

By Senator Passidomo

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1                   A bill to be entitled  
2           An act relating to covenants and restrictions;  
3           amending ss. 125.022 and 166.033, F.S.; deleting  
4           provisions specifying that a county or municipality is  
5           not prohibited from providing information to an  
6           applicant regarding other state or federal permits  
7           that may apply under certain circumstances; specifying  
8           that the imposition or acceptance of certain  
9           restrictions or covenants does not preclude a county  
10          or municipality from exercising its police power, in  
11          its sole discretion, to later amend, release, or  
12          terminate such restrictions or covenants; prohibiting  
13          a county or municipality from delegating its police  
14          power to a third party by restriction, covenant, or  
15          otherwise; declaring any such purported delegation  
16          void; providing for retroactive applicability;  
17          creating s. 712.001, F.S.; providing a short title;  
18          amending s. 712.01, F.S.; defining and redefining  
19          terms; amending s. 712.04, F.S.; providing that a  
20          marketable title is free and clear of all covenants or  
21          restrictions, the existence of which depends upon any  
22          act, title transaction, event, zoning requirement,  
23          building or development permit, or omission that  
24          occurred before the effective date of the root of  
25          title; providing for construction; providing  
26          applicability; amending s. 712.05, F.S.; revising the  
27          notice filing requirements for a person claiming an  
28          interest in land and other rights; authorizing a  
29          property owners' association to preserve and protect

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30 certain covenants or restrictions from extinguishment,  
31 subject to specified requirements; providing that a  
32 failure in indexing does not affect the validity of  
33 the notice; extending the length of time certain  
34 covenants or restrictions are preserved; deleting a  
35 provision requiring a two-thirds vote by members of an  
36 incorporated homeowners' association to file certain  
37 notices; conforming provisions to changes made by the  
38 act; amending s. 712.06, F.S.; exempting a specified  
39 summary notice from certain notice content  
40 requirements; revising the contents required to be  
41 specified by certain notices; conforming provisions to  
42 changes made by the act; amending s. 712.11, F.S.;  
43 conforming provisions to changes made by the act;  
44 creating s. 712.12, F.S.; defining terms; authorizing  
45 the parcel owners of a community not subject to a  
46 homeowners' association to use specified procedures to  
47 revive certain covenants or restrictions, subject to  
48 certain exceptions and requirements; authorizing a  
49 parcel owner to commence an action by a specified date  
50 under certain circumstances for a judicial  
51 determination that the covenants or restrictions did  
52 not govern that parcel as of a specified date and that  
53 any revitalization of such covenants or restrictions  
54 as to that parcel would unconstitutionally deprive the  
55 parcel owner of rights or property; providing  
56 applicability; amending s. 720.303, F.S.; requiring a  
57 board to take up certain provisions relating to notice  
58 filings at the first board meeting; creating s.

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59 720.3032, F.S.; providing recording requirements for  
60 an association; providing a document form for  
61 recording by an association to preserve certain  
62 covenants or restrictions; providing that failure to  
63 file one or more notices does not affect the validity  
64 or enforceability of a covenant or restriction or  
65 alter the time before extinguishment under certain  
66 circumstances; requiring a copy of the filed notice to  
67 be sent to all members; requiring the original signed  
68 notice to be recorded with the clerk of the circuit  
69 court or other recorder; amending ss. 702.09 and  
70 702.10, F.S.; conforming provisions to changes made by  
71 the act; amending s. 712.095, F.S.; conforming a  
72 cross-reference; amending ss. 720.403, 720.404,  
73 720.405, and 720.407, F.S.; conforming provisions to  
74 changes made by the act; providing an effective date.  
75

76 Be It Enacted by the Legislature of the State of Florida:  
77

78 Section 1. Subsection (6) of section 125.022, Florida  
79 Statutes, is amended to read:

80 125.022 Development permits.—

81 (6) The imposition or acceptance of a recorded or  
82 unrecorded restriction or covenant in connection with the  
83 approval or issuance of a development permit does not preclude  
84 the county from exercising its police power, in its sole  
85 discretion, to later amend, release, or terminate the  
86 restriction or covenant. A county may not delegate its police  
87 power to a third party by restriction, covenant, or otherwise,

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88 and any such purported delegation is hereby declared to be void  
89 ~~This section does not prohibit a county from providing~~  
90 ~~information to an applicant regarding what other state or~~  
91 ~~federal permits may apply.~~

92 Section 2. Subsection (6) of section 166.033, Florida  
93 Statutes, is amended to read:

94 166.033 Development permits.—

95 (6) The imposition or acceptance of a recorded or  
96 unrecorded restriction or covenant in connection with the  
97 approval or issuance of a development permit does not preclude a  
98 municipality from exercising its police power, in its sole  
99 discretion, to later amend, release, or terminate the  
100 restriction or covenant. A municipality may not delegate its  
101 police power to a third party by restriction, covenant, or  
102 otherwise, and any such purported delegation is hereby declared  
103 to be void ~~This section does not prohibit a municipality from~~  
104 ~~providing information to an applicant regarding what other state~~  
105 ~~or federal permits may apply.~~

106 Section 3. The amendments by this act to ss. 125.022 and  
107 166.033, Florida Statutes, which relate to development permits,  
108 are remedial in nature and apply retroactively.

