

By the Committee on Community Affairs; and Senator Passidomo

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1 A bill to be entitled
2 An act relating to covenants and restrictions;
3 creating s. 712.001, F.S.; providing a short title;
4 amending s. 712.01, F.S.; defining and redefining
5 terms; amending s. 712.05, F.S.; revising the notice
6 filing requirements for a person claiming an interest
7 in land and other rights; authorizing a property
8 owners' association to preserve and protect certain
9 covenants or restrictions from extinguishment, subject
10 to specified requirements; providing that a failure in
11 indexing does not affect the validity of the notice;
12 extending the length of time certain covenants or
13 restrictions are preserved; deleting a provision
14 requiring a two-thirds vote by members of an
15 incorporated homeowners' association to file certain
16 notices; conforming provisions to changes made by the
17 act; amending s. 712.06, F.S.; exempting a specified
18 summary notice from certain notice content
19 requirements; revising the contents required to be
20 specified by certain notices; conforming provisions to
21 changes made by the act; amending s. 712.11, F.S.;
22 conforming provisions to changes made by the act;
23 creating s. 712.12, F.S.; defining terms; authorizing
24 the parcel owners of a community not subject to a
25 homeowners' association to use specified procedures to
26 revive certain covenants or restrictions, subject to
27 certain exceptions and requirements; authorizing a
28 parcel owner to commence an action by a specified date
29 under certain circumstances for a judicial

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30 determination that the covenants or restrictions did
31 not govern that parcel as of a specified date and that
32 any revitalization of such covenants or restrictions
33 as to that parcel would unconstitutionally deprive the
34 parcel owner of rights or property; providing
35 applicability; amending s. 720.303, F.S.; requiring a
36 board to take up certain provisions relating to notice
37 filings at the first board meeting; creating s.
38 720.3032, F.S.; providing recording requirements for
39 an association; providing a document form for
40 recording by an association to preserve certain
41 covenants or restrictions; providing that failure to
42 file one or more notices does not affect the validity
43 or enforceability of a covenant or restriction or
44 alter the time before extinguishment under certain
45 circumstances; requiring a copy of the filed notice to
46 be sent to all members; requiring the original signed
47 notice to be recorded with the clerk of the circuit
48 court or other recorder; amending ss. 702.09 and
49 702.10, F.S.; conforming provisions to changes made by
50 the act; amending s. 712.095, F.S.; conforming a
51 cross-reference; amending ss. 720.403, 720.404,
52 720.405, and 720.407, F.S.; conforming provisions to
53 changes made by the act; providing an effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Section 712.001, Florida Statutes, is created to
58 read:

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59 712.001 Short title.—This chapter may be cited as the
60 “Marketable Record Title Act.”

61 Section 2. Section 712.01, Florida Statutes, is reordered
62 and amended to read:

63 712.01 Definitions.—As used in this chapter, the term law:

64 (1) “Community covenant or restriction” means any agreement
65 or limitation contained in a document recorded in the public
66 records of the county in which a parcel is located which:

67 (a) Subjects the parcel to any use restriction that may be
68 enforced by a property owners’ association; or

69 (b) Authorizes a property owners’ association to impose a
70 charge or assessment against the parcel or the parcel owner.

71 (4) (1) The term “Person” includes the as used herein
72 denotes singular or plural, natural or corporate, private or
73 governmental, including the state and any political subdivision
74 or agency thereof as the context for the use thereof requires or
75 denotes and including any property owners’ homeowners’
76 association.

77 (6) (2) “Root of title” means any title transaction
78 purporting to create or transfer the estate claimed by any
79 person and which is the last title transaction to have been
80 recorded at least 30 years before ~~prior to~~ the time when
81 marketability is being determined. The effective date of the
82 root of title is the date on which it was recorded.

83 (7) (3) “Title transaction” means any recorded instrument or
84 court proceeding that ~~which~~ affects title to any estate or
85 interest in land and that ~~which~~ describes the land sufficiently
86 to identify its location and boundaries.

