

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 of certain restrictions or
9 covenants does not preclude a county or municipality
10 from exercising its police power to later amend,
11 release, or terminate such restrictions or covenants;
12 prohibiting a county or municipality from delegating
13 its police power to a third party by restriction,
14 covenant, or otherwise; declaring any such purported
15 delegation void; providing for retroactive
16 applicability; creating s. 712.001, F.S.; providing a
17 short title; amending s. 712.01, F.S.; defining and
18 redefining terms; amending s. 712.04, F.S.; providing
19 that a marketable title is free and clear of all
20 covenants or restrictions, the existence of which
21 depends upon any act, title transaction, event, zoning
22 requirement, building or development permit, or
23 omission that occurred before the effective date of
24 the root of title; providing for construction;
25 providing applicability; amending s. 712.05, F.S.;

26 | revising the notice filing requirements for a person
27 | claiming an interest in land and other rights;
28 | authorizing a property owners' association to preserve
29 | and protect certain covenants or restrictions from
30 | extinguishment, subject to specified requirements;
31 | providing that a failure in indexing does not affect
32 | the validity of the notice; extending the length of
33 | time certain covenants or restrictions are preserved;
34 | deleting a provision requiring a two-thirds vote by
35 | members of an incorporated homeowners' association to
36 | file certain notices; conforming provisions to changes
37 | made by the act; amending s. 712.06, F.S.; exempting a
38 | specified summary notice from certain notice content
39 | requirements; revising the contents required to be
40 | specified by certain notices; conforming provisions to
41 | changes made by the act; amending s. 712.11, F.S.;
42 | conforming provisions to changes made by the act;
43 | creating s. 712.12, F.S.; defining terms; authorizing
44 | the parcel owners of a community not subject to a
45 | homeowners' association to use specified procedures to
46 | revive certain covenants or restrictions, subject to
47 | certain exceptions and requirements; authorizing a
48 | parcel owner to commence an action by a specified date
49 | under certain circumstances for a judicial
50 | determination that the covenants or restrictions did

51 not govern that parcel as of a specified date and that
52 any revitalization of such covenants or restrictions
53 as to that parcel would unconstitutionally deprive the
54 parcel owner of rights or property; providing
55 applicability; amending s. 720.303, F.S.; requiring a
56 board to take up certain provisions relating to notice
57 filings at the first board meeting; creating s.
58 720.3032, F.S.; providing recording requirements for
59 an association; providing a document form for
60 recording by an association to preserve certain
61 covenants or restrictions; providing that failure to
62 file one or more notices does not affect the validity
63 or enforceability of a covenant or restriction or
64 alter the time before extinguishment under certain
65 circumstances; requiring a copy of the filed notice to
66 be sent to all members; requiring the original signed
67 notice to be recorded with the clerk of the circuit
68 court or other recorder; amending ss. 702.09 and
69 702.10, F.S.; conforming provisions to changes made by
70 the act; amending s. 712.095, F.S.; conforming a
71 cross-reference; amending ss. 720.403, 720.404,
72 720.405, and 720.407, F.S.; conforming provisions to
73 changes made by the act; providing an effective date.

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

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

125.022 Development permits.—

(6) A county may not delegate its police power to a third party by restriction, covenant, or otherwise, and any such purported delegation is hereby declared to be void. The imposition by a county of a recorded or unrecorded restriction or covenant as a condition of a county's approval or issuance of a development permit does not preclude the county from exercising its police power to later amend, release, or terminate the restriction or covenant. Any such amendment, release, or termination of the restriction or covenant must follow the procedural requirements in s. 125.66(4). ~~This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.~~

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

166.033 Development permits.—

(6) A municipality may not delegate its police power to a third party by restriction, covenant, or otherwise, and any such purported delegation is hereby declared to be void. The imposition by a municipality of a recorded or unrecorded restriction or covenant as a condition of a municipality's

101 approval or issuance of a development permit does not preclude a
 102 municipality from exercising its police power to later amend,
 103 release, or terminate the restriction or covenant. Any such
 104 amendment, release, or termination of the restriction or
 105 covenant must follow the procedural requirements in s.
 106 166.041(3)(c). ~~This section does not prohibit a municipality~~
 107 ~~from providing information to an applicant regarding what other~~
 108 ~~state or federal permits may apply.~~

109 Section 3. The amendments by this act to ss. 125.022 and
 110 166.033, Florida Statutes, which relate to development permits,
 111 are remedial in nature and apply retroactively.