109 Section 4. Section 712.001, Florida Statutes, is created to  
110 read:

111 712.001 Short title.—This chapter may be cited as the  
112 "Marketable Record Title Act."

113 Section 5. Section 712.01, Florida Statutes, is reordered  
114 and amended to read:

115 712.01 Definitions.—As used in this chapter, the term law:

116 (1) "Community covenant or restriction" means any agreement

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117 or limitation contained in a document recorded in the public  
 118 records of the county in which a parcel is located which:

119 (a) Subjects the parcel to any use restriction that may be  
 120 enforced by a property owners' association; or

121 (b) Authorizes a property owners' association to impose a  
 122 charge or assessment against the parcel or the parcel owner.

123 (4)~~(1)~~ The term "Person" includes the as used herein  
 124 denotes singular or plural, natural or corporate, private or  
 125 governmental, including the state and any political subdivision  
 126 or agency thereof as the context for the use thereof requires or  
 127 denotes and including any property owners' homeowners'  
 128 association.

129 (6)~~(2)~~ "Root of title" means any title transaction  
 130 purporting to create or transfer the estate claimed by any  
 131 person ~~and~~ which is the last title transaction to have been  
 132 recorded at least 30 years before ~~prior to~~ the time when  
 133 marketability is being determined. The effective date of the  
 134 root of title is the date on which it was recorded.

135 (7)~~(3)~~ "Title transaction" means any recorded instrument or  
 136 court proceeding that ~~which~~ affects title to any estate or  
 137 interest in land and that ~~which~~ describes the land sufficiently  
 138 to identify its location and boundaries.

139 (5)~~(4)~~ "Property owners' association" ~~The term "homeowners'~~  
 140 association" means a homeowners' association as defined in s.  
 141 720.301, a corporation or other entity responsible for the  
 142 operation of property in which the voting membership is made up  
 143 of the owners of the property or their agents, or a combination  
 144 thereof, and in which membership is a mandatory condition of  
 145 property ownership, or an association of parcel owners which is

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146 authorized to enforce a community covenant or restriction use  
147 ~~restrictions~~ that is ~~are~~ imposed on the parcels.

148 ~~(3)(5) The term~~ "Parcel" means real property that ~~which~~ is  
149 used for residential purposes and that is subject to exclusive  
150 ownership and ~~which is subject~~ to any covenant or restriction of  
151 a property owners' ~~homeowners'~~ association.

152 ~~(2)(6) The term~~ "Covenant or restriction" means any  
153 agreement or limitation contained in a document recorded in the  
154 public records of the county in which a parcel is located which  
155 subjects the parcel to any use or other restriction or  
156 obligation ~~which may be enforced by a homeowners' association or~~  
157 ~~which authorizes a homeowners' association to impose a charge or~~  
158 ~~assessment against the parcel or the owner of the parcel or~~  
159 ~~which may be enforced by the Florida Department of Environmental~~  
160 ~~Protection pursuant to chapter 376 or chapter 403.~~

161 Section 6. Section 712.04, Florida Statutes, is amended to  
162 read:

163 712.04 Interests extinguished by marketable record title.-

164 (1) Subject to s. 712.03, a marketable record title is free  
165 and clear of all estates, interests, claims, covenants,  
166 restrictions, or charges, the existence of which depends upon  
167 any act, title transaction, event, zoning requirement, building  
168 or development permit, or omission that occurred before the  
169 effective date of the root of title. Except as provided in s.  
170 712.03, all such estates, interests, claims, covenants,  
171 restrictions, or charges, however denominated, whether they are  
172 or appear to be held or asserted by a person sui juris or under  
173 a disability, whether such person is within or without the  
174 state, natural or corporate, or private or governmental, are

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175 declared to be null and void. However, this chapter does not  
176 affect any right, title, or interest of the United States,  
177 Florida, or any of its officers, boards, commissions, or other  
178 agencies reserved in the patent or deed by which the United  
179 States, Florida, or any of its agencies parted with title.

