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A bill to be entitled

An act relating to marketable record titles to real property; amending s. 712.01, F.S.; defining terms; amending s. 712.03, F.S.; providing that marketable record title does not affect certain interests that have been reinstated or that arise out of documents relating to the creation of condominiums or cooperatives; amending s. 712.06, F.S.; providing requirements for the reinstatement of certain covenants or restrictions by the filing of statutory notice; amending s. 712.09, F.S.; extending the 30-year vesting period for creating marketable title; providing for reinstating certain covenants or restrictions that have been extinguished; amending s. 720.301, F.S.; providing applicability of certain definitions; creating s. 720.313, F.S.; providing for the reinstatement of certain extinguished covenants or restrictions; providing applicability; providing an effective date.

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

Section 1. Section 712.01, Florida Statutes, is amended to read:

712.01 Definitions.--As used in this chapter, the term law:

(1) ~~The term "Person" as used herein~~ denotes singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the

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29 context for the use thereof requires or denotes and including
 30 any homeowners' association.

31 (2) "Root of title" means any title transaction purporting
 32 to create or transfer the estate claimed by any person and which
 33 is the last title transaction to have been recorded at least 30
 34 years prior to the time when marketability is being determined.

35 The effective date of the root of title is the date on which it
 36 was recorded.

37 (3) "Title transaction" means any recorded instrument or
 38 court proceeding which affects title to any estate or interest
 39 in land and which describes the land sufficiently to identify
 40 its location and boundaries. Recorded amendments to covenants or
 41 restrictions, as defined in subsection (6), are deemed "title
 42 transactions," as are the recordation of amended, restated, or
 43 amended and restated covenants or restrictions. However, to be
 44 effective as a title transaction, such amendments, restatements,
 45 or amendments and restatements must reference, by citation to
 46 official record book and page of the land records of the county
 47 where the property is located, the covenant or restriction
 48 affected thereby, or must describe the land affected by the
 49 covenant or restriction sufficiently to identify its location
 50 and boundaries.

51 (4) ~~The term~~ "Homeowners' association" means a homeowners'
 52 association as defined in s. 720.301, or an association of
 53 parcel owners which is authorized to enforce covenants or use
 54 restrictions against a parcel or the parcel owner or occupant by
 55 an assignment of enforcement rights, by ownership of property
 56 subject to such covenants or restrictions, or by other means
 57 ~~that are imposed on the parcels.~~

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

62 (6) ~~The term~~ "Covenant or restriction" means any agreement
 63 or limitation, including, but not limited to, use restrictions,
 64 contained in a document recorded in the public records of the
 65 county in which a parcel is located which subjects the parcel to
 66 any use restriction which may be enforced by a homeowners'
 67 association or which authorizes a homeowners' association to
 68 impose a charge or assessment against the parcel or the owner of
 69 the parcel or which may be enforced by the Florida Department of
 70 Environmental Protection pursuant to chapter 376 or chapter 403.

71 Section 2. Subsection (2) of section 712.03, Florida
 72 Statutes, is amended, and subsection (9) is added to that
 73 section, to read:

74 712.03 Exceptions to marketability.--Such marketable
 75 record title shall not affect or extinguish the following
 76 rights:

77 (2) Estates, interests, claims, or charges, or any
 78 covenant or restriction, preserved or reinstated by the filing
 79 of a proper notice in accordance with the provisions of s.
 80 712.06 hereof.

81 (9) Estates, interests, claims, rights, obligations, or
 82 charges arising out of a declaration of condominium or the
 83 cooperative documents creating or governing a cooperative, any
 84 exhibits thereto, or amendments to any of the foregoing.

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

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87 712.06 Contents of notice; recording and indexing.--

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

90 (a) The name or description of the claimant or the
91 homeowners' association desiring to preserve or restate any
92 covenant or restriction and the name and particular post office
93 address of the person filing the claim or the homeowners'
94 association.

95 (d) A statement of the claim showing the nature,
96 description, and extent of such claim or, in the case of a
97 covenant or restriction, a copy of the covenant or restriction,
98 except that it shall not be necessary to show the amount of any
99 claim for money or the terms of payment. A homeowners'
100 association, as defined in s. 712.01(4), which preserves or
101 reinstates covenants or restrictions as provided in paragraph
102 (b) shall not be required to rerecord such covenant or
103 restriction, provided that the notice recorded by the
104 homeowners' association complies with paragraphs (a)-(c).

105 Section 4. Section 712.09, Florida Statutes, is amended to
106 read:

107 712.09 Extension of 30-year period.--

108 (1) If the 30-year period for filing notice under s.
109 712.05 ~~shall have~~ expired prior to July 1, 2006 ~~1965~~, such
110 period shall be extended to July 1, 2006 ~~1965~~. However, if the
111 filing occurs after the 30th anniversary of the initial
112 recordation of a covenant or restriction that has not been
113 extended as provided in s. 712.05(1) or subsection (2), such
114 covenant or restriction may be reinstated if it has been
115 routinely enforced by the homeowners' association. Enforcement

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116 includes levying and collecting assessments or maintaining
 117 common property pursuant to covenants or restrictions.

