

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1046

INTRODUCER: Community Affairs Committee and Senator Passidomo

SUBJECT: Covenants and Restrictions

DATE: April 4, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Fav/CS
2.			JU	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

SB 1046 relates to covenants and restrictions and does the following:

- Provides updated definitions and replaces the term "homeowners' association" with "property owners' association," thus extending statutory provisions regarding preservation and revival to a broader range of associations, notably commercial property owners' associations;
- Updates the process for a homeowners' association to timely renew its covenants, including repealing the requirement that a homeowners' association board achieve a two-thirds vote for preservation of existing covenants and restrictions;
- Authorizes parcel owners who were subject to covenants and restrictions but who do not have a homeowners' association to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions;
- Requires a homeowners' association to annually consider preservation of the covenants and restrictions and requires an association to file a summary preservation every five years; and
- Conforms statutory and definitional cross references.

## II. Present Situation:

### The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.<sup>1</sup> In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. Current law includes nine exceptions to the applicability MRTA.<sup>2</sup>

One effect of MRTA is that homeowner association covenants can lose effect after 30 years. In order to protect such covenants, MRTA has long provided for renewal of such covenants. However, many homeowners' associations fail to timely file a renewal of their covenants. Formerly, MRTA would apply in such cases and accordingly the covenants and restrictions expired and were unenforceable. In 2004, part III of ch. 720, F.S., was enacted to provide a means by which covenants and restrictions of a mandatory homeowners' association may be revived.<sup>3</sup> In 2007, nonmandatory homeowners' associations became eligible for revitalization.<sup>4</sup> Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.<sup>5</sup>

There are two categories of property owners who enact and enforce covenants and restrictions regarding their property and that of their neighbors who are impacted by MRTA, but have not been included in the laws regarding renewal or revival of their covenants and restrictions. These property owners are commercial landowners in office parks, industrial parks, and other commercial districts; and neighborhoods with enforceable covenants but no formal homeowners' association.

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

## III. Effect of Proposed Changes:

### Preservation of Existing Covenants

#### *Present Situation*

Sections 712.05 and 712.06, F.S., provide that a homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner of the impending preservation of the covenants;<sup>6</sup>

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<sup>1</sup> *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).

<sup>2</sup> Section 712.03, F.S.

<sup>3</sup> Chapter 2004-345, Laws of Fla.

<sup>4</sup> Chapter 2007-173, Laws of Fla.

<sup>5</sup> Part III of ch. 720, F.S.

<sup>6</sup> Section 712.06(1)(b), F.S.

- The board must give written notice to every parcel owner of a meeting of the board of directors where the directors will decide whether to renew the covenants;<sup>7</sup>
- The board of directors of the association must approve the renewal by a two-thirds vote;<sup>8</sup> and
- Notice of the renewal must be recorded in the Official Records of the county.<sup>9</sup>

**Sections 3 and 4** of the bill change this procedure to:

- Provide that compliance by a homeowners' association with newly created s. 720.3032, F.S. (see discussion below) may substitute for the requirements of ss. 712.05 and 712.06, F.S.;
- Repeal the requirement that the board achieve a two-thirds vote; and
- Repeal the requirement that affected property owners be furnished notice of the board meeting to vote on preservation.

These sections also contain conforming language.

### **Preservation and Revitalization of Covenants by a Commercial Property Owners' Association**

#### ***Present Situation***

Current law provides for the preservation and for the revitalization of covenants by a homeowners association.

#### ***Effect of the Bill***

**Section 2** provides a definition for the term community covenant or restriction and substitutes the term property owners' association for homeowners' association. A property owners' association includes a homeowners' association as defined in s. 720.301, F.S., a corporation or entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, as well as an association of parcel owners authorized to enforce a community covenant or restriction. The bill also makes changes in s. 712.01, F.S., to conform to these new terms.

The bill replaces all instances of the term "homeowners' association" found in ch. 712, F.S., with the term "property owners' association." The effect is to expand MRTA laws on preservation and revitalization of covenants or restrictions to these associations, that is, to expand the law to cover commercial associations.

**Section 12** provides that part III of ch. 720, F.S., comprised of ss. 720.403 – 720.407, F.S., is intended to provide mechanisms for revitalization of covenants or restrictions by all types of communities and property associations, not just residential communities. This section also includes conforming changes.

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<sup>7</sup> Section 712.05(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 712.06(2), F.S.

## **Revitalization by an Owner Not Subject to Homeowners' Association**

### ***Present Situation***

There are residential communities in which there were recorded covenants and restrictions similar to those found in a homeowners' association, but no association was ever created. Under current law, individual owners can file notice of preservation of covenants before they expire (see ss. 712.05 and 712.06, F.S.), but there are no means of revitalizing such covenants and restrictions.

