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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/RE/2R	.	
05/04/2017 10:16 PM	.	
	.	

Senator Passidomo moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

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



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12 (1) "Community covenant or restriction" means any agreement
13 or limitation contained in a document recorded in the public
14 records of the county in which a parcel is located which:

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

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

19 (4)-(1) The term "Person" includes the as used herein
20 denotes singular or plural, natural or corporate, private or
21 governmental, including the state and any political subdivision
22 or agency thereof as the context for the use thereof requires or
23 denotes and including any property owners' homeowners'
24 association.

25 (6)-(2) "Root of title" means any title transaction
26 purporting to create or transfer the estate claimed by any
27 person and which is the last title transaction to have been
28 recorded at least 30 years before prior to the time when
29 marketability is being determined. The effective date of the
30 root of title is the date on which it was recorded.

31 (7)-(3) "Title transaction" means any recorded instrument or
32 court proceeding that which affects title to any estate or
33 interest in land and that which describes the land sufficiently
34 to identify its location and boundaries.

35 (5)-(4) "Property owners' association" The term "homeowners'
36 association" means a homeowners' association as defined in s.
37 720.301, a corporation or other entity responsible for the
38 operation of property in which the voting membership is made up
39 of the owners of the property or their agents, or a combination
40 thereof, and in which membership is a mandatory condition of



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41 property ownership, or an association of parcel owners which is
42 authorized to enforce a community covenant or restriction ~~use~~
43 ~~restrictions~~ that is ~~are~~ imposed on the parcels.

44 ~~(3)-(5) The term~~ "Parcel" means real property that ~~which~~ is
45 used for residential purposes and that is subject to exclusive
46 ownership and ~~which is subject~~ to any covenant or restriction of
47 a property owners' homeowners' association.

48 ~~(2)-(6) The term~~ "Covenant or restriction" means any
49 agreement or limitation contained in a document recorded in the
50 public records of the county in which a parcel is located which
51 subjects the parcel to any use or other restriction or
52 obligation ~~which may be enforced by a homeowners' association or~~
53 ~~which authorizes a homeowners' association to impose a charge or~~
54 ~~assessment against the parcel or the owner of the parcel or~~
55 ~~which may be enforced by the Florida Department of Environmental~~
56 ~~Protection pursuant to chapter 376 or chapter 403.~~

57 Section 3. Section 712.05, Florida Statutes, is amended to
58 read:

59 712.05 Effect of filing notice.-

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

68 (2) A property owners' association may preserve and protect
69 a community covenant or restriction from extinguishment by the



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70 operation of this chapter by filing for record, at any time
71 during the 30-year period immediately following the effective
72 date of the root of title:

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

74 (b) A summary notice in substantial form and content as
75 required under s. 720.3032(2). Failure of a summary notice to be
76 indexed to the current owners of the affected property does not
77 affect the validity of the notice or vitiate the effect of the
78 filing of such notice.

79 (3) A ~~Such~~ notice under subsection (1) or subsection (2)
80 preserves an interest in land or other ~~such claim of~~ right
81 subject to extinguishment under this chapter, or a ~~such~~ covenant
82 or restriction or portion of such covenant or restriction, for
83 not less than ~~up to~~ 30 years after filing the notice unless the
84 notice is filed again as required in this chapter. A person's
85 disability or lack of knowledge of any kind may not delay the
86 commencement of or suspend the running of the 30-year period.
87 Such notice may be filed for record by the claimant or by any
88 other person acting on behalf of a claimant who is:

89 (a) Under a disability;

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

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

94

95 ~~Such notice may be filed by a homeowners' association only if~~
96 ~~the preservation of such covenant or restriction or portion of~~
97 ~~such covenant or restriction is approved by at least two thirds~~
98 ~~of the members of the board of directors of an incorporated~~



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99 ~~homeowners' association at a meeting for which a notice, stating~~
100 ~~the meeting's time and place and containing the statement of~~
101 ~~marketable title action described in s. 712.06(1)(b), was mailed~~
102 ~~or hand delivered to members of the homeowners' association at~~
103 ~~least 7 days before such meeting. The property owners'~~
104 ~~homeowners' association or clerk of the circuit court is not~~
105 required to provide additional notice pursuant to s. 712.06(3).
106 The preceding sentence is intended to clarify existing law.