180 (2) This section may not be construed to alter or  
181 invalidate a zoning ordinance, land development regulation,  
182 building code, or other ordinance, rule, regulation, or law if  
183 such ordinance, rule, regulation, or law operates independently  
184 of matters recorded in the official records.

185 (3) This section is intended to clarify existing law, is  
186 remedial in nature, and applies to all restrictions and  
187 covenants whether imposed or accepted before, on, or after  
188 October 1, 2017.

189 Section 7. Section 712.05, Florida Statutes, is amended to  
190 read:

191 712.05 Effect of filing notice.-

192 (1) A person claiming an interest in land or other right  
193 subject to extinguishment under this chapter ~~a homeowners'~~  
194 ~~association desiring to preserve a covenant or restriction~~ may  
195 preserve and protect such interest or right ~~the same~~ from  
196 extinguishment by the operation of this chapter ~~act~~ by filing  
197 for record, at any time during the 30-year period immediately  
198 following the effective date of the root of title, a written  
199 notice in accordance with s. 712.06 ~~this chapter~~.

200 (2) A property owners' association may preserve and protect  
201 a community covenant or restriction from extinguishment by the  
202 operation of this chapter by filing for record, at any time  
203 during the 30-year period immediately following the effective

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204 date of the root of title:

205 (a) A written notice in accordance with s. 712.06; or

206 (b) A summary notice in substantial form and content as  
207 required under s. 720.3032(2). Failure of a summary notice to be  
208 indexed to the current owners of the affected property does not  
209 affect the validity of the notice or vitiate the effect of the  
210 filing of such notice.

211 (3) A ~~Such~~ notice under subsection (1) or subsection (2)  
212 preserves an interest in land or other ~~such claim of right~~  
213 subject to extinguishment under this chapter, or a ~~such~~ covenant  
214 or restriction or portion of such covenant or restriction, for  
215 not less than ~~up to~~ 30 years after filing the notice unless the  
216 notice is filed again as required in this chapter. A person's  
217 disability or lack of knowledge of any kind may not delay the  
218 commencement of or suspend the running of the 30-year period.  
219 Such notice may be filed for record by the claimant or by any  
220 other person acting on behalf of a claimant who is:

221 (a) Under a disability;

222 (b) Unable to assert a claim on his or her behalf; or

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

226

227 ~~Such notice may be filed by a homeowners' association only if~~  
228 ~~the preservation of such covenant or restriction or portion of~~  
229 ~~such covenant or restriction is approved by at least two-thirds~~  
230 ~~of the members of the board of directors of an incorporated~~  
231 ~~homeowners' association at a meeting for which a notice, stating~~  
232 ~~the meeting's time and place and containing the statement of~~



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233 ~~marketable title action described in s. 712.06(1)(b), was mailed~~  
 234 ~~or hand delivered to members of the homeowners' association at~~  
 235 ~~least 7 days before such meeting. The property owners'~~  
 236 ~~homeowners' association or clerk of the circuit court is not~~  
 237 required to provide additional notice pursuant to s. 712.06(3).  
 238 The preceding sentence is intended to clarify existing law.

239 ~~(4)(2)~~ It is ~~shall~~ not be necessary for the owner of the  
 240 marketable record title, as described in s. 712.02 herein  
 241 ~~defined~~, to file a notice to protect his or her marketable  
 242 record title.

243 Section 8. Subsections (1) and (3) of section 712.06,  
 244 Florida Statutes, are amended to read:

245 712.06 Contents of notice; recording and indexing.—

246 (1) To be effective, the notice referred to in s. 712.05,  
 247 other than the summary notice referred to in s. 712.05(2)(b),  
 248 must ~~shall~~ contain:

249 (a) The name or description and mailing address of the  
 250 claimant or the property owners' ~~homeowners'~~ association  
 251 desiring to preserve any covenant or restriction ~~and the name~~  
 252 ~~and particular post office address of the person filing the~~  
 253 ~~claim or the homeowners' association.~~

254 (b) The name and mailing ~~post office~~ address of an owner,  
 255 or the name and mailing ~~post office~~ address of the person in  
 256 whose name the ~~said~~ property is assessed on the last completed  
 257 tax assessment roll of the county at the time of filing, who,  
 258 for purpose of such notice, shall be deemed to be an owner;  
 259 ~~provided~~, however, if a property owners' ~~homeowners'~~ association  
 260 is filing the notice, ~~then~~ the requirements of this paragraph  
 261 may be satisfied by attaching to and recording with the notice

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262 an affidavit executed by the appropriate member of the board of  
263 directors of the property owners' ~~homeowners'~~ association  
264 affirming that the board of directors of the property owners'  
265 ~~homeowners'~~ association caused a statement in substantially the  
266 following form to be mailed or hand delivered to the members of  
267 that property owners' ~~homeowners'~~ association:

268  
269 STATEMENT OF MARKETABLE TITLE ACTION  
270

271 The [name of property owners' ~~homeowners'~~ association] (the  
272 "Association") has taken action to ensure that the [name of  
273 declaration, covenant, or restriction], recorded in Official  
274 Records Book ....., Page ....., of the public records of ....  
275 County, Florida, as may be amended from time to time, currently  
276 burdening the property of each and every member of the  
277 Association, retains its status ~~as the source of marketable~~  
278 ~~title~~ with regard to the affected real property ~~the transfer of~~  
279 ~~a member's residence~~. To this end, the Association shall cause  
280 the notice required by chapter 712, Florida Statutes, to be  
281 recorded in the public records of .... County, Florida. Copies  
282 of this notice and its attachments are available through the  
283 Association pursuant to the Association's governing documents  
284 regarding official records of the Association.  
285

286 (c) A full and complete description of all land affected by  
287 such notice, which description shall be set forth in particular  
288 terms and not by general reference, but if said claim is founded  
289 upon a recorded instrument or a covenant or a restriction, ~~then~~  
290 the description in such notice may be the same as that contained

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291 in such recorded instrument or covenant or restriction, provided  
292 the same shall be sufficient to identify the property.

293 (d) A statement of the claim showing the nature,  
294 description, and extent of such claim or other right subject to  
295 extinguishment under this chapter or, in the case of a covenant  
296 or restriction, a copy of the covenant or restriction, except  
297 that it is ~~shall~~ not ~~be~~ necessary to show the amount of any  
298 claim for money or the terms of payment.

299 (e) If such claim or other right subject to extinguishment  
300 under this chapter is based upon an instrument of record or a  
301 recorded covenant or restriction, such instrument of record or  
302 recorded covenant or restriction shall be deemed sufficiently  
303 described to identify the same if the notice includes a  
304 reference to the book and page in which the same is recorded.

305 (f) Such notice shall be acknowledged in the same manner as  
306 deeds are acknowledged for record.

307 (3) The person providing the notice referred to in s.  
308 712.05, other than a notice for preservation of a community  
309 covenant or restriction, shall:

310 (a) Cause the clerk of the circuit court to mail by  
311 registered or certified mail to the purported owner of said  
312 property, as stated in such notice, a copy thereof and shall  
313 enter on the original, before recording the same, a certificate  
314 showing such mailing. For preparing the certificate, the  
315 claimant shall pay to the clerk the service charge as prescribed  
316 in s. 28.24(8) and the necessary costs of mailing, in addition  
317 to the recording charges as prescribed in s. 28.24(12). If the  
318 notice names purported owners having more than one address, the  
319 person filing the same shall furnish a true copy for each of the

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320 several addresses stated, and the clerk shall send one such copy  
321 to the purported owners named at each respective address. Such  
322 certificate shall be sufficient if the same reads substantially  
323 as follows:

324

325 I hereby certify that I did on this ....., mail by  
326 registered (or certified) mail a copy of the foregoing notice to  
327 each of the following at the address stated:

328

329 ...(Clerk of the circuit court)...

330 of .... County, Florida,

331 By...(Deputy clerk)...

332

333 The clerk of the circuit court is not required to mail to the  
334 purported owner of such property any such notice that pertains  
335 solely to the preserving of any covenant or restriction or any  
336 portion of a covenant or restriction; or

337 (b) Publish once a week, for 2 consecutive weeks, the  
338 notice referred to in s. 712.05, with the official record book  
339 and page number in which such notice was recorded, in a  
340 newspaper as defined in chapter 50 in the county in which the  
341 property is located.

342 Section 9. Section 712.11, Florida Statutes, is amended to  
343 read:

344 712.11 Covenant revitalization.—A property owners'  
345 ~~homeowners'~~ association not otherwise subject to chapter 720 may  
346 use the procedures set forth in ss. 720.403-720.407 to revive  
347 covenants that have lapsed under the terms of this chapter.

348 Section 10. Section 712.12, Florida Statutes, is created to

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349 read:

350 712.12 Covenant or restriction revitalization by parcel  
351 owners not subject to a homeowners' association.-

352 (1) As used in this section, the term:

353 (a) "Community" means the real property that is subject to  
354 a covenant or restriction that is recorded in the county where  
355 the property is located.

356 (b) "Covenant or restriction" means any agreement or  
357 limitation imposed by a private party and not required by a  
358 governmental agency as a condition of a development permit, as  
359 defined in s. 163.3164, which is contained in a document  
360 recorded in the public records of the county in which a parcel  
361 is located and which subjects the parcel to any use restriction  
362 that may be enforced by a parcel owner.

