

By Senator Campbell

32-289C-04

1 A bill to be entitled
 2 An act relating to marketable record titles to
 3 real property; amending s. 712.01, F.S.;
 4 defining terms; amending s. 712.03, F.S.;
 5 providing that marketable record title does not
 6 affect certain interests that have been
 7 reinstated or that arise out of documents
 8 relating to the creation of condominiums or
 9 cooperatives; amending s. 712.06, F.S.;
 10 providing requirements for the reinstatement of
 11 certain covenants or restrictions by the filing
 12 of statutory notice; amending s. 712.09, F.S.;
 13 extending the 30-year vesting period for
 14 creating marketable title; providing for
 15 reinstating certain covenants or restrictions
 16 that have been extinguished; amending s.
 17 720.301, F.S.; providing applicability of
 18 certain definitions; creating s. 720.313, F.S.;
 19 providing for the reinstatement of certain
 20 extinguished covenants or restrictions;
 21 providing applicability; providing an effective
 22 date.

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

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 26 Section 1. Section 712.01, Florida Statutes, is
 27 amended to read:
 28 712.01 Definitions.--As used in this chapter, the term
 29 ~~law~~:
 30 (1) ~~The term "Person" as used herein~~ denotes singular
 31 or plural, natural or corporate, private or governmental,

1 including the state and any political subdivision or agency
2 thereof as the context for the use thereof requires or denotes
3 and including any homeowners' association.

4 (2) "Root of title" means any title transaction
5 purporting to create or transfer the estate claimed by any
6 person and which is the last title transaction to have been
7 recorded at least 30 years prior to the time when
8 marketability is being determined. The effective date of the
9 root of title is the date on which it was recorded.

10 (3) "Title transaction" means any recorded instrument
11 or court proceeding which affects title to any estate or
12 interest in land and which describes the land sufficiently to
13 identify its location and boundaries. Recorded amendments to
14 covenants or restrictions, as defined in subsection (6), are
15 deemed "title transactions," as are the recordation of
16 amended, restated, or amended and restated covenants or
17 restrictions. However, to be effective as a title transaction,
18 such amendments, restatements, or amendments and restatements
19 must reference, by citation to official record book and page
20 of the land records of the county where the property is
21 located, the covenant or restriction affected thereby, or must
22 describe the land affected by the covenant or restriction
23 sufficiently to identify its location and boundaries.

24 (4) ~~The term~~ "Homeowners' association" means a
25 homeowners' association as defined in s. 720.301, or an
26 association of parcel owners which is authorized to enforce
27 covenants or use restrictions against a parcel or the parcel
28 owner or occupant by an assignment of enforcement rights, by
29 ownership of property subject to such covenants or
30 restrictions, or by other means ~~that are imposed on the~~
31 ~~parcels.~~

1 (5) ~~The term~~ "Parcel" means real property which is
2 used for residential purposes that is subject to exclusive
3 ownership and which is subject to any covenant or restriction
4 that is enforceable by ~~of~~ a homeowners' association.

5 (6) ~~The term~~ "Covenant or restriction" means any
6 agreement or limitation, including, but not limited to, use
7 restrictions, contained in a document recorded in the public
8 records of the county in which a parcel is located which
9 subjects the parcel to any use restriction which may be
10 enforced by a homeowners' association or which authorizes a
11 homeowners' association to impose a charge or assessment
12 against the parcel or the owner of the parcel or which may be
13 enforced by the Florida Department of Environmental Protection
14 pursuant to chapter 376 or chapter 403.

15 Section 2. Subsection (2) of section 712.03, Florida
16 Statutes, is amended, and subsection (9) is added to that
17 section, to read:

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

21 (2) Estates, interests, claims, or charges, or any
22 covenant or restriction, preserved or reinstated by the filing
23 of a proper notice in accordance with the provisions of s.
24 712.06 hereof.