107 ~~(4)(2)~~ It is ~~shall~~ not be necessary for the owner of the
108 marketable record title, as described in s. 712.02 herein
109 ~~defined~~, to file a notice to protect his or her marketable
110 record title.

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

113 712.06 Contents of notice; recording and indexing.—

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

117 (a) The name or description and mailing address of the
118 claimant or the property owners' ~~homeowners'~~ association
119 desiring to preserve any covenant or restriction ~~and the name~~
120 ~~and particular post office address of the person filing the~~
121 ~~claim or the homeowners' association.~~

122 (b) The name and mailing ~~post office~~ address of an owner,
123 or the name and mailing ~~post office~~ address of the person in
124 whose name the ~~said~~ property is assessed on the last completed
125 tax assessment roll of the county at the time of filing, who,
126 for purpose of such notice, shall be deemed to be an owner;
127 ~~provided~~, however, if a property owners' ~~homeowners'~~ association



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128 is filing the notice, ~~then~~ the requirements of this paragraph
129 may be satisfied by attaching to and recording with the notice
130 an affidavit executed by the appropriate member of the board of
131 directors of the property owners' ~~homeowners'~~ association
132 affirming that the board of directors of the property owners'
133 ~~homeowners'~~ association caused a statement in substantially the
134 following form to be mailed or hand delivered to the members of
135 that property owners' ~~homeowners'~~ association:

136
137 STATEMENT OF MARKETABLE TITLE ACTION
138

139 The [name of property owners' ~~homeowners'~~ association] (the
140 "Association") has taken action to ensure that the [name of
141 declaration, covenant, or restriction], recorded in Official
142 Records Book, Page, of the public records of
143 County, Florida, as may be amended from time to time, currently
144 burdening the property of each and every member of the
145 Association, retains its status ~~as the source of marketable~~
146 ~~title~~ with regard to the affected real property ~~the transfer of~~
147 ~~a member's residence~~. To this end, the Association shall cause
148 the notice required by chapter 712, Florida Statutes, to be
149 recorded in the public records of County, Florida. Copies
150 of this notice and its attachments are available through the
151 Association pursuant to the Association's governing documents
152 regarding official records of the Association.
153

154 (c) A full and complete description of all land affected by
155 such notice, which description shall be set forth in particular
156 terms and not by general reference, but if said claim is founded



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157 upon a recorded instrument or a covenant or a restriction, ~~then~~
158 the description in such notice may be the same as that contained
159 in such recorded instrument or covenant or restriction, provided
160 the same shall be sufficient to identify the property.

161 (d) A statement of the claim showing the nature,
162 description, and extent of such claim or other right subject to
163 extinguishment under this chapter or, in the case of a covenant
164 or restriction, a copy of the covenant or restriction, except
165 that it is ~~shall~~ not ~~be~~ necessary to show the amount of any
166 claim for money or the terms of payment.

167 (e) If such claim or other right subject to extinguishment
168 under this chapter is based upon an instrument of record or a
169 recorded covenant or restriction, such instrument of record or
170 recorded covenant or restriction shall be deemed sufficiently
171 described to identify the same if the notice includes a
172 reference to the book and page in which the same is recorded.

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

175 (3) The person providing the notice referred to in s.
176 712.05, other than a notice for preservation of a community
177 covenant or restriction, shall:

178 (a) Cause the clerk of the circuit court to mail by
179 registered or certified mail to the purported owner of said
180 property, as stated in such notice, a copy thereof and shall
181 enter on the original, before recording the same, a certificate
182 showing such mailing. For preparing the certificate, the
183 claimant shall pay to the clerk the service charge as prescribed
184 in s. 28.24(8) and the necessary costs of mailing, in addition
185 to the recording charges as prescribed in s. 28.24(12). If the



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186 notice names purported owners having more than one address, the
187 person filing the same shall furnish a true copy for each of the
188 several addresses stated, and the clerk shall send one such copy
189 to the purported owners named at each respective address. Such
190 certificate shall be sufficient if the same reads substantially
191 as follows:

192
193 I hereby certify that I did on this, mail by
194 registered (or certified) mail a copy of the foregoing notice to
195 each of the following at the address stated:

196
197 ...(Clerk of the circuit court)...
198 of County, Florida,
199 By... (Deputy clerk)...