363 (c) "Parcel" means real property that is used for  
364 residential purposes and that is subject to exclusive ownership  
365 and any covenant or restriction that may be enforced by a parcel  
366 owner.

367 (d) "Parcel owner" means the record owner of legal title to  
368 a parcel.

369 (2) The parcel owners of a community not subject to a  
370 homeowners' association may use the procedures set forth in ss.  
371 720.403-720.407 to revive covenants or restrictions that have  
372 lapsed under the terms of this chapter, except:

373 (a) A reference to a homeowners' association or articles of  
374 incorporation or bylaws of a homeowners' association under ss.  
375 720.403-720.407 is not required to revive the covenants or  
376 restrictions.

377 (b) The approval required under s. 720.405(6) must be in

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378 writing, and not at a meeting.

379 (c) The requirements under s. 720.407(2) may be satisfied  
380 by having the organizing committee execute the revived covenants  
381 or restrictions in the name of the community.

382 (d) The indexing requirements under s. 720.407(3) may be  
383 satisfied by indexing the community name in the covenants or  
384 restrictions as the grantee and the parcel owners as the  
385 grantors.

386 (3) With respect to any parcel that has ceased to be  
387 governed by covenants or restrictions as of October 1, 2017, the  
388 parcel owner may commence an action by October 1, 2018, for a  
389 judicial determination that the covenants or restrictions did  
390 not govern that parcel as of October 1, 2017, and that any  
391 revitalization of such covenants or restrictions as to that  
392 parcel would unconstitutionally deprive the parcel owner of  
393 rights or property.

394 (4) Revived covenants or restrictions that are implemented  
395 pursuant to this section do not apply to or affect the rights of  
396 the parcel owner which are recognized by any court order or  
397 judgment in any action commenced by October 1, 2018, and any  
398 such rights so recognized may not be subsequently altered by  
399 revived covenants or restrictions implemented under this section  
400 without the consent of the affected parcel owner.

401 Section 11. Paragraph (e) is added to subsection (2) of  
402 section 720.303, Florida Statutes, to read:

403 720.303 Association powers and duties; meetings of board;  
404 official records; budgets; financial reporting; association  
405 funds; recalls.—

406 (2) BOARD MEETINGS.—

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407       (e) At the first board meeting, excluding the  
408 organizational meeting, which follows the annual meeting of the  
409 members, the board shall consider the desirability of filing  
410 notices to preserve the covenants or restrictions affecting the  
411 community or association from extinguishment under the  
412 Marketable Record Title Act, chapter 712, and to authorize and  
413 direct the appropriate officer to file notice in accordance with  
414 s. 720.3032.

415       Section 12. Section 720.3032, Florida Statutes, is created  
416 to read:

417       720.3032 Notice of association information; preservation  
418 from Marketable Record Title Act.—

419       (1) Not less than once every 5 years, each association  
420 shall record in the official records of each county in which the  
421 community is located a notice specifying:

422       (a) The legal name of the association.

423       (b) The mailing and physical addresses of the association.

424       (c) The names of the affected subdivision plats and  
425 condominiums or, if not applicable, the common name of the  
426 community.

427       (d) The name, address, and telephone number for the current  
428 community association management company or community  
429 association manager, if any.

430       (e) Indication as to whether the association desires to  
431 preserve the covenants or restrictions affecting the community  
432 or association from extinguishment under the Marketable Record  
433 Title Act, chapter 712.

434       (f) A listing by name and recording information of those  
435 covenants or restrictions affecting the community which the

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436 association desires to be preserved from extinguishment.

437 (g) The legal description of the community affected by the  
438 covenants or restrictions, which may be satisfied by a reference  
439 to a recorded plat.

440 (h) The signature of a duly authorized officer of the  
441 association, acknowledged in the same manner as deeds are  
442 acknowledged for record.

443 (2) Recording a document in substantially the following  
444 form satisfies the notice obligation and constitutes a summary  
445 notice as specified in s. 712.05(2)(b) sufficient to preserve  
446 and protect the referenced covenants and restrictions from  
447 extinguishment under the Marketable Record Title Act, chapter  
448 712.

450 Notice of ...(name of association)... under s. 720.3032, Florida  
451 Statutes, and notice to preserve and protect covenants and  
452 restrictions from extinguishment under the Marketable Record  
453 Title Act, chapter 712, Florida Statutes.

454  
455 Instructions to recorder: Please index both the legal name  
456 of the association and the names shown in item 3.

- 457 1. Legal name of association: ....
- 458 2. Mailing and physical addresses of association: .... ....
- 459 3. Names of the subdivision plats, or, if none, common name  
460 of community: ....