112 Section 4. Section 712.001, Florida Statutes, is created
 113 to read:

114 712.001 Short title.—This chapter may be cited as the
 115 "Marketable Record Title Act."

116 Section 5. Section 712.01, Florida Statutes, is reordered
 117 and amended to read:

118 712.01 Definitions.—As used in this chapter, the term law:

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

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

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

126 (2)~~(6)~~ ~~The term~~ "Covenant or restriction" means any
127 agreement or limitation contained in a document recorded in the
128 public records of the county in which a parcel is located which
129 subjects the parcel to any use or other restriction or
130 obligation ~~which may be enforced by a homeowners' association or~~
131 ~~which authorizes a homeowners' association to impose a charge or~~
132 ~~assessment against the parcel or the owner of the parcel or~~
133 ~~which may be enforced by the Florida Department of Environmental~~
134 ~~Protection pursuant to chapter 376 or chapter 403.~~

135 (3)~~(5)~~ ~~The term~~ "Parcel" means real property that ~~which~~ is
136 used for residential purposes and that is subject to exclusive
137 ownership and ~~which is subject~~ to any covenant or restriction of
138 a property owners' ~~homeowners'~~ association.

139 (4)~~(1)~~ ~~The term~~ "Person" includes the ~~as used herein~~
140 ~~denotes~~ singular or plural, natural or corporate, private or
141 governmental, including the state and any political subdivision
142 or agency thereof as the context for the use thereof requires or
143 denotes and including any property owners' ~~homeowners'~~
144 association.

145 (5)~~(4)~~ "Property owners' association" ~~The term~~
146 ~~"homeowners' association"~~ means a homeowners' association as
147 defined in s. 720.301, a corporation or other entity responsible
148 for the operation of property in which the voting membership is
149 made up of the owners of the property or their agents, or a
150 combination thereof, and in which membership is a mandatory

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

154 ~~(6)(2)~~ "Root of title" means any title transaction
 155 purporting to create or transfer the estate claimed by any
 156 person ~~and~~ which is the last title transaction to have been
 157 recorded at least 30 years before ~~prior to~~ the time when
 158 marketability is being determined. The effective date of the
 159 root of title is the date on which it was recorded.

160 ~~(7)(3)~~ "Title transaction" means any recorded instrument
 161 or court proceeding that ~~which~~ affects title to any estate or
 162 interest in land and that ~~which~~ describes the land sufficiently
 163 to identify its location and boundaries.

164 Section 6. Section 712.04, Florida Statutes, is amended to
 165 read:

166 712.04 Interests extinguished by marketable record title.-

167 (1) Subject to s. 712.03, a marketable record title is
 168 free and clear of all estates, interests, claims, covenants,
 169 restrictions, or charges, the existence of which depends upon
 170 any act, title transaction, event, zoning requirement, building
 171 or development permit, or omission that occurred before the
 172 effective date of the root of title. Except as provided in s.
 173 712.03, all such estates, interests, claims, covenants,
 174 restrictions, or charges, however denominated, whether they are
 175 or appear to be held or asserted by a person sui juris or under

176 a disability, whether such person is within or without the
 177 state, natural or corporate, or private or governmental, are
 178 declared to be null and void. However, this chapter does not
 179 affect any right, title, or interest of the United States,
 180 Florida, or any of its officers, boards, commissions, or other
 181 agencies reserved in the patent or deed by which the United
 182 States, Florida, or any of its agencies parted with title.