200
201 The clerk of the circuit court is not required to mail to the
202 purported owner of such property any such notice that pertains
203 solely to the preserving of any covenant or restriction or any
204 portion of a covenant or restriction; or

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

210 Section 5. Section 712.11, Florida Statutes, is amended to
211 read:

212 712.11 Covenant revitalization.—A property owners'
213 ~~homeowners'~~ association not otherwise subject to chapter 720 may
214 use the procedures set forth in ss. 720.403-720.407 to revive



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215 covenants that have lapsed under the terms of this chapter.

216 Section 6. Section 712.12, Florida Statutes, is created to
217 read:

218 712.12 Covenant or restriction revitalization by parcel
219 owners not subject to a homeowners' association.-

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

221 (a) "Community" means the real property that is subject to
222 a covenant or restriction that is recorded in the county where
223 the property is located.

224 (b) "Covenant or restriction" means any agreement or
225 limitation imposed by a private party and not required by a
226 governmental agency as a condition of a development permit, as
227 defined in s. 163.3164, which is contained in a document
228 recorded in the public records of the county in which a parcel
229 is located and which subjects the parcel to any use restriction
230 that may be enforced by a parcel owner.

231 (c) "Parcel" means real property that is used for
232 residential purposes and that is subject to exclusive ownership
233 and any covenant or restriction that may be enforced by a parcel
234 owner.

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

237 (2) The parcel owners of a community not subject to a
238 homeowners' association may use the procedures set forth in ss.
239 720.403-720.407 to revive covenants or restrictions that have
240 lapsed under the terms of this chapter, except:

241 (a) A reference to a homeowners' association or articles of
242 incorporation or bylaws of a homeowners' association under ss.
243 720.403-720.407 is not required to revive the covenants or



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244 restrictions.

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

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

250 (d) The indexing requirements under s. 720.407(3) may be
251 satisfied by indexing the community name in the covenants or
252 restrictions as the grantee and the parcel owners as the
253 grantors.

254 (3) With respect to any parcel that has ceased to be
255 governed by covenants or restrictions as of October 1, 2017, the
256 parcel owner may commence an action by October 1, 2018, for a
257 judicial determination that the covenants or restrictions did
258 not govern that parcel as of October 1, 2017, and that any
259 revitalization of such covenants or restrictions as to that
260 parcel would unconstitutionally deprive the parcel owner of
261 rights or property.

262 (4) Revived covenants or restrictions that are implemented
263 pursuant to this section do not apply to or affect the rights of
264 the parcel owner which are recognized by any court order or
265 judgment in any action commenced by October 1, 2018, and any
266 such rights so recognized may not be subsequently altered by
267 revived covenants or restrictions implemented under this section
268 without the consent of the affected parcel owner.

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

271 720.303 Association powers and duties; meetings of board;
272 official records; budgets; financial reporting; association



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273 funds; recalls.-

274 (2) BOARD MEETINGS.-

275 (e) At the first board meeting, excluding the
276 organizational meeting, which follows the annual meeting of the
277 members, the board shall consider the desirability of filing
278 notices to preserve the covenants or restrictions affecting the
279 community or association from extinguishment under the
280 Marketable Record Title Act, chapter 712, and to authorize and
281 direct the appropriate officer to file notice in accordance with
282 s. 720.3032.

283 Section 8. Section 720.3032, Florida Statutes, is created
284 to read:

285 720.3032 Notice of association information; preservation
286 from Marketable Record Title Act.-

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

290 (a) The legal name of the association.

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

292 (c) The names of the affected subdivision plats and
293 condominiums or, if not applicable, the common name of the
294 community.

295 (d) The name, address, and telephone number for the current
296 community association management company or community
297 association manager, if any.