25 (9) Estates, interests, claims, rights, obligations,
26 or charges arising out of a declaration of condominium or the
27 cooperative documents creating or governing a cooperative, any
28 exhibits thereto, or amendments to any of the foregoing.

29 Section 3. Paragraphs (a) and (d) of subsection (1) of
30 section 712.06, Florida Statutes, are amended to read:

31 712.06 Contents of notice; recording and indexing.--

1 (1) To be effective, the notice referred to in s.
2 712.05 shall contain:

3 (a) The name or description of the claimant or the
4 homeowners' association desiring to preserve or restate any
5 covenant or restriction and the name and particular post
6 office address of the person filing the claim or the
7 homeowners' association.

8 (d) A statement of the claim showing the nature,
9 description, and extent of such claim or, in the case of a
10 covenant or restriction, a copy of the covenant or
11 restriction, except that it shall not be necessary to show the
12 amount of any claim for money or the terms of payment. A
13 homeowners' association, as defined in s. 712.01(4), which
14 preserves or reinstates covenants or restrictions as provided
15 in paragraph (b) shall not be required to rerecord such
16 covenant or restriction, provided that the notice recorded by
17 the homeowners' association complies with paragraphs (a)-(c).

18 Section 4. Section 712.09, Florida Statutes, is
19 amended to read:

20 712.09 Extension of 30-year period.--

21 (1) If the 30-year period for filing notice under s.
22 712.05 ~~shall have~~ expired prior to July 1, 2006 ~~1965~~, such
23 period shall be extended to July 1, 2006 ~~1965~~. However, if the
24 filing occurs after the 30th anniversary of the initial
25 recordation of a covenant or restriction that has not been
26 extended as provided in s. 712.05(1) or subsection (2), such
27 covenant or restriction may be reinstated if it has been
28 routinely enforced by the homeowners' association. Enforcement
29 includes levying and collecting assessments or maintaining
30 common property pursuant to covenants or restrictions.
31 Reinstatement of an extinguished covenant or restriction must

1 be approved in writing by a majority of all voting interests
2 of the association present or represented by limited proxy at
3 a noticed association meeting at which a quorum is present.

4 (2) If a homeowners' association has placed of record
5 a title transaction as described in s. 712.03(3), such title
6 transaction is deemed properly recorded for the purpose of
7 servicing as a root of title as defined in s. 712.01(2). The
8 30-year preservation of the covenants or restrictions and
9 governing documents to which the title transaction relates,
10 whether or not amended or restated, applies based upon the
11 date of recordation.

12 Section 5. Section 720.301, Florida Statutes, is
13 amended to read:

14 720.301 Definitions.--As used in this chapter ~~ss.~~
15 ~~720.301-720.312~~, the term:

16 (1) "Assessment" or "amenity fee" means a sum or sums
17 of money payable to the association, to the developer or other
18 owner of common areas, or to recreational facilities and other
19 properties serving the parcels by the owners of one or more
20 parcels as authorized in the governing documents, which if not
21 paid by the owner of a parcel, can result in a lien against
22 the parcel.

23 (2) "Common area" means all real property within a
24 community which is owned or leased by an association or
25 dedicated for use or maintenance by the association or its
26 members, including, regardless of whether title has been
27 conveyed to the association:

28 (a) Real property the use of which is dedicated to the
29 association or its members by a recorded plat; or

30 (b) Real property committed by a declaration of
31 covenants to be leased or conveyed to the association.

1 (3) "Community" means the real property that is or
2 will be subject to a declaration of covenants which is
3 recorded in the county where the property is located. The
4 term "community" includes all real property, including
5 undeveloped phases, that is or was the subject of a
6 development-of-regional-impact development order, together
7 with any approved modification thereto.

8 (4) "Declaration of covenants," or "declaration,"
9 means a recorded written instrument in the nature of covenants
10 running with the land which subjects the land comprising the
11 community to the jurisdiction and control of an association or
12 associations in which the owners of the parcels, or their
13 association representatives, must be members.