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

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

192 Section 7. Section 712.05, Florida Statutes, is amended to
 193 read:

194 712.05 Effect of filing notice.—

195 (1) A person claiming an interest in land or other right
 196 subject to extinguishment under this chapter ~~a homeowners'~~
 197 ~~association desiring to preserve a covenant or restriction~~ may
 198 preserve and protect such interest or right ~~the same~~ from
 199 extinguishment by the operation of this chapter ~~act~~ by filing
 200 for record, at any time during the 30-year period immediately

201 following the effective date of the root of title, a written
 202 notice in accordance with s. 712.06 ~~this chapter~~.

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

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

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

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

224 (a) Under a disability;

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

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

229
 230 ~~Such notice may be filed by a homeowners' association only if~~
 231 ~~the preservation of such covenant or restriction or portion of~~
 232 ~~such covenant or restriction is approved by at least two-thirds~~
 233 ~~of the members of the board of directors of an incorporated~~
 234 ~~homeowners' association at a meeting for which a notice, stating~~
 235 ~~the meeting's time and place and containing the statement of~~
 236 ~~marketable title action described in s. 712.06(1)(b), was mailed~~
 237 ~~or hand delivered to members of the homeowners' association at~~
 238 ~~least 7 days before such meeting. The property owners'~~
 239 ~~homeowners' association or clerk of the circuit court is not~~
 240 required to provide additional notice pursuant to s. 712.06(3).
 241 The preceding sentence is intended to clarify existing law.

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

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

248 712.06 Contents of notice; recording and indexing.—

249 (1) To be effective, the notice referred to in s. 712.05,
 250 other than the summary notice referred to in s. 712.05(2)(b),

251 must ~~shall~~ contain:

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

257 (b) The name and mailing ~~post office~~ address of an owner,
258 or the name and mailing ~~post office~~ address of the person in
259 whose name the ~~said~~ property is assessed on the last completed
260 tax assessment roll of the county at the time of filing, who,
261 for purpose of such notice, shall be deemed to be an owner;
262 ~~provided,~~ however, if a property owners' ~~homeowners'~~ association
263 is filing the notice, ~~then~~ the requirements of this paragraph
264 may be satisfied by attaching to and recording with the notice
265 an affidavit executed by the appropriate member of the board of
266 directors of the property owners' ~~homeowners'~~ association
267 affirming that the board of directors of the property owners'
268 ~~homeowners'~~ association caused a statement in substantially the
269 following form to be mailed or hand delivered to the members of
270 that property owners' ~~homeowners'~~ association:

271
272 STATEMENT OF MARKETABLE TITLE ACTION
273

274 The [name of property owners' ~~homeowners'~~ association] (the
275 "Association") has taken action to ensure that the [name of

276 | declaration, covenant, or restriction], recorded in Official
 277 | Records Book, Page, of the public records of
 278 | County, Florida, as may be amended from time to time, currently
 279 | burdening the property of each and every member of the
 280 | Association, retains its status ~~as the source of marketable~~
 281 | ~~title~~ with regard to the affected real property ~~the transfer of~~
 282 | ~~a member's residence~~. To this end, the Association shall cause
 283 | the notice required by chapter 712, Florida Statutes, to be
 284 | recorded in the public records of County, Florida. Copies
 285 | of this notice and its attachments are available through the
 286 | Association pursuant to the Association's governing documents
 287 | regarding official records of the Association.

288 |
 289 | (c) A full and complete description of all land affected
 290 | by such notice, which description shall be set forth in
 291 | particular terms and not by general reference, but if said claim
 292 | is founded upon a recorded instrument or a covenant or a
 293 | restriction, ~~then~~ the description in such notice may be the same
 294 | as that contained in such recorded instrument or covenant or
 295 | restriction, provided the same shall be sufficient to identify
 296 | the property.

297 | (d) A statement of the claim showing the nature,
 298 | description, and extent of such claim or other right subject to
 299 | extinguishment under this chapter or, in the case of a covenant
 300 | or restriction, a copy of the covenant or restriction, except

301 that it ~~is shall~~ not be necessary to show the amount of any
302 claim for money or the terms of payment.