298 (e) Indication as to whether the association desires to
299 preserve the covenants or restrictions affecting the community
300 or association from extinguishment under the Marketable Record
301 Title Act, chapter 712.



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

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

308 (h) The signature of a duly authorized officer of the
309 association, acknowledged in the same manner as deeds are
310 acknowledged for record.

311 (2) Recording a document in substantially the following
312 form satisfies the notice obligation and constitutes a summary
313 notice as specified in s. 712.05(2)(b) sufficient to preserve
314 and protect the referenced covenants and restrictions from
315 extinguishment under the Marketable Record Title Act, chapter
316 712.

317
318 Notice of ...(name of association)... under s. 720.3032, Florida
319 Statutes, and notice to preserve and protect covenants and
320 restrictions from extinguishment under the Marketable Record
321 Title Act, chapter 712, Florida Statutes.

322
323 Instructions to recorder: Please index both the legal name
324 of the association and the names shown in item 3.

325 1. Legal name of association:
326 2. Mailing and physical addresses of association:
327 3. Names of the subdivision plats, or, if none, common name
328 of community:

329 4. Name, address, and telephone number for management
330 company, if any:



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

363 Section 9. Section 702.09, Florida Statutes, is amended to
364 read:

365 702.09 Definitions.—For the purposes of ss. 702.07 and
366 702.08, the words “decree of foreclosure” shall include a
367 judgment or order rendered or passed in the foreclosure
368 proceedings in which the decree of foreclosure shall be
369 rescinded, vacated, and set aside; the word “mortgage” shall
370 mean any written instrument securing the payment of money or
371 advances and includes liens to secure payment of assessments
372 arising under chapters 718 and 719 and liens created pursuant to
373 the recorded covenants of a property owners’ ~~homeowners’~~
374 association as defined in s. 712.01; the word “debt” shall
375 include promissory notes, bonds, and all other written
376 obligations given for the payment of money; the words
377 “foreclosure proceedings” shall embrace every action in the
378 circuit or county courts of this state wherein it is sought to
379 foreclose a mortgage and sell the property covered by the same;
380 and the word “property” shall mean and include both real and
381 personal property.

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

384 702.10 Order to show cause; entry of final judgment of
385 foreclosure; payment during foreclosure.—

386 (1) A lienholder may request an order to show cause for the
387 entry of final judgment in a foreclosure action. For purposes of
388 this section, the term “lienholder” includes the plaintiff and a



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389 defendant to the action who holds a lien encumbering the
390 property or a defendant who, by virtue of its status as a
391 condominium association, cooperative association, or property
392 owners' ~~homeowners'~~ association, may file a lien against the
393 real property subject to foreclosure. Upon filing, the court
394 shall immediately review the request and the court file in
395 chambers and without a hearing. If, upon examination of the
396 court file, the court finds that the complaint is verified,
397 complies with s. 702.015, and alleges a cause of action to
398 foreclose on real property, the court shall promptly issue an
399 order directed to the other parties named in the action to show
400 cause why a final judgment of foreclosure should not be entered.

401 (a) The order shall:

402 1. Set the date and time for a hearing to show cause. The
403 date for the hearing may not occur sooner than the later of 20
404 days after service of the order to show cause or 45 days after
405 service of the initial complaint. When service is obtained by
406 publication, the date for the hearing may not be set sooner than
407 30 days after the first publication.

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

410 3. State that the filing of defenses by a motion, a
411 responsive pleading, an affidavit, or other papers before the
412 hearing to show cause that raise a genuine issue of material
413 fact which would preclude the entry of summary judgment or
414 otherwise constitute a legal defense to foreclosure shall
415 constitute cause for the court not to enter final judgment.

416 4. State that a defendant has the right to file affidavits
417 or other papers before the time of the hearing to show cause and



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418 may appear personally or by way of an attorney at the hearing.