87 (5) (4) “Property owners’ association” ~~The term “homeowners’~~

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88 ~~association~~" means a homeowners' association as defined in s.
 89 720.301, a corporation or other entity responsible for the
 90 operation of property in which the voting membership is made up
 91 of the owners of the property or their agents, or a combination
 92 thereof, and in which membership is a mandatory condition of
 93 property ownership, or an association of parcel owners which is
 94 authorized to enforce a community covenant or restriction ~~use~~
 95 ~~restrictions~~ that is ~~are~~ imposed on the parcels.

96 ~~(3)(5)~~ The term "Parcel" means real property that ~~which~~ is
 97 used for residential purposes and that is subject to exclusive
 98 ownership and ~~which is subject~~ to any covenant or restriction of
 99 a property owners' homeowners' association.

100 ~~(2)(6)~~ The term "Covenant or restriction" means any
 101 agreement or limitation contained in a document recorded in the
 102 public records of the county in which a parcel is located which
 103 subjects the parcel to any use or other restriction or
 104 obligation ~~which may be enforced by a homeowners' association or~~
 105 ~~which authorizes a homeowners' association to impose a charge or~~
 106 ~~assessment against the parcel or the owner of the parcel or~~
 107 ~~which may be enforced by the Florida Department of Environmental~~
 108 ~~Protection pursuant to chapter 376 or chapter 403.~~

109 Section 3. Section 712.05, Florida Statutes, is amended to
 110 read:

111 712.05 Effect of filing notice.—

112 (1) A person claiming an interest in land or other right
 113 subject to extinguishment under this chapter ~~a homeowners'~~
 114 ~~association desiring to preserve a covenant or restriction~~ may
 115 preserve and protect such interest or right ~~the same~~ from
 116 extinguishment by the operation of this chapter ~~act~~ by filing

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117 for record, at any time during the 30-year period immediately
118 following the effective date of the root of title, a written
119 notice in accordance with s. 712.06 ~~this chapter~~.

120 (2) A property owners' association may preserve and protect
121 a community covenant or restriction from extinguishment by the
122 operation of this chapter by filing for record, at any time
123 during the 30-year period immediately following the effective
124 date of the root of title:

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

126 (b) A summary notice in substantial form and content as
127 required under s. 720.3032(2). Failure of a summary notice to be
128 indexed to the current owners of the affected property does not
129 affect the validity of the notice or vitiate the effect of the
130 filing of such notice.

131 (3) A ~~Such~~ notice under subsection (1) or subsection (2)
132 preserves an interest in land or other ~~such claim of right~~
133 subject to extinguishment under this chapter, or a ~~such~~ covenant
134 or restriction or portion of such covenant or restriction, for
135 not less than ~~up to~~ 30 years after filing the notice unless the
136 notice is filed again as required in this chapter. A person's
137 disability or lack of knowledge of any kind may not delay the
138 commencement of or suspend the running of the 30-year period.
139 Such notice may be filed for record by the claimant or by any
140 other person acting on behalf of a claimant who is:

141 (a) Under a disability;

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

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

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146
147 ~~Such notice may be filed by a homeowners' association only if~~
148 ~~the preservation of such covenant or restriction or portion of~~
149 ~~such covenant or restriction is approved by at least two thirds~~
150 ~~of the members of the board of directors of an incorporated~~
151 ~~homeowners' association at a meeting for which a notice, stating~~
152 ~~the meeting's time and place and containing the statement of~~
153 ~~marketable title action described in s. 712.06(1)(b), was mailed~~
154 ~~or hand delivered to members of the homeowners' association at~~
155 ~~least 7 days before such meeting. The property owners'~~
156 ~~homeowners' association or clerk of the circuit court is not~~
157 required to provide additional notice pursuant to s. 712.06(3).
158 The preceding sentence is intended to clarify existing law.