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

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

311 (3) The person providing the notice referred to in s.
312 712.05, other than a notice for preservation of a community
313 covenant or restriction, shall:

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

326 certificate shall be sufficient if the same reads substantially
 327 as follows:

328
 329 I hereby certify that I did on this, mail by
 330 registered (or certified) mail a copy of the foregoing notice to
 331 each of the following at the address stated:

332
 333 ... (Clerk of the circuit court) ...
 334 of County, Florida,
 335 By... (Deputy clerk) ...

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

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

346 Section 9. Section 712.11, Florida Statutes, is amended to
 347 read:

348 712.11 Covenant revitalization.—A property owners'
 349 ~~homeowners'~~ association not otherwise subject to chapter 720 may
 350 use the procedures set forth in ss. 720.403-720.407 to revive

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

352 Section 10. Section 712.12, Florida Statutes, is created
353 to read:

354 712.12 Covenant or restriction revitalization by parcel
355 owners not subject to a homeowners' association.-

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

357 (a) "Community" means a group of parcels near one another
358 sharing a common interest due to their proximity to one another
359 and sharing a neighborhood name or identity, which parcels are
360 or will be subject to covenants and restrictions which are
361 recorded in the county where the property is located.

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

369 (c) "Parcel" means real property that is used for
370 residential purposes and which is subject to exclusive ownership
371 and any covenant or restriction that may be enforced by a parcel
372 owner.

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

375 (2) The parcel owners of a community not subject to a

376 homeowners' association may use the procedures set forth in ss.
377 720.403-720.407 to revive covenants or restrictions that have
378 lapsed under the terms of this chapter, except:

379 (a) A reference to a homeowners' association or articles
380 of incorporation or bylaws of a homeowners' association under
381 ss. 720.403-720.407 is not required to revive the covenants or
382 restrictions.

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

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

388 (d) The indexing requirements under s. 720.407(3) may be
389 satisfied by indexing the community name in the covenants or
390 restrictions as the grantee and the parcel owners as the
391 grantors.

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

400 (4) Revived covenants or restrictions that are implemented

401 pursuant to this section do not apply to or affect the rights of
402 the parcel owner which are recognized by any court order or
403 judgment in any action commenced by October 1, 2018, and any
404 such rights so recognized may not be subsequently altered by
405 revived covenants or restrictions implemented under this section
406 without the consent of the affected parcel owner.

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

409 720.303 Association powers and duties; meetings of board;
410 official records; budgets; financial reporting; association
411 funds; recalls.—

412 (2) BOARD MEETINGS.—

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

421 Section 12. Section 720.3032, Florida Statutes, is created
422 to read:

423 720.3032 Notice of association information; preservation
424 from Marketable Record Title Act.—

425 (1) Not less than once every 5 years, if an association

426 wishes to preserve its covenants and restrictions, the
427 association must record in the official records of each county
428 in which the community is located a notice specifying:

429 (a) The legal name of the association.

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

431 (c) The names of the affected subdivision plats and
432 condominiums or, if not applicable, the common name of the
433 community.

434 (d) The name, address, and telephone number for the
435 current community association management company or community
436 association manager, if any.

437 (e) Indication as to whether the association desires to
438 preserve the covenants or restrictions affecting the community
439 or association from extinguishment under the Marketable Record
440 Title Act, chapter 712.

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

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

447 (h) The signature of a duly authorized officer of the
448 association, acknowledged in the same manner as deeds are
449 acknowledged for record.

450 (2) Recording a document in substantially the following

451 form satisfies the notice obligation and constitutes a summary
 452 notice as specified in s. 712.05(2)(b) sufficient to preserve
 453 and protect the referenced covenants and restrictions from
 454 extinguishment under the Marketable Record Title Act, chapter
 455 712.

456
 457 Notice of ...(name of association)... under s. 720.3032, Florida
 458 Statutes, and notice to preserve and protect covenants and
 459 restrictions from extinguishment under the Marketable Record
 460 Title Act, chapter 712, Florida Statutes.