14 (5) "Developer" means a person or entity that:

15 (a) Creates the community served by the association;
16 or

17 (b) Succeeds to the rights and liabilities of the
18 person or entity that created the community served by the
19 association, provided that such is evidenced in writing.

20 (6) "Governing documents" means:

21 (a) The recorded declaration of covenants for a
22 community, and all duly adopted and recorded amendments,
23 supplements, and recorded exhibits thereto; and

24 (b) The articles of incorporation and bylaws of the
25 homeowners' association, and any duly adopted amendments
26 thereto.

27 (7) "Homeowners' association" or "association" means a
28 Florida corporation responsible for the operation of a
29 community or a mobile home subdivision in which the voting
30 membership is made up of parcel owners or their agents, or a
31 combination thereof, and in which membership is a mandatory

1 condition of parcel ownership, and which is authorized to
2 impose assessments that, if unpaid, may become a lien on the
3 parcel. The term "homeowners' association" does not include a
4 community development district or other similar special taxing
5 district created pursuant to statute.

6 (8) "Member" means a member of an association, and may
7 include, but is not limited to, a parcel owner or an
8 association representing parcel owners or a combination
9 thereof.

10 (9) "Parcel" means a platted or unplatted lot, tract,
11 unit, or other subdivision of real property within a
12 community, as described in the declaration:

13 (a) Which is capable of separate conveyance; and

14 (b) Of which the parcel owner, or an association in
15 which the parcel owner must be a member, is obligated:

16 1. By the governing documents to be a member of an
17 association that serves the community; and

18 2. To pay to the homeowners' association assessments
19 that, if not paid, may result in a lien.

20 (10) "Parcel owner" means the record owner of legal
21 title to a parcel.

22 (11) "Voting interest" means the voting rights
23 distributed to the members of the homeowners' association,
24 pursuant to the governing documents.

25 Section 6. Section 720.313, Florida Statutes, is
26 created to read:

27 720.313 Extinguished covenants or restrictions;
28 amendments or reinstatement.--

29 (1) Notwithstanding any provision of law to the
30 contrary, a covenant or restriction in the governing documents
31 of a homeowners' association that has been extinguished

1 pursuant to chapter 712 may be reinstated if it has been
2 routinely enforced by the homeowners' association. Enforcement
3 includes levying and collecting assessments or maintaining
4 common property pursuant to covenants or restrictions.
5 Reinstatement of an extinguished covenant or restriction must
6 be approved in writing by a majority of all voting interests
7 of the association present or represented by limited proxy at
8 a noticed association meeting at which a quorum is present.

9 (2) Recorded amendments to the governing documents of
10 a homeowners' association or recorded restated governing
11 documents that specifically reference the official record book
12 and page number of the land records of the county where the
13 property is located, or that sufficiently identify the
14 locations and boundaries of the property affected by the
15 amendments or restatements, are title transactions as defined
16 in s. 712.01(3), for the purposes of extending the 30-year
17 root of title period set out in chapter 712.

18 (3) Notwithstanding any provision of law to the
19 contrary, if, because of prior extinguishment, title policies
20 have been issued without an exception for the covenants or
21 restrictions in the governing documents to which the title
22 transaction relates, which covenants or restrictions are
23 reinstated pursuant to this section, title policies issued
24 prior to the effective date hereof are deemed to have included
25 the governing documents for the covenants or restrictions as
26 exceptions to title.

27 Section 7. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Revises provisions relating to the effect of marketable record title on certain interests that have been reinstated or that arise out of specified condominium or cooperative documents. Provides requirements for the reinstatement of certain covenants or restrictions. Extends the 30-year period for creating marketable title. Provides for reinstating certain extinguished covenants or restrictions. Provides for the application of certain reinstated covenants and restrictions to title policies. (See bill for details.)