159 ~~(4)(2)~~ It is ~~shall~~ not be necessary for the owner of the
160 marketable record title, as described in s. 712.02 herein
161 ~~defined~~, to file a notice to protect his or her marketable
162 record title.

163 Section 4. Subsections (1) and (3) of section 712.06,
164 Florida Statutes, are amended to read:

165 712.06 Contents of notice; recording and indexing.—

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

169 (a) The name or description and mailing address of the
170 claimant or the property owners' ~~homeowners'~~ association
171 desiring to preserve any covenant or restriction ~~and the name~~
172 ~~and particular post office address of the person filing the~~
173 ~~claim or the homeowners' association.~~

174 (b) The name and mailing ~~post office~~ address of an owner,

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175 or the name and mailing ~~post office~~ address of the person in
176 whose name the ~~said~~ property is assessed on the last completed
177 tax assessment roll of the county at the time of filing, who,
178 for purpose of such notice, shall be deemed to be an owner;
179 ~~provided,~~ however, if a property owners' ~~homeowners'~~ association
180 is filing the notice, ~~then~~ the requirements of this paragraph
181 may be satisfied by attaching to and recording with the notice
182 an affidavit executed by the appropriate member of the board of
183 directors of the property owners' ~~homeowners'~~ association
184 affirming that the board of directors of the property owners'
185 ~~homeowners'~~ association caused a statement in substantially the
186 following form to be mailed or hand delivered to the members of
187 that property owners' ~~homeowners'~~ association:
188

189 STATEMENT OF MARKETABLE TITLE ACTION
190

191 The [name of property owners' ~~homeowners'~~ association] (the
192 "Association") has taken action to ensure that the [name of
193 declaration, covenant, or restriction], recorded in Official
194 Records Book, Page, of the public records of
195 County, Florida, as may be amended from time to time, currently
196 burdening the property of each and every member of the
197 Association, retains its status ~~as the source of marketable~~
198 ~~title~~ with regard to the affected real property ~~the transfer of~~
199 ~~a member's residence~~. To this end, the Association shall cause
200 the notice required by chapter 712, Florida Statutes, to be
201 recorded in the public records of County, Florida. Copies
202 of this notice and its attachments are available through the
203 Association pursuant to the Association's governing documents

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204 regarding official records of the Association.

205
206 (c) A full and complete description of all land affected by
207 such notice, which description shall be set forth in particular
208 terms and not by general reference, but if said claim is founded
209 upon a recorded instrument or a covenant or a restriction, ~~then~~
210 the description in such notice may be the same as that contained
211 in such recorded instrument or covenant or restriction, provided
212 the same shall be sufficient to identify the property.

213 (d) A statement of the claim showing the nature,
214 description, and extent of such claim or other right subject to
215 extinguishment under this chapter or, in the case of a covenant
216 or restriction, a copy of the covenant or restriction, except
217 that it is ~~shall~~ not ~~be~~ necessary to show the amount of any
218 claim for money or the terms of payment.

219 (e) If such claim or other right subject to extinguishment
220 under this chapter is based upon an instrument of record or a
221 recorded covenant or restriction, such instrument of record or
222 recorded covenant or restriction shall be deemed sufficiently
223 described to identify the same if the notice includes a
224 reference to the book and page in which the same is recorded.

