



CHAMBER ACTION

The Committee on Business Regulation 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; providing a limitation on the ability to initiate certain litigation; amending s. 720.306, F.S.; prohibiting certain



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29 amendments to bylaws of the associations; providing for a
30 limitation on the applicability of certain provisions of
31 the act; providing an effective date.

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

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35 Section 1. Subsection (1) of section 712.05, Florida
36 Statutes, is amended to read:

37 712.05. Effect of filing notice.--

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

53 (a) Under a disability,

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



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

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

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

71 712.06 Contents of notice; recording and indexing.--

72 (1) To be effective, the notice ~~above~~ referred to in s.
73 712.05 shall contain:

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



83 association affirming that the board of directors of the
 84 homeowners' association caused a statement in substantially the
 85 following form to be mailed or hand delivered to the members of
 86 that homeowners' association:

87
 88 STATEMENT OF MARKETABLE TITLE ACTION

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

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

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



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111 720.303 Association powers and duties; meetings of board;
112 official records; budgets; financial reporting.--

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



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139 amounts in controversy in excess of \$100,000, the association
140 must obtain the affirmative approval of a majority of the voting
141 interests at a meeting of the membership at which a quorum has
142 been attained. This subsection does not limit any statutory or
143 common-law right of any individual member or class of members to
144 bring any action without participation by the association. A
145 member does not have authority to act for the association by
146 virtue of being a member. An association may have more than one
147 class of members and may issue membership certificates.

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

150 720.306 Meetings of members; voting and election
151 procedures; amendments.--

152 (1) QUORUM; AMENDMENTS.--

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

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



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166 (c) Unless otherwise provided in the governing documents
 167 as originally recorded or permitted by this chapter or chapter
 168 617, an amendment may not materially and adversely alter the
 169 proportionate voting interest appurtenant to a parcel or
 170 increase the proportion or percentage by which a parcel shares
 171 in the common expenses of the association ~~affect vested rights~~
 172 unless the record parcel owner ~~of the affected parcel~~ and all
 173 record owners of liens on the ~~affected~~ parcels join in the
 174 execution of the amendment. For purposes of this section, a
 175 change in quorum requirements is not an alteration of voting
 176 interests.

177 Section 5. The amendments to s. 720.306, Florida Statutes,
 178 provided in this act shall not apply to or affect any vested
 179 rights recognized by any court order or judgment in any action
 180 commenced prior to July 1, 2003, and any such vested rights so
 181 recognized may not be subsequently altered without the consent
 182 of the affected parcel owner or owners.

183 Section 6. This act shall take effect July 1, 2003.