419 5. State that, if a defendant files defenses by a motion, a
420 verified or sworn answer, affidavits, or other papers or appears
421 personally or by way of an attorney at the time of the hearing,
422 the hearing time will be used to hear and consider whether the
423 defendant's motion, answer, affidavits, other papers, and other
424 evidence and argument as may be presented by the defendant or
425 the defendant's attorney raise a genuine issue of material fact
426 which would preclude the entry of summary judgment or otherwise
427 constitute a legal defense to foreclosure. The order shall also
428 state that the court may enter an order of final judgment of
429 foreclosure at the hearing and order the clerk of the court to
430 conduct a foreclosure sale.

431 6. State that, if a defendant fails to appear at the
432 hearing to show cause or fails to file defenses by a motion or
433 by a verified or sworn answer or files an answer not contesting
434 the foreclosure, such defendant may be considered to have waived
435 the right to a hearing, and in such case, the court may enter a
436 default against such defendant and, if appropriate, a final
437 judgment of foreclosure ordering the clerk of the court to
438 conduct a foreclosure sale.

439 7. State that if the mortgage provides for reasonable
440 attorney fees and the requested attorney fees do not exceed 3
441 percent of the principal amount owed at the time of filing the
442 complaint, it is unnecessary for the court to hold a hearing or
443 adjudge the requested attorney fees to be reasonable.

444 8. Attach the form of the proposed final judgment of
445 foreclosure which the movant requests the court to enter at the
446 hearing on the order to show cause.



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447 9. Require the party seeking final judgment to serve a copy
448 of the order to show cause on the other parties in the following
449 manner:

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

455 b. If a defendant has not been served pursuant to chapter
456 48 with the complaint and original process, the order to show
457 cause, together with the summons and a copy of the complaint,
458 shall be served on the party in the same manner as provided by
459 law for original process.

460
461 Any final judgment of foreclosure entered under this subsection
462 is for in rem relief only. This subsection does not preclude the
463 entry of a deficiency judgment where otherwise allowed by law.
464 The Legislature intends that this alternative procedure may run
465 simultaneously with other court procedures.

466 (b) The right to be heard at the hearing to show cause is
467 waived if a defendant, after being served as provided by law
468 with an order to show cause, engages in conduct that clearly
469 shows that the defendant has relinquished the right to be heard
470 on that order. The defendant's failure to file defenses by a
471 motion or by a sworn or verified answer, affidavits, or other
472 papers or to appear personally or by way of an attorney at the
473 hearing duly scheduled on the order to show cause presumptively
474 constitutes conduct that clearly shows that the defendant has
475 relinquished the right to be heard. If a defendant files



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476 defenses by a motion, a verified answer, affidavits, or other
477 papers or presents evidence at or before the hearing which raise
478 a genuine issue of material fact which would preclude entry of
479 summary judgment or otherwise constitute a legal defense to
480 foreclosure, such action constitutes cause and precludes the
481 entry of a final judgment at the hearing to show cause.

482 (c) In a mortgage foreclosure proceeding, when a final
483 judgment of foreclosure has been entered against the mortgagor
484 and the note or mortgage provides for the award of reasonable
485 attorney fees, it is unnecessary for the court to hold a hearing
486 or adjudge the requested attorney fees to be reasonable if the
487 fees do not exceed 3 percent of the principal amount owed on the
488 note or mortgage at the time of filing, even if the note or
489 mortgage does not specify the percentage of the original amount
490 that would be paid as liquidated damages.

491 (d) If the court finds that all defendants have waived the
492 right to be heard as provided in paragraph (b), the court shall
493 promptly enter a final judgment of foreclosure without the need
494 for further hearing if the plaintiff has shown entitlement to a
495 final judgment and upon the filing with the court of the
496 original note, satisfaction of the conditions for establishment
497 of a lost note, or upon a showing to the court that the
498 obligation to be foreclosed is not evidenced by a promissory
499 note or other negotiable instrument. If the court finds that a
500 defendant has not waived the right to be heard on the order to
501 show cause, the court shall determine whether there is cause not
502 to enter a final judgment of foreclosure. If the court finds
503 that the defendant has not shown cause, the court shall promptly
504 enter a judgment of foreclosure. If the time allotted for the



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505 hearing is insufficient, the court may announce at the hearing a
506 date and time for the continued hearing. Only the parties who
507 appear, individually or through an attorney, at the initial
508 hearing must be notified of the date and time of the continued
509 hearing.