461
 462 Instructions to recorder: Please index both the legal name
 463 of the association and the names shown in item 3.

- 464 1. Legal name of association:
 465 2. Mailing and physical addresses of association:
 466

467 3. Names of the subdivision plats, or, if none, common
 468 name of community:

469 4. Name, address, and telephone number for management
 470 company, if any:

471 5. This notice does does not constitute a notice
 472 to preserve and protect covenants or restrictions from
 473 extinguishment under the Marketable Record Title Act.

474 6. The following covenants or restrictions affecting the
 475 community which the association desires to be preserved from

476 extinguishment:
 477 ...(Name of instrument)...
 478 ...(Official Records Book where recorded & page)...
 479 ...(List of instruments)...
 480 ...(List of recording information)...
 481 7. The legal description of the community affected by the
 482 listed covenants or restrictions is: ...(Legal description,
 483 which may be satisfied by reference to a recorded plat)...
 484 This notice is filed on behalf of ...(Name of
 485 association) ... as of ...(Date)....
 486 ...(Name of association)...
 487
 488 By:
 489 ...(Name of individual officer)...
 490 ...(Title of officer)...
 491 ...(Notary acknowledgment)...
 492
 493 (3) The failure to file one or more notices does not
 494 affect the validity or enforceability of any covenant or
 495 restriction nor in any way alter the remaining time before
 496 extinguishment by the Marketable Record Title Act, chapter 712.
 497 (4) A copy of the notice, as filed, must be included as
 498 part of the next notice of meeting or other mailing sent to all
 499 members.
 500 (5) The original signed notice must be recorded in the

501 official records of the clerk of the circuit court or other
 502 recorder for the county.

503 Section 13. Section 702.09, Florida Statutes, is amended
 504 to read:

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

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

524 702.10 Order to show cause; entry of final judgment of
 525 foreclosure; payment during foreclosure.—

526 (1) A lienholder may request an order to show cause for
 527 the entry of final judgment in a foreclosure action. For
 528 purposes of this section, the term "lienholder" includes the
 529 plaintiff and a defendant to the action who holds a lien
 530 encumbering the property or a defendant who, by virtue of its
 531 status as a condominium association, cooperative association, or
 532 property owners' ~~homeowners'~~ association, may file a lien
 533 against the real property subject to foreclosure. Upon filing,
 534 the court shall immediately review the request and the court
 535 file in chambers and without a hearing. If, upon examination of
 536 the court file, the court finds that the complaint is verified,
 537 complies with s. 702.015, and alleges a cause of action to
 538 foreclose on real property, the court shall promptly issue an
 539 order directed to the other parties named in the action to show
 540 cause why a final judgment of foreclosure should not be entered.

541 (a) The order shall:

542 1. Set the date and time for a hearing to show cause. The
 543 date for the hearing may not occur sooner than the later of 20
 544 days after service of the order to show cause or 45 days after
 545 service of the initial complaint. When service is obtained by
 546 publication, the date for the hearing may not be set sooner than
 547 30 days after the first publication.

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

550 3. State that the filing of defenses by a motion, a

551 responsive pleading, an affidavit, or other papers before the
552 hearing to show cause that raise a genuine issue of material
553 fact which would preclude the entry of summary judgment or
554 otherwise constitute a legal defense to foreclosure shall
555 constitute cause for the court not to enter final judgment.

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

559 5. State that, if a defendant files defenses by a motion,
560 a verified or sworn answer, affidavits, or other papers or
561 appears personally or by way of an attorney at the time of the
562 hearing, the hearing time will be used to hear and consider
563 whether the defendant's motion, answer, affidavits, other
564 papers, and other evidence and argument as may be presented by
565 the defendant or the defendant's attorney raise a genuine issue
566 of material fact which would preclude the entry of summary
567 judgment or otherwise constitute a legal defense to foreclosure.
568 The order shall also state that the court may enter an order of
569 final judgment of foreclosure at the hearing and order the clerk
570 of the court to conduct a foreclosure sale.