118 Reinstatement of an extinguished covenant or restriction must be
 119 approved in writing by a majority of all voting interests of the
 120 association present or represented by limited proxy at a noticed
 121 association meeting at which a quorum is present.

122 (2) If a homeowners' association has placed on record a
 123 title transaction as described in s. 712.03(3), such title
 124 transaction is deemed properly recorded for the purpose of
 125 servicing as a root of title as defined in s. 712.01(2). The 30-
 126 year preservation of the covenants or restrictions and governing
 127 documents to which the title transaction relates, whether or not
 128 amended or restated, applies based upon the date of recordation.

129 Section 5. Section 720.301, Florida Statutes, is amended
 130 to read:

131 720.301 Definitions.--As used in this chapter ~~ss. 720.301-~~
 132 ~~720.312~~, the term:

133 (1) "Assessment" or "amenity fee" means a sum or sums of
 134 money payable to the association, to the developer or other
 135 owner of common areas, or to recreational facilities and other
 136 properties serving the parcels by the owners of one or more
 137 parcels as authorized in the governing documents, which if not
 138 paid by the owner of a parcel, can result in a lien against the
 139 parcel.

140 (2) "Common area" means all real property within a
 141 community which is owned or leased by an association or
 142 dedicated for use or maintenance by the association or its
 143 members, including, regardless of whether title has been
 144 conveyed to the association:

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

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

149 (3) "Community" means the real property that is or will be
 150 subject to a declaration of covenants which is recorded in the
 151 county where the property is located. The term "community"
 152 includes all real property, including undeveloped phases, that
 153 is or was the subject of a development-of-regional-impact
 154 development order, together with any approved modification
 155 thereto.

156 (4) "Declaration of covenants," or "declaration," means a
 157 recorded written instrument in the nature of covenants running
 158 with the land which subjects the land comprising the community
 159 to the jurisdiction and control of an association or
 160 associations in which the owners of the parcels, or their
 161 association representatives, must be members.

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

163 (a) Creates the community served by the association; or

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

167 (6) "Governing documents" means:

168 (a) The recorded declaration of covenants for a community,
 169 and all duly adopted and recorded amendments, supplements, and
 170 recorded exhibits thereto; and

171 (b) The articles of incorporation and bylaws of the
 172 homeowners' association, and any duly adopted amendments
 173 thereto.

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174 (7) "Homeowners' association" or "association" means a
 175 Florida corporation responsible for the operation of a community
 176 or a mobile home subdivision in which the voting membership is
 177 made up of parcel owners or their agents, or a combination
 178 thereof, and in which membership is a mandatory condition of
 179 parcel ownership, and which is authorized to impose assessments
 180 that, if unpaid, may become a lien on the parcel. The term
 181 "homeowners' association" does not include a community
 182 development district or other similar special taxing district
 183 created pursuant to statute.

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

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

- 190 (a) Which is capable of separate conveyance; and
- 191 (b) Of which the parcel owner, or an association in which
- 192 the parcel owner must be a member, is obligated:
 - 193 1. By the governing documents to be a member of an
 - 194 association that serves the community; and
 - 195 2. To pay to the homeowners' association assessments that,
 - 196 if not paid, may result in a lien.

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

199 (11) "Voting interest" means the voting rights distributed
 200 to the members of the homeowners' association, pursuant to the
 201 governing documents.

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202 Section 6. Section 720.313, Florida Statutes, is created
 203 to read:

204 720.313 Extinguished covenants or restrictions; amendments
 205 or reinstatement.--

206 (1) Notwithstanding any provision of law to the contrary,
 207 a covenant or restriction in the governing documents of a
 208 homeowners' association that has been extinguished pursuant to
 209 chapter 712 may be reinstated if it has been routinely enforced
 210 by the homeowners' association. Enforcement includes levying and
 211 collecting assessments or maintaining common property pursuant
 212 to covenants or restrictions. Reinstatement of an extinguished
 213 covenant or restriction must be approved in writing by a
 214 majority of all voting interests of the association present or
 215 represented by limited proxy at a noticed association meeting at
 216 which a quorum is present.

217 (2) Recorded amendments to the governing documents of a
 218 homeowners' association or recorded restated governing documents
 219 that specifically reference the official record book and page
 220 number of the land records of the county where the property is
 221 located, or that sufficiently identify the locations and
 222 boundaries of the property affected by the amendments or
 223 restatements, are title transactions as defined in s. 712.01(3),
 224 for the purposes of extending the 30-year root of title period
 225 set out in chapter 712.

226 (3) Notwithstanding any provision of law to the contrary,
 227 if, because of prior extinguishment, title policies have been
 228 issued without an exception for the covenants or restrictions in
 229 the governing documents to which the title transaction relates,
 230 which covenants or restrictions are reinstated pursuant to this

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231 section, title policies issued prior to the effective date
232 hereof are deemed to have included the governing documents for
233 the covenants or restrictions as exceptions to title.

234 Section 7. This act shall take effect July 1, 2004.