510 Section 11. Section 712.095, Florida Statutes, is amended
511 to read:

512 712.095 Notice required by July 1, 1983.—Any person whose
513 interest in land is derived from an instrument or court
514 proceeding recorded subsequent to the root of title, which
515 instrument or proceeding did not contain a description of the
516 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
517 interest had not been extinguished prior to July 1, 1981, shall
518 have until July 1, 1983, to file a notice in accordance with s.
519 712.06 to preserve the interest.

520 Section 12. Section 720.403, Florida Statutes, is amended
521 to read:

522 720.403 Preservation of ~~residential~~ communities; revival of
523 declaration of covenants.—

524 (1) Consistent with required and optional elements of local
525 comprehensive plans and other applicable provisions of the
526 Community Planning Act, property owners ~~homeowners~~ are
527 encouraged to preserve existing residential and other
528 communities, promote available and affordable housing, protect
529 structural and aesthetic elements of their ~~residential~~
530 community, and, as applicable, maintain roads and streets,
531 easements, water and sewer systems, utilities, drainage
532 improvements, conservation and open areas, recreational
533 amenities, and other infrastructure and common areas that serve



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534 and support the ~~residential~~ community by the revival of a
535 previous declaration of covenants and other governing documents
536 that may have ceased to govern some or all parcels in the
537 community.

538 (2) In order to preserve a ~~residential~~ community and the
539 associated infrastructure and common areas for the purposes
540 described in this section, the parcel owners in a community that
541 was previously subject to a declaration of covenants that has
542 ceased to govern one or more parcels in the community may revive
543 the declaration and the ~~homeowners'~~ association for the
544 community upon approval by the parcel owners to be governed
545 thereby as provided in this act, and upon approval of the
546 declaration and the other governing documents for the
547 association by the Department of Economic Opportunity in a
548 manner consistent with this act.

549 (3) Part III of this chapter is intended to provide
550 mechanisms for the revitalization of covenants or restrictions
551 for all types of communities and property associations and is
552 not limited to residential communities.

553 Section 13. Section 720.404, Florida Statutes, is amended
554 to read:

555 720.404 Eligible ~~residential~~ communities; requirements for
556 revival of declaration.—Parcel owners in a community are
557 eligible to seek approval from the Department of Economic
558 Opportunity to revive a declaration of covenants under this act
559 if all of the following requirements are met:

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



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

565 (3) The revived declaration may not contain covenants that
566 are more restrictive on the parcel owners than the covenants
567 contained in the previous declaration, except that the
568 declaration may:

569 (a) Have an effective term of longer duration than the term
570 of the previous declaration;

571 (b) Omit restrictions contained in the previous
572 declaration;

573 (c) Govern fewer than all of the parcels governed by the
574 previous declaration;

575 (d) Provide for amendments to the declaration and other
576 governing documents; and

577 (e) Contain provisions required by this chapter for new
578 declarations that were not contained in the previous
579 declaration.

580 Section 14. Subsections (1), (3), (5), and (6) of section
581 720.405, Florida Statutes, are amended to read:

582 720.405 Organizing committee; parcel owner approval.—

583 (1) The proposal to revive a declaration of covenants and
584 ~~an a homeowners'~~ association for a community under the terms of
585 this act shall be initiated by an organizing committee
586 consisting of not less than three parcel owners located in the
587 community that is proposed to be governed by the revived
588 declaration. The name, address, and telephone number of each
589 member of the organizing committee must be included in any
590 notice or other document provided by the committee to parcel
591 owners to be affected by the proposed revived declaration.



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592 (3) The organizing committee shall prepare the full text of
593 the proposed articles of incorporation and bylaws of the revived
594 ~~homeowners'~~ association to be submitted to the parcel owners for
595 approval, unless the association is then an existing
596 corporation, in which case the organizing committee shall
597 prepare the existing articles of incorporation and bylaws to be
598 submitted to the parcel owners.