461 4. Name, address, and telephone number for management  
462 company, if any: .....

463 5. This notice does .... does not .... constitute a notice  
464 to preserve and protect covenants or restrictions from





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494 recorder for the county.

495 Section 13. Section 702.09, Florida Statutes, is amended to  
496 read:

497 702.09 Definitions.—For the purposes of ss. 702.07 and  
498 702.08, the words “decree of foreclosure” shall include a  
499 judgment or order rendered or passed in the foreclosure  
500 proceedings in which the decree of foreclosure shall be  
501 rescinded, vacated, and set aside; the word “mortgage” shall  
502 mean any written instrument securing the payment of money or  
503 advances and includes liens to secure payment of assessments  
504 arising under chapters 718 and 719 and liens created pursuant to  
505 the recorded covenants of a property owners’ ~~homeowners’~~  
506 association as defined in s. 712.01; the word “debt” shall  
507 include promissory notes, bonds, and all other written  
508 obligations given for the payment of money; the words  
509 “foreclosure proceedings” shall embrace every action in the  
510 circuit or county courts of this state wherein it is sought to  
511 foreclose a mortgage and sell the property covered by the same;  
512 and the word “property” shall mean and include both real and  
513 personal property.

514 Section 14. Subsection (1) of section 702.10, Florida  
515 Statutes, is amended to read:

516 702.10 Order to show cause; entry of final judgment of  
517 foreclosure; payment during foreclosure.—

518 (1) A lienholder may request an order to show cause for the  
519 entry of final judgment in a foreclosure action. For purposes of  
520 this section, the term “lienholder” includes the plaintiff and a  
521 defendant to the action who holds a lien encumbering the  
522 property or a defendant who, by virtue of its status as a

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523 condominium association, cooperative association, or property  
524 owners' ~~homeowners'~~ association, may file a lien against the  
525 real property subject to foreclosure. Upon filing, the court  
526 shall immediately review the request and the court file in  
527 chambers and without a hearing. If, upon examination of the  
528 court file, the court finds that the complaint is verified,  
529 complies with s. 702.015, and alleges a cause of action to  
530 foreclose on real property, the court shall promptly issue an  
531 order directed to the other parties named in the action to show  
532 cause why a final judgment of foreclosure should not be entered.

533 (a) The order shall:

534 1. Set the date and time for a hearing to show cause. The  
535 date for the hearing may not occur sooner than the later of 20  
536 days after service of the order to show cause or 45 days after  
537 service of the initial complaint. When service is obtained by  
538 publication, the date for the hearing may not be set sooner than  
539 30 days after the first publication.

540 2. Direct the time within which service of the order to  
541 show cause and the complaint must be made upon the defendant.

542 3. State that the filing of defenses by a motion, a  
543 responsive pleading, an affidavit, or other papers before the  
544 hearing to show cause that raise a genuine issue of material  
545 fact which would preclude the entry of summary judgment or  
546 otherwise constitute a legal defense to foreclosure shall  
547 constitute cause for the court not to enter final judgment.

548 4. State that a defendant has the right to file affidavits  
549 or other papers before the time of the hearing to show cause and  
550 may appear personally or by way of an attorney at the hearing.

551 5. State that, if a defendant files defenses by a motion, a

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552 verified or sworn answer, affidavits, or other papers or appears  
553 personally or by way of an attorney at the time of the hearing,  
554 the hearing time will be used to hear and consider whether the  
555 defendant's motion, answer, affidavits, other papers, and other  
556 evidence and argument as may be presented by the defendant or  
557 the defendant's attorney raise a genuine issue of material fact  
558 which would preclude the entry of summary judgment or otherwise  
559 constitute a legal defense to foreclosure. The order shall also  
560 state that the court may enter an order of final judgment of  
561 foreclosure at the hearing and order the clerk of the court to  
562 conduct a foreclosure sale.

563 6. State that, if a defendant fails to appear at the  
564 hearing to show cause or fails to file defenses by a motion or  
565 by a verified or sworn answer or files an answer not contesting  
566 the foreclosure, such defendant may be considered to have waived  
567 the right to a hearing, and in such case, the court may enter a  
568 default against such defendant and, if appropriate, a final  
569 judgment of foreclosure ordering the clerk of the court to  
570 conduct a foreclosure sale.

571 7. State that if the mortgage provides for reasonable  
572 attorney fees and the requested attorney fees do not exceed 3  
573 percent of the principal amount owed at the time of filing the  
574 complaint, it is unnecessary for the court to hold a hearing or  
575 adjudge the requested attorney fees to be reasonable.

576 8. Attach the form of the proposed final judgment of  
577 foreclosure which the movant requests the court to enter at the  
578 hearing on the order to show cause.

