

1 A bill to be entitled
2 An act relating to real property; amending ss. 125.022
3 and 166.033, F.S.; deleting provisions specifying that
4 a county or municipality is not prohibited from
5 providing information to an applicant regarding other
6 state or federal permits that may apply under certain
7 circumstances; specifying that the imposition of
8 certain restrictions or covenants against real
9 property 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; creating s. 163.035, F.S.;
15 prohibiting local governments from promulgating,
16 adopting, or enforcing an ordinance or regulation that
17 purports to establish a common law customary use of
18 property; creating s. 702.12, F.S.; authorizing
19 certain lienholders to use certain documents as an
20 admission in an action to foreclose a mortgage against
21 real property; providing that submission of certain
22 documents in a foreclosure action creates certain
23 presumptions; authorizing a lienholder to make a
24 request for judicial notice; providing construction;
25 providing applicability; creating s. 712.001, F.S.;

26 providing a short title; amending s. 712.01, F.S.;

27 defining and redefining terms; amending s. 712.04,

28 F.S.; providing that a marketable title to real

29 property is free and clear of all covenants or

30 restrictions, the existence of which depends upon any

31 act, title transaction, event, zoning requirement,

32 building or development permit, or omission that

33 occurred before the effective date of the root of

34 title; providing for construction; providing

35 applicability; amending s. 712.05, F.S.; revising the

36 notice filing requirements for a person claiming an

37 interest in real property and other rights;

38 authorizing a property owners' association to preserve

39 and protect certain covenants or restrictions from

40 extinguishment, subject to specified requirements;

41 providing that a failure in indexing does not affect

42 the validity of the notice; extending the length of

43 time certain covenants or restrictions affecting real

44 property are preserved; deleting a provision requiring

45 a two-thirds vote by members of an incorporated

46 homeowners' association to file certain notices;

47 conforming provisions to changes made by the act;

48 amending s. 712.06, F.S.; exempting a specified

49 summary notice regarding real property from certain

50 notice content requirements; revising the contents

51 required to be specified by certain notices;
52 conforming provisions to changes made by the act;
53 amending s. 712.11, F.S.; conforming provisions to
54 changes made by the act; creating s. 712.12, F.S.;
55 defining terms; authorizing the parcel owners of a
56 community not subject to a homeowners' association to
57 use specified procedures to revive certain covenants
58 or restrictions, subject to certain exceptions and
59 requirements; authorizing a parcel owner to commence
60 an action by a specified date under certain
61 circumstances for a judicial determination that the
62 covenants or restrictions did not govern that parcel
63 as of a specified date and that any revitalization of
64 such covenants or restrictions as to that parcel would
65 unconstitutionally deprive the parcel owner of rights
66 or property; providing applicability; amending s.
67 720.303, F.S.; requiring a homeowners association
68 board to take up certain provisions relating to notice
69 filings at the first board meeting; creating s.
70 720.3032, F.S.; providing recording requirements for
71 an association; providing a document form for
72 recording by an association to preserve certain
73 covenants or restrictions affecting real property;
74 providing that failure to file one or more notices
75 does not affect the validity or enforceability of a

76 covenant or restriction or alter the time before
 77 extinguishment under certain circumstances; requiring
 78 a copy of the filed notice to be sent to all members;
 79 requiring the original signed notice to be recorded
 80 with the clerk of the circuit court or other recorder;
 81 amending ss. 702.09 and 702.10, F.S.; conforming
 82 provisions to changes made by the act; amending s.
 83 712.095, F.S.; conforming a cross-reference; amending
 84 ss. 720.403, 720.404, 720.405, and 720.407, F.S.;
 85 conforming provisions to changes made by the act;
 86 providing an effective date.