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

227 (3) The person providing the notice referred to in s.
228 712.05, other than a notice for preservation of a community
229 covenant or restriction, shall:

230 (a) Cause the clerk of the circuit court to mail by
231 registered or certified mail to the purported owner of said
232 property, as stated in such notice, a copy thereof and shall

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233 enter on the original, before recording the same, a certificate
234 showing such mailing. For preparing the certificate, the
235 claimant shall pay to the clerk the service charge as prescribed
236 in s. 28.24(8) and the necessary costs of mailing, in addition
237 to the recording charges as prescribed in s. 28.24(12). If the
238 notice names purported owners having more than one address, the
239 person filing the same shall furnish a true copy for each of the
240 several addresses stated, and the clerk shall send one such copy
241 to the purported owners named at each respective address. Such
242 certificate shall be sufficient if the same reads substantially
243 as follows:

244

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

248

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

250 of County, Florida,

251 By...(Deputy clerk)...

252

253 The clerk of the circuit court is not required to mail to the
254 purported owner of such property any such notice that pertains
255 solely to the preserving of any covenant or restriction or any
256 portion of a covenant or restriction; or

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

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262 Section 5. Section 712.11, Florida Statutes, is amended to
263 read:

264 712.11 Covenant revitalization.—A property owners'
265 ~~homeowners'~~ association not otherwise subject to chapter 720 may
266 use the procedures set forth in ss. 720.403-720.407 to revive
267 covenants that have lapsed under the terms of this chapter.

268 Section 6. Section 712.12, Florida Statutes, is created to
269 read:

270 712.12 Covenant or restriction revitalization by parcel
271 owners not subject to a homeowners' association.—

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

273 (a) "Community" means the real property that is subject to
274 a covenant or restriction that is recorded in the county where
275 the property is located.

276 (b) "Covenant or restriction" means any agreement or
277 limitation imposed by a private party and not required by a
278 governmental agency as a condition of a development permit, as
279 defined in s. 163.3164, which is contained in a document
280 recorded in the public records of the county in which a parcel
281 is located and which subjects the parcel to any use restriction
282 that may be enforced by a parcel owner.

283 (c) "Parcel" means real property that is used for
284 residential purposes and that is subject to exclusive ownership
285 and any covenant or restriction that may be enforced by a parcel
286 owner.

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

289 (2) The parcel owners of a community not subject to a
290 homeowners' association may use the procedures set forth in ss.

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291 720.403-720.407 to revive covenants or restrictions that have
292 lapsed under the terms of this chapter, except:

293 (a) A reference to a homeowners' association or articles of
294 incorporation or bylaws of a homeowners' association under ss.
295 720.403-720.407 is not required to revive the covenants or
296 restrictions.

297 (b) The approval required under s. 720.405(6) must be in
298 writing, and not at a meeting.

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

302 (d) The indexing requirements under s. 720.407(3) may be
303 satisfied by indexing the community name in the covenants or
304 restrictions as the grantee and the parcel owners as the
305 grantors.

306 (3) With respect to any parcel that has ceased to be
307 governed by covenants or restrictions as of October 1, 2017, the
308 parcel owner may commence an action by October 1, 2018, for a
309 judicial determination that the covenants or restrictions did
310 not govern that parcel as of October 1, 2017, and that any
311 revitalization of such covenants or restrictions as to that
312 parcel would unconstitutionally deprive the parcel owner of
313 rights or property.

314 (4) Revived covenants or restrictions that are implemented
315 pursuant to this section do not apply to or affect the rights of
316 the parcel owner which are recognized by any court order or
317 judgment in any action commenced by October 1, 2018, and any
318 such rights so recognized may not be subsequently altered by
319 revived covenants or restrictions implemented under this section

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320 without the consent of the affected parcel owner.

321 Section 7. Paragraph (e) is added to subsection (2) of
322 section 720.303, Florida Statutes, to read:

323 720.303 Association powers and duties; meetings of board;
324 official records; budgets; financial reporting; association
325 funds; recalls.—

326 (2) BOARD MEETINGS.—

327 (e) At the first board meeting, excluding the
328 organizational meeting, which follows the annual meeting of the
329 members, the board shall consider the desirability of filing
330 notices to preserve the covenants or restrictions affecting the
331 community or association from extinguishment under the
332 Marketable Record Title Act, chapter 712, and to authorize and
333 direct the appropriate officer to file notice in accordance with
334 s. 720.3032.