571 6. State that, if a defendant fails to appear at the
572 hearing to show cause or fails to file defenses by a motion or
573 by a verified or sworn answer or files an answer not contesting
574 the foreclosure, such defendant may be considered to have waived
575 the right to a hearing, and in such case, the court may enter a

576 default against such defendant and, if appropriate, a final
577 judgment of foreclosure ordering the clerk of the court to
578 conduct a foreclosure sale.

579 7. State that if the mortgage provides for reasonable
580 attorney fees and the requested attorney fees do not exceed 3
581 percent of the principal amount owed at the time of filing the
582 complaint, it is unnecessary for the court to hold a hearing or
583 adjudge the requested attorney fees to be reasonable.

584 8. Attach the form of the proposed final judgment of
585 foreclosure which the movant requests the court to enter at the
586 hearing on the order to show cause.

587 9. Require the party seeking final judgment to serve a
588 copy of the order to show cause on the other parties in the
589 following manner:

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

595 b. If a defendant has not been served pursuant to chapter
596 48 with the complaint and original process, the order to show
597 cause, together with the summons and a copy of the complaint,
598 shall be served on the party in the same manner as provided by
599 law for original process.

600

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

606 (b) The right to be heard at the hearing to show cause is
607 waived if a defendant, after being served as provided by law
608 with an order to show cause, engages in conduct that clearly
609 shows that the defendant has relinquished the right to be heard
610 on that order. The defendant's failure to file defenses by a
611 motion or by a sworn or verified answer, affidavits, or other
612 papers or to appear personally or by way of an attorney at the
613 hearing duly scheduled on the order to show cause presumptively
614 constitutes conduct that clearly shows that the defendant has
615 relinquished the right to be heard. If a defendant files
616 defenses by a motion, a verified answer, affidavits, or other
617 papers or presents evidence at or before the hearing which raise
618 a genuine issue of material fact which would preclude entry of
619 summary judgment or otherwise constitute a legal defense to
620 foreclosure, such action constitutes cause and precludes the
621 entry of a final judgment at the hearing to show cause.

622 (c) In a mortgage foreclosure proceeding, when a final
623 judgment of foreclosure has been entered against the mortgagor
624 and the note or mortgage provides for the award of reasonable
625 attorney fees, it is unnecessary for the court to hold a hearing

626 or adjudge the requested attorney fees to be reasonable if the
627 fees do not exceed 3 percent of the principal amount owed on the
628 note or mortgage at the time of filing, even if the note or
629 mortgage does not specify the percentage of the original amount
630 that would be paid as liquidated damages.

631 (d) If the court finds that all defendants have waived the
632 right to be heard as provided in paragraph (b), the court shall
633 promptly enter a final judgment of foreclosure without the need
634 for further hearing if the plaintiff has shown entitlement to a
635 final judgment and upon the filing with the court of the
636 original note, satisfaction of the conditions for establishment
637 of a lost note, or upon a showing to the court that the
638 obligation to be foreclosed is not evidenced by a promissory
639 note or other negotiable instrument. If the court finds that a
640 defendant has not waived the right to be heard on the order to
641 show cause, the court shall determine whether there is cause not
642 to enter a final judgment of foreclosure. If the court finds
643 that the defendant has not shown cause, the court shall promptly
644 enter a judgment of foreclosure. If the time allotted for the
645 hearing is insufficient, the court may announce at the hearing a
646 date and time for the continued hearing. Only the parties who
647 appear, individually or through an attorney, at the initial
648 hearing must be notified of the date and time of the continued
649 hearing.

650 Section 15. Section 712.095, Florida Statutes, is amended

651 to read:

652 712.095 Notice required by July 1, 1983.—Any person whose
 653 interest in land is derived from an instrument or court
 654 proceeding recorded subsequent to the root of title, which
 655 instrument or proceeding did not contain a description of the
 656 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
 657 interest had not been extinguished prior to July 1, 1981, shall
 658 have until July 1, 1983, to file a notice in accordance with s.
 659 712.06 to preserve the interest.