599 (5) A copy of the complete text of the proposed revised
600 declaration of covenants, the proposed new or existing articles
601 of incorporation and bylaws of the ~~homeowners'~~ association, and
602 a graphic depiction of the property to be governed by the
603 revived declaration shall be presented to all of the affected
604 parcel owners by mail or hand delivery not less than 14 days
605 before the time that the consent of the affected parcel owners
606 to the proposed governing documents is sought by the organizing
607 committee.

608 (6) A majority of the affected parcel owners must agree in
609 writing to the revived declaration of covenants and governing
610 documents of the ~~homeowners'~~ association or approve the revived
611 declaration and governing documents by a vote at a meeting of
612 the affected parcel owners noticed and conducted in the manner
613 prescribed by s. 720.306. Proof of notice of the meeting to all
614 affected owners of the meeting and the minutes of the meeting
615 recording the votes of the property owners shall be certified by
616 a court reporter or an attorney licensed to practice in the
617 state.

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

620 720.407 Recording; notice of recording; applicability and



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621 effective date.-

622 (3) The recorded documents shall include the full text of
623 the approved declaration of covenants, the articles of
624 incorporation and bylaws of the ~~homeowners'~~ association, the
625 letter of approval by the department, and the legal description
626 of each affected parcel of property. For purposes of chapter
627 712, the association is deemed to be and shall be indexed as the
628 grantee in a title transaction and the parcel owners named in
629 the revived declaration are deemed to be and shall be indexed as
630 the grantors in the title transaction.

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

632

633 ===== T I T L E A M E N D M E N T =====

634 And the title is amended as follows:

635 Delete everything before the enacting clause
636 and insert:

637 A bill to be entitled
638 An act relating to covenants and restrictions;
639 creating s. 712.001, F.S.; providing a short title;
640 amending s. 712.01, F.S.; defining and redefining
641 terms; amending s. 712.05, F.S.; revising the notice
642 filing requirements for a person claiming an interest
643 in land and other rights; authorizing a property
644 owners' association to preserve and protect certain
645 covenants or restrictions from extinguishment, subject
646 to specified requirements; providing that a failure in
647 indexing does not affect the validity of the notice;
648 extending the length of time certain covenants or
649 restrictions are preserved; deleting a provision



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650 requiring a two-thirds vote by members of an
651 incorporated homeowners' association to file certain
652 notices; conforming provisions to changes made by the
653 act; amending s. 712.06, F.S.; exempting a specified
654 summary notice from certain notice content
655 requirements; revising the contents required to be
656 specified by certain notices; conforming provisions to
657 changes made by the act; amending s. 712.11, F.S.;
658 conforming provisions to changes made by the act;
659 creating s. 712.12, F.S.; defining terms; authorizing
660 the parcel owners of a community not subject to a
661 homeowners' association to use specified procedures to
662 revive certain covenants or restrictions, subject to
663 certain exceptions and requirements; authorizing a
664 parcel owner to commence an action by a specified date
665 under certain circumstances for a judicial
666 determination that the covenants or restrictions did
667 not govern that parcel as of a specified date and that
668 any revitalization of such covenants or restrictions
669 as to that parcel would unconstitutionally deprive the
670 parcel owner of rights or property; providing
671 applicability; amending s. 720.303, F.S.; requiring a
672 board to take up certain provisions relating to notice
673 filings at the first board meeting; creating s.
674 720.3032, F.S.; providing recording requirements for
675 an association; providing a document form for
676 recording by an association to preserve certain
677 covenants or restrictions; providing that failure to
678 file one or more notices does not affect the validity



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679 or enforceability of a covenant or restriction or
680 alter the time before extinguishment under certain
681 circumstances; requiring a copy of the filed notice to
682 be sent to all members; requiring the original signed
683 notice to be recorded with the clerk of the circuit
684 court or other recorder; amending ss. 702.09 and
685 702.10, F.S.; conforming provisions to changes made by
686 the act; amending s. 712.095, F.S.; conforming a
687 cross-reference; amending ss. 720.403, 720.404,
688 720.405, and 720.407, F.S.; conforming provisions to
689 changes made by the act; providing an effective date.