87

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

89

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

92 125.022 Development permits.—

93 (6) A county may not delegate its police power to a third
 94 party by restriction, covenant, or otherwise. The imposition by
 95 a county of a recorded or unrecorded restriction or covenant as
 96 a condition of a county's approval or issuance of a development
 97 permit does not preclude the county from exercising its police
 98 power to later amend, release, or terminate the restriction or
 99 covenant. Any such amendment, release, or termination of the
 100 restriction or covenant must follow the procedural requirements

101 ~~in s. 125.66(4). This section does not prohibit a county from~~
102 ~~providing information to an applicant regarding what other state~~
103 ~~or federal permits may apply.~~

104 Section 2. Section 163.035, Florida Statutes, is created
105 to read:

106 163.035 Ordinances or regulations relating to customary
107 use of real property.—A local government shall not promulgate,
108 adopt, or enforce any ordinance or regulation that purports to
109 establish a common law customary use of property.

110 Section 3. Subsection (6) of section 166.033, Florida
111 Statutes, is amended to read:

112 166.033 Development permits.—

113 (6) A municipality may not delegate its police power to a
114 third party by restriction, covenant, or otherwise. The
115 imposition by a municipality of a recorded or unrecorded
116 restriction or covenant as a condition of a municipality's
117 approval or issuance of a development permit does not preclude a
118 municipality from exercising its police power to later amend,
119 release, or terminate the restriction or covenant. Any such
120 amendment, release, or termination of the restriction or
121 covenant must follow the procedural requirements in s.
122 166.041(3)(c). ~~This section does not prohibit a municipality~~
123 ~~from providing information to an applicant regarding what other~~
124 ~~state or federal permits may apply.~~

125 Section 4. Section 702.12, Florida Statutes, is created to

126 read:

127 702.12 Actions in foreclosure.—

128 (1) (a) A lienholder, in an action to foreclose a mortgage
129 encumbering an interest in real property, may submit any
130 document the defendant filed in the defendant's bankruptcy case
131 under penalty of perjury for use as an admission by the
132 defendant.

133 (b) The lienholder's submission of a document the
134 defendant filed in the defendant's bankruptcy case that
135 evidences intention to surrender to the lienholder the property
136 that is the subject of the foreclosure, which document has not
137 been withdrawn by the defendant, together with the submission of
138 a final order entered in the bankruptcy case that discharges the
139 defendant's debts or confirms the defendant's repayment plan
140 which intention is contained therein, creates a rebuttable
141 presumption that the defendant has waived any defenses to the
142 foreclosure.

143 (2) In addition to a request set forth in s. 90.203, the
144 lienholder may request that the court take judicial notice of
145 any final order entered in a bankruptcy case.

146 (3) This section does not preclude the defendant in a
147 foreclosure action from raising a defense based upon the
148 lienholder's conduct subsequent to the filing of the document
149 filed in the bankruptcy case that evidenced the defendant's
150 intention to surrender the mortgaged property to the lienholder.

151 (4) This section applies to any foreclosure action filed
152 on or after July 1, 2017.

153 Section 5. Section 712.001, Florida Statutes, is created
154 to read:

155 712.001 Short title.—This chapter may be cited as the
156 "Marketable Record Title Act."

157 Section 6. Section 712.01, Florida Statutes, is reordered
158 and amended to read:

159 712.01 Definitions.—As used in this chapter, the term ~~law~~:

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

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

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

167 (2) ~~(6)~~ The term "Covenant or restriction" means any
168 agreement or limitation contained in a document recorded in the
169 public records of the county in which a parcel is located which
170 subjects the parcel to any use or other restriction or
171 obligation ~~which may be enforced by a homeowners' association or~~
172 ~~which authorizes a homeowners' association to impose a charge or~~
173 ~~assessment against the parcel or the owner of the parcel or~~
174 ~~which may be enforced by the Florida Department of Environmental~~
175 ~~Protection pursuant to chapter 376 or chapter 403.~~

176 (3)-(5) ~~The term~~ "Parcel" means real property that ~~which~~ is
177 used for residential purposes and that is subject to exclusive
178 ownership and ~~which is subject~~ to any covenant or restriction of
179 a property owners' homeowners' association.

180 (4)-(1) ~~The term~~ "Person" includes the ~~as used herein~~
181 ~~denotes~~ singular or plural, natural or corporate, private or
182 governmental, including the state and any political subdivision
183 or agency thereof as the context for the use thereof requires or
184 denotes and including any property owners' homeowners'
185 association.