335 Section 8. Section 720.3032, Florida Statutes, is created
336 to read:

337 720.3032 Notice of association information; preservation
338 from Marketable Record Title Act.—

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

342 (a) The legal name of the association.

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

344 (c) The names of the affected subdivision plats and
345 condominiums or, if not applicable, the common name of the
346 community.

347 (d) The name, address, and telephone number for the current
348 community association management company or community

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349 association manager, if any.

350 (e) Indication as to whether the association desires to
351 preserve the covenants or restrictions affecting the community
352 or association from extinguishment under the Marketable Record
353 Title Act, chapter 712.

354 (f) A listing by name and recording information of those
355 covenants or restrictions affecting the community which the
356 association desires to be preserved from extinguishment.

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

360 (h) The signature of a duly authorized officer of the
361 association, acknowledged in the same manner as deeds are
362 acknowledged for record.

363 (2) Recording a document in substantially the following
364 form satisfies the notice obligation and constitutes a summary
365 notice as specified in s. 712.05(2)(b) sufficient to preserve
366 and protect the referenced covenants and restrictions from
367 extinguishment under the Marketable Record Title Act, chapter
368 712.

369
370 Notice of ... (name of association) ... under s. 720.3032, Florida
371 Statutes, and notice to preserve and protect covenants and
372 restrictions from extinguishment under the Marketable Record
373 Title Act, chapter 712, Florida Statutes.

374
375 Instructions to recorder: Please index both the legal name
376 of the association and the names shown in item 3.

377 1. Legal name of association:

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378 2. Mailing and physical addresses of association:

379 3. Names of the subdivision plats, or, if none, common name
380 of community:

381 4. Name, address, and telephone number for management
382 company, if any:

383 5. This notice does does not constitute a notice
384 to preserve and protect covenants or restrictions from
385 extinguishment under the Marketable Record Title Act.

386 6. The following covenants or restrictions affecting the
387 community which the association desires to be preserved from
388 extinguishment:

389 ...(Name of instrument)...

390 ...(Official Records Book where recorded & page)...

391 ...(List of instruments)...

392 ...(List of recording information)...

393 7. The legal description of the community affected by the
394 listed covenants or restrictions is: ...(Legal description,
395 which may be satisfied by reference to a recorded plat)...

396 This notice is filed on behalf of ...(Name of
397 association) ... as of ...(Date)....

398 ...(Name of association)...

399 By:

401 ...(Name of individual officer)...

402 ...(Title of officer)...

403 ...(Notary acknowledgment)...

404

405 (3) The failure to file one or more notices does not affect
406 the validity or enforceability of any covenant or restriction

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407 nor in any way alter the remaining time before extinguishment by
408 the Marketable Record Title Act, chapter 712.

409 (4) A copy of the notice, as filed, must be included as
410 part of the next notice of meeting or other mailing sent to all
411 members.

412 (5) The original signed notice must be recorded in the
413 official records of the clerk of the circuit court or other
414 recorder for the county.

415 Section 9. Section 702.09, Florida Statutes, is amended to
416 read:

417 702.09 Definitions.—For the purposes of ss. 702.07 and
418 702.08, the words “decree of foreclosure” shall include a
419 judgment or order rendered or passed in the foreclosure
420 proceedings in which the decree of foreclosure shall be
421 rescinded, vacated, and set aside; the word “mortgage” shall
422 mean any written instrument securing the payment of money or
423 advances and includes liens to secure payment of assessments
424 arising under chapters 718 and 719 and liens created pursuant to
425 the recorded covenants of a property owners’ ~~homeowners’~~
426 association as defined in s. 712.01; the word “debt” shall
427 include promissory notes, bonds, and all other written
428 obligations given for the payment of money; the words
429 “foreclosure proceedings” shall embrace every action in the
430 circuit or county courts of this state wherein it is sought to
431 foreclose a mortgage and sell the property covered by the same;
432 and the word “property” shall mean and include both real and
433 personal property.