### ***Effect of the Bill***

**Section 6** creates s. 712.12, F.S., relating to covenant or restriction revitalization by parcel owners not subject to a homeowners' association. The bill provides the following definitions:

- “Community” means the real property that is subject to a covenant or restriction that is recorded in the county where the property is located.
- “Covenant or restriction” means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, F.S., which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.
- “Parcel” means real property that is used for residential purposes and that is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.
- “Parcel owner” means the record owner of legal title to a parcel.

The section provides that the parcel owners may use the process available to a homeowners' association in ss. 720.403 – 720.407, F.S., to revive covenants or restrictions that have lapsed under MRTA. The parcel owners are excepted from needing to provide articles of incorporation or bylaws to revive the covenants or restrictions and only need the required approval in writing. The organizing committee of the community may execute the revived covenants in the name of the community and the community name can be indexed as the grantee of the covenants with the parcel owners listed as grantors. A parcel owner who has ceased to be subject to covenants or restrictions as of October 1, 2017, may commence an action by October 1, 2018, to determine if revitalization would unconstitutionally deprive the parcel owner of right or property. Revived covenants or restrictions do not affect the rights of a parcel owner which are recognized by a court order in an action commenced by October 1, 2018, and may not be subsequently altered without the consent of the affected parcel owner.

## **Requirements on the Board of Directors of a Homeowners' Association**

### ***Present Situation***

While it is probably good practice for a homeowners' association to regularly consider the need for preservation of the covenants and restrictions of their neighborhood, there is no statutory requirement that a board of directors of a homeowners' association do so.

### ***Effect of the Bill***

**Section 7** amends s. 720.303(2), F.S., to require that the board of directors for a homeowners' association must consider whether to file a notice to preserve the covenants and restrictions

affecting the community from extinguishment pursuant to MRTA. This must be considered at the first board meeting after the annual meeting of the members.

**Section 8** creates s. 720.3032, F.S., to require that, at least once every 5 years, a homeowners' association must file in the official records of the county in which it is located a notice detailing:

- The legal name of the association;
- The mailing and physical addresses of the association;
- The names of the affected subdivision plats and condominiums, or the common name of the community;
- The name, address, and telephone number for the current community association management company or manager, if any;
- An indication as to whether the association desires to preserve the covenants or restrictions affecting the community from extinguishment pursuant to MRTA;
- The name and recording information of those covenants or restrictions affecting the community which the association wishes to preserve;
- A legal description of the community affected by the covenants or restrictions; and
- The signature of a duly authorized officer of the association.

The section creates a statutory form for such information. The bill further provides that the filing of the completed form is considered a substitute for the notice required for preservation of the covenants pursuant to ss. 712.05 and 712.06, F.S. As such, every 5-year filing of the form will have the effect of starting the MRTA 30-year period anew.

The failure to file this notice does not affect the validity or enforceability of any covenant or restriction. A copy of this notice must be included as a part of the next notice of meeting or other mailing sent to all members of the association. The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

#### **Other Changes Made by the Bill**

**Section 1** provides a short title of the "Marketable Record Title Act" for ch. 712, F.S.

**Sections 5, 9, 10, 11, 13, 14, and 15** make changes to conform various statutory and definitional cross references.

**Section 16** provides for an effective date of October 1, 2017.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 8 of the bill requires associations to prepare and record a notice every 5 years. The recording fee is nominal (\$10 for the first page, \$8.50 for additional pages). Because the form is in statute, associations may be able to complete the task without assistance, or a community association manager can assist an association with preparation and filing without reference to a licensed attorney.

C. Government Sector Impact:

The bill requires the recording of documents in the public records of the county. Recording is subject to a fee of \$10.00 for the first page and \$8.50 for every subsequent page, payable to the recording department (in most counties, the clerk of the court).<sup>10</sup> The net revenues to county recorders, after deductions for incremental costs of recording and indexing documents, are unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 712.01, 712.05, 712.06, 712.11, 720.303, 702.09, 702.10, 712.095, 720.403, 720.404, 720.405, and 720.407.

This bill creates the following sections of the Florida Statutes 712.001, 712.12, and 720.3032.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on April 3, 2017:**

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<sup>10</sup> Section 28.24(12), F.S.

- Removed sections of the bill that authorized counties and municipalities to amend, release, or terminate a restriction or covenant that they imposed or accepted during the approval of a development permit.
- Removed retroactivity clauses pertaining to existing restrictions and covenants.
- Removed a section that added that a marketable record title is also free and clear of all zoning requirements or building or development permits that occurred before the effective date of the root of title.

B. Amendments:

None.