579 9. Require the party seeking final judgment to serve a copy  
580 of the order to show cause on the other parties in the following

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581 manner:

582 a. If a party has been served pursuant to chapter 48 with  
583 the complaint and original process, or the other party is the  
584 plaintiff in the action, service of the order to show cause on  
585 that party may be made in the manner provided in the Florida  
586 Rules of Civil Procedure.

587 b. If a defendant has not been served pursuant to chapter  
588 48 with the complaint and original process, the order to show  
589 cause, together with the summons and a copy of the complaint,  
590 shall be served on the party in the same manner as provided by  
591 law for original process.

592

593 Any final judgment of foreclosure entered under this subsection  
594 is for in rem relief only. This subsection does not preclude the  
595 entry of a deficiency judgment where otherwise allowed by law.  
596 The Legislature intends that this alternative procedure may run  
597 simultaneously with other court procedures.

598 (b) The right to be heard at the hearing to show cause is  
599 waived if a defendant, after being served as provided by law  
600 with an order to show cause, engages in conduct that clearly  
601 shows that the defendant has relinquished the right to be heard  
602 on that order. The defendant's failure to file defenses by a  
603 motion or by a sworn or verified answer, affidavits, or other  
604 papers or to appear personally or by way of an attorney at the  
605 hearing duly scheduled on the order to show cause presumptively  
606 constitutes conduct that clearly shows that the defendant has  
607 relinquished the right to be heard. If a defendant files  
608 defenses by a motion, a verified answer, affidavits, or other  
609 papers or presents evidence at or before the hearing which raise

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610 a genuine issue of material fact which would preclude entry of  
611 summary judgment or otherwise constitute a legal defense to  
612 foreclosure, such action constitutes cause and precludes the  
613 entry of a final judgment at the hearing to show cause.

614 (c) In a mortgage foreclosure proceeding, when a final  
615 judgment of foreclosure has been entered against the mortgagor  
616 and the note or mortgage provides for the award of reasonable  
617 attorney fees, it is unnecessary for the court to hold a hearing  
618 or adjudge the requested attorney fees to be reasonable if the  
619 fees do not exceed 3 percent of the principal amount owed on the  
620 note or mortgage at the time of filing, even if the note or  
621 mortgage does not specify the percentage of the original amount  
622 that would be paid as liquidated damages.

623 (d) If the court finds that all defendants have waived the  
624 right to be heard as provided in paragraph (b), the court shall  
625 promptly enter a final judgment of foreclosure without the need  
626 for further hearing if the plaintiff has shown entitlement to a  
627 final judgment and upon the filing with the court of the  
628 original note, satisfaction of the conditions for establishment  
629 of a lost note, or upon a showing to the court that the  
630 obligation to be foreclosed is not evidenced by a promissory  
631 note or other negotiable instrument. If the court finds that a  
632 defendant has not waived the right to be heard on the order to  
633 show cause, the court shall determine whether there is cause not  
634 to enter a final judgment of foreclosure. If the court finds  
635 that the defendant has not shown cause, the court shall promptly  
636 enter a judgment of foreclosure. If the time allotted for the  
637 hearing is insufficient, the court may announce at the hearing a  
638 date and time for the continued hearing. Only the parties who

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639 appear, individually or through an attorney, at the initial  
640 hearing must be notified of the date and time of the continued  
641 hearing.

642 Section 15. Section 712.095, Florida Statutes, is amended  
643 to read:

644 712.095 Notice required by July 1, 1983.—Any person whose  
645 interest in land is derived from an instrument or court  
646 proceeding recorded subsequent to the root of title, which  
647 instrument or proceeding did not contain a description of the  
648 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose  
649 interest had not been extinguished prior to July 1, 1981, shall  
650 have until July 1, 1983, to file a notice in accordance with s.  
651 712.06 to preserve the interest.

652 Section 16. Section 720.403, Florida Statutes, is amended  
653 to read:

654 720.403 Preservation of ~~residential~~ communities; revival of  
655 declaration of covenants.—

656 (1) Consistent with required and optional elements of local  
657 comprehensive plans and other applicable provisions of the  
658 Community Planning Act, property owners ~~homeowners~~ are  
659 encouraged to preserve existing residential and other  
660 communities, promote available and affordable housing, protect  
661 structural and aesthetic elements of their ~~residential~~  
662 community, and, as applicable, maintain roads and streets,  
663 easements, water and sewer systems, utilities, drainage  
664 improvements, conservation and open areas, recreational  
665 amenities, and other infrastructure and common areas that serve  
666 and support the ~~residential~~ community by the revival of a  
667 previous declaration of covenants and other governing documents

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668 that may have ceased to govern some or all parcels in the  
669 community.

