



1 A bill to be entitled
2 An act relating to homeowners' associations; amending s.
3 712.05, F.S.; providing that a recorded notice to preserve
4 a claim of right or covenant or restriction, or a part
5 thereof, may be filed by a homeowners' association upon
6 approval by two-thirds of that association's board of
7 directors; amending s. 712.06, F.S.; providing that
8 content requirements of a recorded notice to preserve a
9 claim of right may be satisfied by a homeowners'
10 association's affidavit affirming the delivery of a
11 statement to its members; providing a form of said
12 statement of marketable title action; providing that
13 recorded notice of a claim of right is deemed sufficient
14 description of property if it cites official records
15 describing said property by book and page; amending s.
16 720.303, F.S.; providing powers for associations
17 controlled by unit owners other than the developer;
18 providing a limitation on the ability to initiate certain
19 litigation; amending s. 720.306, F.S.; prohibiting certain
20 amendments to bylaws of the associations; providing for a
21 limitation on the applicability of certain provisions of
22 the act; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (1) of section 712.05, Florida
27 Statutes, is amended to read:

28 712.05. Effect of filing notice.--



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

- 44 (a) Under a disability,
45 (b) Unable to assert a claim on his or her behalf, or
46 (c) One of a class, but whose identity cannot be
47 established or is uncertain at the time of filing such notice of
48 claim for record.

49
50 Such notice may be filed by a homeowners' association only if
51 the preservation of such covenant or restriction or portion of
52 such covenant or restriction is approved by at least two-thirds
53 of the members of the board of directors of an incorporated
54 homeowners' association at a meeting for which a notice, stating
55 the meeting's time and place and containing the statement of
56 marketable title action described in s. 712.06(1)(b), was mailed



57 or hand delivered to members of the homeowners' association not
 58 less than 7 days prior to such meeting ~~a majority vote at a~~
 59 ~~meeting of the membership where a quorum is present.~~

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

62 712.06 Contents of notice; recording and indexing.--

63 (1) To be effective, the notice ~~above~~ referred to in s.
 64 712.05 shall contain:

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

78
 79 STATEMENT OF MARKETABLE TITLE ACTION

80 The [name of homeowners' association] (the "Association")
 81 has taken action to ensure that the [name of declaration,
 82 covenant, or restriction], recorded in Official Records Book
 83 _____, Page _____, of the public records of _____ County,
 84 Florida, as may be amended from time to time, currently



85 burdening the property of each and every member of the
 86 Association, retains its status as the source of marketable
 87 title with regard to the transfer of a member's residence. To
 88 this end, the Association shall cause the notice required by
 89 chapter 712, Florida Statutes, to be recorded in the public
 90 records of _____ County, Florida. Copies of this notice and its
 91 attachments are available through the Association pursuant to
 92 the Association's governing documents regarding official records
 93 of the Association.

94 (e) If such claim is based upon an instrument of record or
 95 a recorded covenant or restriction, such instrument of record or
 96 recorded covenant or restriction shall be deemed ~~shall be~~
 97 sufficiently described to identify the same if the notice
 98 includes a, ~~including~~ reference to the book and page in which
 99 the same is recorded.

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

102 720.303 Association powers and duties; meetings of board;
 103 official records; budgets; financial reporting.--

104 (1) POWERS AND DUTIES.--An association which operates a
 105 community as defined in s. 720.301, must be operated by an
 106 association that is a Florida corporation. After October 1,
 107 1995, the association must be incorporated and the initial
 108 governing documents must be recorded in the official records of
 109 the county in which the community is located. An association may
 110 operate more than one community. The officers and directors of
 111 an association have a fiduciary relationship to the members who
 112 are served by the association. The powers and duties of an



113 | association include those set forth in this chapter and, except
114 | as expressly limited or restricted in this chapter, those set
115 | forth in the governing documents. After control of the
116 | association is obtained by unit owners other than the developer,
117 | the association may institute, maintain, settle, or appeal
118 | actions or hearings in its name on behalf of all members
119 | concerning matters of common interest to the members, including,
120 | but not limited to, the common areas; roof or structural
121 | components of a building, or other improvements for which the
122 | association is responsible; mechanical, electrical, or plumbing
123 | elements serving an improvement or building for which the
124 | association is responsible; representations of the developer
125 | pertaining to any existing or proposed commonly used facility;
126 | and protesting ad valorem taxes on commonly used facilities. The
127 | association may defend actions in eminent domain or bring
128 | inverse condemnation actions. Before commencing litigation
129 | against any party in the name of the association involving
130 | amounts in controversy in excess of \$100,000, the association
131 | must obtain the affirmative approval of a majority of the voting
132 | interests at a meeting of the membership at which a quorum has
133 | been attained. This subsection does not limit any statutory or
134 | common-law right of any individual member or class of members to
135 | bring any action without participation by the association. A
136 | member does not have authority to act for the association by
137 | virtue of being a member. An association may have more than one
138 | class of members and may issue membership certificates.

139 | Section 4. Subsection (1) of section 720.306, Florida
140 | Statutes, is amended to read:



141 720.306 Meetings of members; voting and election
142 procedures; amendments.--

143 (1) QUORUM; AMENDMENTS.--

144 (a) Unless a lower number is provided in the bylaws, the
145 percentage of voting interests required to constitute a quorum
146 at a meeting of the members shall be 30 percent of the total
147 voting interests. Unless otherwise provided in this chapter or
148 in the articles of incorporation or bylaws, decisions that
149 require a vote of the members must be made by the concurrence of
150 at least a majority of the voting interests present, in person
151 or by proxy, at a meeting at which a quorum has been attained.

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

157 (c) Unless otherwise provided in the governing documents
158 as originally recorded or permitted by this chapter or chapter
159 617, an amendment may not materially and adversely alter the
160 proportionate voting interest appurtenant to a parcel or
161 increase the proportion or percentage by which a parcel shares
162 in the common expenses of the association ~~affect vested rights~~
163 unless the record parcel owner ~~of the affected parcel~~ and all
164 record owners of liens on the ~~affected~~ parcels join in the
165 execution of the amendment. For purposes of this section, a
166 change in quorum requirements is not an alteration of voting
167 interests.



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

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