434 Section 10. Subsection (1) of section 702.10, Florida
435 Statutes, is amended to read:

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436 702.10 Order to show cause; entry of final judgment of
437 foreclosure; payment during foreclosure.—

438 (1) A lienholder may request an order to show cause for the
439 entry of final judgment in a foreclosure action. For purposes of
440 this section, the term "lienholder" includes the plaintiff and a
441 defendant to the action who holds a lien encumbering the
442 property or a defendant who, by virtue of its status as a
443 condominium association, cooperative association, or property
444 owners' ~~homeowners'~~ association, may file a lien against the
445 real property subject to foreclosure. Upon filing, the court
446 shall immediately review the request and the court file in
447 chambers and without a hearing. If, upon examination of the
448 court file, the court finds that the complaint is verified,
449 complies with s. 702.015, and alleges a cause of action to
450 foreclose on real property, the court shall promptly issue an
451 order directed to the other parties named in the action to show
452 cause why a final judgment of foreclosure should not be entered.

453 (a) The order shall:

454 1. Set the date and time for a hearing to show cause. The
455 date for the hearing may not occur sooner than the later of 20
456 days after service of the order to show cause or 45 days after
457 service of the initial complaint. When service is obtained by
458 publication, the date for the hearing may not be set sooner than
459 30 days after the first publication.

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

462 3. State that the filing of defenses by a motion, a
463 responsive pleading, an affidavit, or other papers before the
464 hearing to show cause that raise a genuine issue of material

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465 fact which would preclude the entry of summary judgment or
466 otherwise constitute a legal defense to foreclosure shall
467 constitute cause for the court not to enter final judgment.

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

471 5. State that, if a defendant files defenses by a motion, a
472 verified or sworn answer, affidavits, or other papers or appears
473 personally or by way of an attorney at the time of the hearing,
474 the hearing time will be used to hear and consider whether the
475 defendant's motion, answer, affidavits, other papers, and other
476 evidence and argument as may be presented by the defendant or
477 the defendant's attorney raise a genuine issue of material fact
478 which would preclude the entry of summary judgment or otherwise
479 constitute a legal defense to foreclosure. The order shall also
480 state that the court may enter an order of final judgment of
481 foreclosure at the hearing and order the clerk of the court to
482 conduct a foreclosure sale.

483 6. State that, if a defendant fails to appear at the
484 hearing to show cause or fails to file defenses by a motion or
485 by a verified or sworn answer or files an answer not contesting
486 the foreclosure, such defendant may be considered to have waived
487 the right to a hearing, and in such case, the court may enter a
488 default against such defendant and, if appropriate, a final
489 judgment of foreclosure ordering the clerk of the court to
490 conduct a foreclosure sale.

491 7. State that if the mortgage provides for reasonable
492 attorney fees and the requested attorney fees do not exceed 3
493 percent of the principal amount owed at the time of filing the

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494 complaint, it is unnecessary for the court to hold a hearing or
495 adjudge the requested attorney fees to be reasonable.

496 8. Attach the form of the proposed final judgment of
497 foreclosure which the movant requests the court to enter at the
498 hearing on the order to show cause.

499 9. Require the party seeking final judgment to serve a copy
500 of the order to show cause on the other parties in the following
501 manner:

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

507 b. If a defendant has not been served pursuant to chapter
508 48 with the complaint and original process, the order to show
509 cause, together with the summons and a copy of the complaint,
510 shall be served on the party in the same manner as provided by
511 law for original process.

512
513 Any final judgment of foreclosure entered under this subsection
514 is for in rem relief only. This subsection does not preclude the
515 entry of a deficiency judgment where otherwise allowed by law.
516 The Legislature intends that this alternative procedure may run
517 simultaneously with other court procedures.

