes, are amended to read:

69 712.06 Contents of notice; recording and indexing.--

70 (1) To be effective, the notice ~~above~~ referred to in s.
71 712.05 shall contain:

72 (b) The name and post office address of an owner, or the
73 name and post office address of the person in whose name said
74 property is assessed on the last completed tax assessment roll
75 of the county at the time of filing, who, for purpose of such
76 notice, shall be deemed to be an owner; provided, however, if a
77 homeowners' association is filing the notice, then the
78 requirements of this paragraph may be satisfied by attaching to
79 and recording with the notice an affidavit executed by the
80 appropriate member of the board of directors of the homeowners'
81 association affirming that the board of directors of the
82 homeowners' association caused a statement in substantially the



83 following form to be mailed or hand delivered to the members of
 84 that homeowners' association:

85
 86 STATEMENT OF MARKETABLE TITLE ACTION

87 The [name of homeowners' association] (the "Association")
 88 has taken action to ensure that the [name of declaration,
 89 covenant, or restriction], recorded in Official Records Book
 90 _____, Page _____, of the public records of _____ County,
 91 Florida, as may be amended from time to time, currently
 92 burdening the property of each and every member of the
 93 Association, retains its status as the source of marketable
 94 title with regard to the transfer of a member's residence. To
 95 this end, the Association shall cause the notice required by
 96 chapter 712, Florida Statutes, to be recorded in the public
 97 records of _____ County, Florida. Copies of this notice and its
 98 attachments are available through the Association pursuant to
 99 the Association's governing documents regarding official records
 100 of the Association.

101 (e) If such claim is based upon an instrument of record or
 102 a recorded covenant or restriction, such instrument of record or
 103 recorded covenant or restriction shall be deemed ~~shall be~~
 104 sufficiently described to identify the same if the notice
 105 includes a, ~~including~~ reference to the book and page in which
 106 the same is recorded.

107 Section 3. Subsection (1) of section 720.303, Florida
 108 Statutes, is amended to read:

109 720.303 Association powers and duties; meetings of board;
 110 official records; budgets; financial reporting.--



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111 (1) POWERS AND DUTIES.--An association which operates a
112 community as defined in s. 720.301, must be operated by an
113 association that is a Florida corporation. After October 1,
114 1995, the association must be incorporated and the initial
115 governing documents must be recorded in the official records of
116 the county in which the community is located. An association may
117 operate more than one community. The officers and directors of
118 an association have a fiduciary relationship to the members who
119 are served by the association. The powers and duties of an
120 association include those set forth in this chapter and, except
121 as expressly limited or restricted in this chapter, those set
122 forth in the governing documents. After control of the
123 association is obtained by unit owners other than the developer,
124 the association may institute, maintain, settle, or appeal
125 actions or hearings in its name on behalf of all members
126 concerning matters of common interest to the members, including,
127 but not limited to, the common areas; roof or structural
128 components of a building, or other improvements for which the
129 association is responsible; mechanical, electrical, or plumbing
130 elements serving an improvement or building for which the
131 association is responsible; representations of the developer
132 pertaining to any existing or proposed commonly used facility;
133 and protesting ad valorem taxes on commonly used facilities. The
134 association may defend actions in eminent domain or bring
135 inverse condemnation actions. If the association has the
136 authority to maintain a class action, it may be joined in an
137 action as a representative of that class with reference to
138 litigation and disputes involving the matters for which the



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139 association could bring a class action. This subsection does not
140 limit any statutory or common-law right of any individual member
141 or class of members to bring any action without participation by
142 the association. A member does not have authority to act for the
143 association by virtue of being a member. An association may have
144 more than one class of members and may issue membership
145 certificates.

146 Section 4. Subsection (1) of section 720.306, Florida
147 Statutes, is amended to read:

148 720.306 Meetings of members; voting and election
149 procedures; amendments.--

150 (1) QUORUM; AMENDMENTS.--

151 (a) Unless a lower number is provided in the bylaws, the
152 percentage of voting interests required to constitute a quorum
153 at a meeting of the members shall be 30 percent of the total
154 voting interests. Unless otherwise provided in this chapter or
155 in the articles of incorporation or bylaws, decisions that
156 require a vote of the members must be made by the concurrence of
157 at least a majority of the voting interests present, in person
158 or by proxy, at a meeting at which a quorum has been attained.

159 (b) Unless otherwise provided in the governing documents
160 or required by law, and other than those matters set forth in
161 paragraph (c), any governing document of an association may be
162 amended by the affirmative vote of two-thirds of the voting
163 interests of the association.

164 (c) Unless otherwise provided in the governing documents
165 as originally recorded or permitted by this chapter or chapter
166 617, an amendment may not materially and adversely alter the



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167 proportionate voting interest appurtenant to a parcel or
168 increase the proportion or percentage by which a parcel shares
169 in the common expenses of the association ~~affect vested rights~~
170 unless the record parcel owner ~~of the affected parcel~~ and all
171 record owners of liens on the ~~affected~~ parcels join in the
172 execution of the amendment. For purposes of this section, a
173 change in quorum requirements is not an alteration of voting
174 interests.

175 Section 5. This act shall take effect July 1, 2003.

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