186 (5)-(4) "Property owners' association" ~~The term~~
187 "homeowners' association" means a homeowners' association as
188 defined in s. 720.301, a corporation or other entity responsible
189 for the operation of property in which the voting membership is
190 made up of the owners of the property or their agents, or a
191 combination thereof, and in which membership is a mandatory
192 condition of property ownership, or an association of parcel
193 owners which is authorized to enforce a community covenant or
194 restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.

195 (6)-(2) "Root of title" means any title transaction
196 purporting to create or transfer the estate claimed by any
197 person ~~and~~ which is the last title transaction to have been
198 recorded at least 30 years before ~~prior to~~ the time when
199 marketability is being determined. The effective date of the
200 root of title is the date on which it was recorded.

201 ~~(7)(3)~~ "Title transaction" means any recorded instrument
 202 or court proceeding that ~~which~~ affects title to any estate or
 203 interest in land and that ~~which~~ describes the land sufficiently
 204 to identify its location and boundaries.

205 Section 7. Section 712.04, Florida Statutes, is amended to
 206 read:

207 712.04 Interests extinguished by marketable record title.—

208 (1) Subject to s. 712.03, a marketable record title is
 209 free and clear of all estates, interests, claims, covenants,
 210 restrictions, or charges, the existence of which depends upon
 211 any act, title transaction, event, zoning requirement, building
 212 or development permit, or omission that occurred before the
 213 effective date of the root of title. Except as provided in s.
 214 712.03, all such estates, interests, claims, covenants,
 215 restrictions, or charges, however denominated, whether they are
 216 or appear to be held or asserted by a person sui juris or under
 217 a disability, whether such person is within or without the
 218 state, natural or corporate, or private or governmental, are
 219 declared to be null and void. However, this chapter does not
 220 affect any right, title, or interest of the United States,
 221 Florida, or any of its officers, boards, commissions, or other
 222 agencies reserved in the patent or deed by which the United
 223 States, Florida, or any of its agencies parted with title.

224 (2) This section may not be construed to alter or
 225 invalidate a zoning ordinance, land development regulation,

226 building code, or other ordinance, rule, regulation, or law if
 227 such ordinance, rule, regulation, or law operates independently
 228 of matters recorded in the official records.

229 (3) This section is intended to clarify existing law, is
 230 remedial in nature, and applies to all restrictions and
 231 covenants whether imposed or accepted before, on, or after July
 232 1, 2017.

233 Section 8. Section 712.05, Florida Statutes, is amended to
 234 read:

235 712.05 Effect of filing notice.—

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

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

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

250 (b) A summary notice in substantial form and content as

251 required under s. 720.3032(2). Failure of a summary notice to be
252 indexed to the current owners of the affected property does not
253 affect the validity of the notice or vitiate the effect of the
254 filing of such notice.

255 (3) A ~~Such~~ notice under subsection (1) or subsection (2)
256 preserves an interest in land or other ~~such claim of right~~
257 subject to extinguishment under this chapter, or a ~~such~~ covenant
258 or restriction or portion of such covenant or restriction, for
259 not less than ~~up to~~ 30 years after filing the notice unless the
260 notice is filed again as required in this chapter. A person's
261 disability or lack of knowledge of any kind may not delay the
262 commencement of or suspend the running of the 30-year period.
263 Such notice may be filed for record by the claimant or by any
264 other person acting on behalf of a claimant who is:

265 (a) Under a disability;
266 (b) Unable to assert a claim on his or her behalf; or
267 (c) One of a class, but whose identity cannot be
268 established or is uncertain at the time of filing such notice of
269 claim for record.

270
271 ~~Such notice may be filed by a homeowners' association only if~~
272 ~~the preservation of such covenant or restriction or portion of~~
273 ~~such covenant or restriction is approved by at least two-thirds~~
274 ~~of the members of the board of directors of an incorporated~~
275 ~~homeowners' association at a meeting for which a notice, stating~~

276 ~~the meeting's time and place and containing the statement of~~
277 ~~marketable title action described in s. 712.06(1)(b), was mailed~~
278 ~~or hand delivered to members of the homeowners' association at~~
279 ~~least 7 days before such meeting. The property owners'~~
280 ~~homeowners' association or clerk of the circuit court is not~~
281 ~~required to provide additional notice pursuant to s. 712.06(3).~~
282 The preceding sentence is intended to clarify existing law.