518 (b) The right to be heard at the hearing to show cause is
519 waived if a defendant, after being served as provided by law
520 with an order to show cause, engages in conduct that clearly
521 shows that the defendant has relinquished the right to be heard
522 on that order. The defendant's failure to file defenses by a

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523 motion or by a sworn or verified answer, affidavits, or other
524 papers or to appear personally or by way of an attorney at the
525 hearing duly scheduled on the order to show cause presumptively
526 constitutes conduct that clearly shows that the defendant has
527 relinquished the right to be heard. If a defendant files
528 defenses by a motion, a verified answer, affidavits, or other
529 papers or presents evidence at or before the hearing which raise
530 a genuine issue of material fact which would preclude entry of
531 summary judgment or otherwise constitute a legal defense to
532 foreclosure, such action constitutes cause and precludes the
533 entry of a final judgment at the hearing to show cause.

534 (c) In a mortgage foreclosure proceeding, when a final
535 judgment of foreclosure has been entered against the mortgagor
536 and the note or mortgage provides for the award of reasonable
537 attorney fees, it is unnecessary for the court to hold a hearing
538 or adjudge the requested attorney fees to be reasonable if the
539 fees do not exceed 3 percent of the principal amount owed on the
540 note or mortgage at the time of filing, even if the note or
541 mortgage does not specify the percentage of the original amount
542 that would be paid as liquidated damages.

543 (d) If the court finds that all defendants have waived the
544 right to be heard as provided in paragraph (b), the court shall
545 promptly enter a final judgment of foreclosure without the need
546 for further hearing if the plaintiff has shown entitlement to a
547 final judgment and upon the filing with the court of the
548 original note, satisfaction of the conditions for establishment
549 of a lost note, or upon a showing to the court that the
550 obligation to be foreclosed is not evidenced by a promissory
551 note or other negotiable instrument. If the court finds that a

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552 defendant has not waived the right to be heard on the order to
553 show cause, the court shall determine whether there is cause not
554 to enter a final judgment of foreclosure. If the court finds
555 that the defendant has not shown cause, the court shall promptly
556 enter a judgment of foreclosure. If the time allotted for the
557 hearing is insufficient, the court may announce at the hearing a
558 date and time for the continued hearing. Only the parties who
559 appear, individually or through an attorney, at the initial
560 hearing must be notified of the date and time of the continued
561 hearing.

562 Section 11. Section 712.095, Florida Statutes, is amended
563 to read:

564 712.095 Notice required by July 1, 1983.—Any person whose
565 interest in land is derived from an instrument or court
566 proceeding recorded subsequent to the root of title, which
567 instrument or proceeding did not contain a description of the
568 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
569 interest had not been extinguished prior to July 1, 1981, shall
570 have until July 1, 1983, to file a notice in accordance with s.
571 712.06 to preserve the interest.

572 Section 12. Section 720.403, Florida Statutes, is amended
573 to read:

574 720.403 Preservation of ~~residential~~ communities; revival of
575 declaration of covenants.—

576 (1) Consistent with required and optional elements of local
577 comprehensive plans and other applicable provisions of the
578 Community Planning Act, property owners ~~homeowners~~ are
579 encouraged to preserve existing residential and other
580 communities, promote available and affordable housing, protect

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581 structural and aesthetic elements of their ~~residential~~
582 community, and, as applicable, maintain roads and streets,
583 easements, water and sewer systems, utilities, drainage
584 improvements, conservation and open areas, recreational
585 amenities, and other infrastructure and common areas that serve
586 and support the ~~residential~~ community by the revival of a
587 previous declaration of covenants and other governing documents
588 that may have ceased to govern some or all parcels in the
589 community.

590 (2) In order to preserve a ~~residential~~ community and the
591 associated infrastructure and common areas for the purposes
592 described in this section, the parcel owners in a community that
593 was previously subject to a declaration of covenants that has
594 ceased to govern one or more parcels in the community may revive
595 the declaration and the ~~homeowners'~~ association for the
596 community upon approval by the parcel owners to be governed
597 thereby as provided in this act, and upon approval of the
598 declaration and the other governing documents for the
599 association by the Department of Economic Opportunity in a
600 manner consistent with this act.