670 (2) In order to preserve a ~~residential~~ community and the  
671 associated infrastructure and common areas for the purposes  
672 described in this section, the parcel owners in a community that  
673 was previously subject to a declaration of covenants that has  
674 ceased to govern one or more parcels in the community may revive  
675 the declaration and the ~~homeowners'~~ association for the  
676 community upon approval by the parcel owners to be governed  
677 thereby as provided in this act, and upon approval of the  
678 declaration and the other governing documents for the  
679 association by the Department of Economic Opportunity in a  
680 manner consistent with this act.

681 (3) Part III of this chapter is intended to provide  
682 mechanisms for the revitalization of covenants or restrictions  
683 for all types of communities and property associations and is  
684 not limited to residential communities.

685 Section 17. Section 720.404, Florida Statutes, is amended  
686 to read:

687 720.404 Eligible ~~residential~~ communities; requirements for  
688 revival of declaration.—Parcel owners in a community are  
689 eligible to seek approval from the Department of Economic  
690 Opportunity to revive a declaration of covenants under this act  
691 if all of the following requirements are met:

692 (1) All parcels to be governed by the revived declaration  
693 must have been once governed by a previous declaration that has  
694 ceased to govern some or all of the parcels in the community;

695 (2) The revived declaration must be approved in the manner  
696 provided in s. 720.405(6); and



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697 (3) The revived declaration may not contain covenants that  
698 are more restrictive on the parcel owners than the covenants  
699 contained in the previous declaration, except that the  
700 declaration may:

701 (a) Have an effective term of longer duration than the term  
702 of the previous declaration;

703 (b) Omit restrictions contained in the previous  
704 declaration;

705 (c) Govern fewer than all of the parcels governed by the  
706 previous declaration;

707 (d) Provide for amendments to the declaration and other  
708 governing documents; and

709 (e) Contain provisions required by this chapter for new  
710 declarations that were not contained in the previous  
711 declaration.

712 Section 18. Subsections (1), (3), (5), and (6) of section  
713 720.405, Florida Statutes, are amended to read:

714 720.405 Organizing committee; parcel owner approval.—

715 (1) The proposal to revive a declaration of covenants and  
716 an a homeowners' association for a community under the terms of  
717 this act shall be initiated by an organizing committee  
718 consisting of not less than three parcel owners located in the  
719 community that is proposed to be governed by the revived  
720 declaration. The name, address, and telephone number of each  
721 member of the organizing committee must be included in any  
722 notice or other document provided by the committee to parcel  
723 owners to be affected by the proposed revived declaration.

724 (3) The organizing committee shall prepare the full text of  
725 the proposed articles of incorporation and bylaws of the revived

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726 ~~homeowners'~~ association to be submitted to the parcel owners for  
727 approval, unless the association is then an existing  
728 corporation, in which case the organizing committee shall  
729 prepare the existing articles of incorporation and bylaws to be  
730 submitted to the parcel owners.

731 (5) A copy of the complete text of the proposed revised  
732 declaration of covenants, the proposed new or existing articles  
733 of incorporation and bylaws of the ~~homeowners'~~ association, and  
734 a graphic depiction of the property to be governed by the  
735 revived declaration shall be presented to all of the affected  
736 parcel owners by mail or hand delivery not less than 14 days  
737 before the time that the consent of the affected parcel owners  
738 to the proposed governing documents is sought by the organizing  
739 committee.

740 (6) A majority of the affected parcel owners must agree in  
741 writing to the revived declaration of covenants and governing  
742 documents of the ~~homeowners'~~ association or approve the revived  
743 declaration and governing documents by a vote at a meeting of  
744 the affected parcel owners noticed and conducted in the manner  
745 prescribed by s. 720.306. Proof of notice of the meeting to all  
746 affected owners of the meeting and the minutes of the meeting  
747 recording the votes of the property owners shall be certified by  
748 a court reporter or an attorney licensed to practice in the  
749 state.

750 Section 19. Subsection (3) of section 720.407, Florida  
751 Statutes, is amended to read:

752 720.407 Recording; notice of recording; applicability and  
753 effective date.—

754 (3) The recorded documents shall include the full text of

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755 the approved declaration of covenants, the articles of  
756 incorporation and bylaws of the ~~homeowners'~~ association, the  
757 letter of approval by the department, and the legal description  
758 of each affected parcel of property. For purposes of chapter  
759 712, the association is deemed to be and shall be indexed as the  
760 grantee in a title transaction and the parcel owners named in  
761 the revived declaration are deemed to be and shall be indexed as  
762 the grantors in the title transaction.

763 Section 20. This act shall take effect October 1, 2017.