660 Section 16. Section 720.403, Florida Statutes, is amended
 661 to read:

662 720.403 Preservation of ~~residential~~ communities; revival
 663 of declaration of covenants.—

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

676 that may have ceased to govern some or all parcels in the
 677 community.

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

689 (3) Part III of this chapter is intended to provide
 690 mechanisms for the revitalization of covenants or restrictions
 691 for all types of communities and property associations and is
 692 not limited to residential communities.

693 Section 17. Section 720.404, Florida Statutes, is amended
 694 to read:

695 720.404 Eligible ~~residential~~ communities; requirements for
 696 revival of declaration.—Parcel owners in a community are
 697 eligible to seek approval from the Department of Economic
 698 Opportunity to revive a declaration of covenants under this act
 699 if all of the following requirements are met:

700 (1) All parcels to be governed by the revived declaration

701 must have been once governed by a previous declaration that has
 702 ceased to govern some or all of the parcels in the community;

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

705 (3) The revived declaration may not contain covenants that
 706 are more restrictive on the parcel owners than the covenants
 707 contained in the previous declaration, except that the
 708 declaration may:

709 (a) Have an effective term of longer duration than the
 710 term of the previous declaration;

711 (b) Omit restrictions contained in the previous
 712 declaration;

713 (c) Govern fewer than all of the parcels governed by the
 714 previous declaration;

715 (d) Provide for amendments to the declaration and other
 716 governing documents; and

717 (e) Contain provisions required by this chapter for new
 718 declarations that were not contained in the previous
 719 declaration.

720 Section 18. Subsections (1), (3), (5), and (6) of section
 721 720.405, Florida Statutes, are amended to read:

722 720.405 Organizing committee; parcel owner approval.—

723 (1) The proposal to revive a declaration of covenants and
 724 an ~~a homeowners'~~ association for a community under the terms of
 725 this act shall be initiated by an organizing committee

726 consisting of not less than three parcel owners located in the
727 community that is proposed to be governed by the revived
728 declaration. The name, address, and telephone number of each
729 member of the organizing committee must be included in any
730 notice or other document provided by the committee to parcel
731 owners to be affected by the proposed revived declaration.

732 (3) The organizing committee shall prepare the full text
733 of the proposed articles of incorporation and bylaws of the
734 revived ~~homeowners'~~ association to be submitted to the parcel
735 owners for approval, unless the association is then an existing
736 corporation, in which case the organizing committee shall
737 prepare the existing articles of incorporation and bylaws to be
738 submitted to the parcel owners.

739 (5) A copy of the complete text of the proposed revised
740 declaration of covenants, the proposed new or existing articles
741 of incorporation and bylaws of the ~~homeowners'~~ association, and
742 a graphic depiction of the property to be governed by the
743 revived declaration shall be presented to all of the affected
744 parcel owners by mail or hand delivery not less than 14 days
745 before the time that the consent of the affected parcel owners
746 to the proposed governing documents is sought by the organizing
747 committee.

748 (6) A majority of the affected parcel owners must agree in
749 writing to the revived declaration of covenants and governing
750 documents of the ~~homeowners'~~ association or approve the revived

751 declaration and governing documents by a vote at a meeting of
752 the affected parcel owners noticed and conducted in the manner
753 prescribed by s. 720.306. Proof of notice of the meeting to all
754 affected owners of the meeting and the minutes of the meeting
755 recording the votes of the property owners shall be certified by
756 a court reporter or an attorney licensed to practice in the
757 state.

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

760 720.407 Recording; notice of recording; applicability and
761 effective date.—

762 (3) The recorded documents shall include the full text of
763 the approved declaration of covenants, the articles of
764 incorporation and bylaws of the ~~homeowners'~~ association, the
765 letter of approval by the department, and the legal description
766 of each affected parcel of property. For purposes of chapter
767 712, the association is deemed to be and shall be indexed as the
768 grantee in a title transaction and the parcel owners named in
769 the revived declaration are deemed to be and shall be indexed as
770 the grantors in the title transaction.

771 Section 20. This act shall take effect July 1, 2017.