601 (3) Part III of this chapter is intended to provide
602 mechanisms for the revitalization of covenants or restrictions
603 for all types of communities and property associations and is
604 not limited to residential communities.

605 Section 13. Section 720.404, Florida Statutes, is amended
606 to read:

607 720.404 Eligible ~~residential~~ communities; requirements for
608 revival of declaration.—Parcel owners in a community are
609 eligible to seek approval from the Department of Economic

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610 Opportunity to revive a declaration of covenants under this act
611 if all of the following requirements are met:

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

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

617 (3) The revived declaration may not contain covenants that
618 are more restrictive on the parcel owners than the covenants
619 contained in the previous declaration, except that the
620 declaration may:

621 (a) Have an effective term of longer duration than the term
622 of the previous declaration;

623 (b) Omit restrictions contained in the previous
624 declaration;

625 (c) Govern fewer than all of the parcels governed by the
626 previous declaration;

627 (d) Provide for amendments to the declaration and other
628 governing documents; and

629 (e) Contain provisions required by this chapter for new
630 declarations that were not contained in the previous
631 declaration.

632 Section 14. Subsections (1), (3), (5), and (6) of section
633 720.405, Florida Statutes, are amended to read:

634 720.405 Organizing committee; parcel owner approval.—

635 (1) The proposal to revive a declaration of covenants and
636 an a-homeowners' association for a community under the terms of
637 this act shall be initiated by an organizing committee
638 consisting of not less than three parcel owners located in the

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639 community that is proposed to be governed by the revived
640 declaration. The name, address, and telephone number of each
641 member of the organizing committee must be included in any
642 notice or other document provided by the committee to parcel
643 owners to be affected by the proposed revived declaration.

644 (3) The organizing committee shall prepare the full text of
645 the proposed articles of incorporation and bylaws of the revived
646 ~~homeowners'~~ association to be submitted to the parcel owners for
647 approval, unless the association is then an existing
648 corporation, in which case the organizing committee shall
649 prepare the existing articles of incorporation and bylaws to be
650 submitted to the parcel owners.

651 (5) A copy of the complete text of the proposed revised
652 declaration of covenants, the proposed new or existing articles
653 of incorporation and bylaws of the ~~homeowners'~~ association, and
654 a graphic depiction of the property to be governed by the
655 revived declaration shall be presented to all of the affected
656 parcel owners by mail or hand delivery not less than 14 days
657 before the time that the consent of the affected parcel owners
658 to the proposed governing documents is sought by the organizing
659 committee.

660 (6) A majority of the affected parcel owners must agree in
661 writing to the revived declaration of covenants and governing
662 documents of the ~~homeowners'~~ association or approve the revived
663 declaration and governing documents by a vote at a meeting of
664 the affected parcel owners noticed and conducted in the manner
665 prescribed by s. 720.306. Proof of notice of the meeting to all
666 affected owners of the meeting and the minutes of the meeting
667 recording the votes of the property owners shall be certified by

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668 a court reporter or an attorney licensed to practice in the
669 state.

670 Section 15. Subsection (3) of section 720.407, Florida
671 Statutes, is amended to read:

672 720.407 Recording; notice of recording; applicability and
673 effective date.—

674 (3) The recorded documents shall include the full text of
675 the approved declaration of covenants, the articles of
676 incorporation and bylaws of the ~~homeowners'~~ association, the
677 letter of approval by the department, and the legal description
678 of each affected parcel of property. For purposes of chapter
679 712, the association is deemed to be and shall be indexed as the
680 grantee in a title transaction and the parcel owners named in
681 the revived declaration are deemed to be and shall be indexed as
682 the grantors in the title transaction.

683 Section 16. This act shall take effect October 1, 2017.