283 ~~(4)(2)~~ It is ~~shall~~ not ~~be~~ necessary for the owner of the
284 marketable record title, as described in s. 712.02 herein
285 ~~defined~~, to file a notice to protect his or her marketable
286 record title.

287 Section 9. Subsections (1) and (3) of section 712.06,
288 Florida Statutes, are amended to read:

289 712.06 Contents of notice; recording and indexing.—

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

293 (a) The name or description and mailing address of the
294 claimant or the property owners' ~~homeowners'~~ association
295 desiring to preserve any covenant or restriction ~~and the name~~
296 ~~and particular post office address of the person filing the~~
297 ~~claim or the homeowners' association.~~

298 (b) The name and mailing ~~post office~~ address of an owner,
299 or the name and mailing ~~post office~~ address of the person in
300 whose name the ~~said~~ property is assessed on the last completed

301 tax assessment roll of the county at the time of filing, who,
 302 for purpose of such notice, shall be deemed to be an owner;
 303 ~~provided,~~ however, if a property owners' ~~homeowners'~~ association
 304 is filing the notice, ~~then~~ the requirements of this paragraph
 305 may be satisfied by attaching to and recording with the notice
 306 an affidavit executed by the appropriate member of the board of
 307 directors of the property owners' ~~homeowners'~~ association
 308 affirming that the board of directors of the property owners'
 309 ~~homeowners'~~ association caused a statement in substantially the
 310 following form to be mailed or hand delivered to the members of
 311 that property owners' ~~homeowners'~~ association:

312
 313 STATEMENT OF MARKETABLE TITLE ACTION
 314

315 The [name of property owners' ~~homeowners'~~ association] (the
 316 "Association") has taken action to ensure that the [name of
 317 declaration, covenant, or restriction], recorded in Official
 318 Records Book, Page, of the public records of
 319 County, Florida, as may be amended from time to time, currently
 320 burdening the property of each and every member of the
 321 Association, retains its status ~~as the source of marketable~~
 322 ~~title~~ with regard to the affected real property ~~the transfer of~~
 323 ~~a member's residence~~. To this end, the Association shall cause
 324 the notice required by chapter 712, Florida Statutes, to be
 325 recorded in the public records of County, Florida. Copies

326 of this notice and its attachments are available through the
327 Association pursuant to the Association's governing documents
328 regarding official records of the Association.

329
330 (c) A full and complete description of all land affected
331 by such notice, which description shall be set forth in
332 particular terms and not by general reference, but if said claim
333 is founded upon a recorded instrument or a covenant or a
334 restriction, ~~then~~ the description in such notice may be the same
335 as that contained in such recorded instrument or covenant or
336 restriction, provided the same shall be sufficient to identify
337 the property.

338 (d) A statement of the claim showing the nature,
339 description, and extent of such claim or other right subject to
340 extinguishment under this chapter or, in the case of a covenant
341 or restriction, a copy of the covenant or restriction, except
342 that it is ~~shall~~ not ~~be~~ necessary to show the amount of any
343 claim for money or the terms of payment.

344 (e) If such claim or other right subject to extinguishment
345 under this chapter is based upon an instrument of record or a
346 recorded covenant or restriction, such instrument of record or
347 recorded covenant or restriction shall be deemed sufficiently
348 described to identify the same if the notice includes a
349 reference to the book and page in which the same is recorded.

350 (f) Such notice shall be acknowledged in the same manner

351 as deeds are acknowledged for record.

352 (3) The person providing the notice referred to in s.
 353 712.05, other than a notice for preservation of a community
 354 covenant or restriction, shall:

355 (a) Cause the clerk of the circuit court to mail by
 356 registered or certified mail to the purported owner of said
 357 property, as stated in such notice, a copy thereof and shall
 358 enter on the original, before recording the same, a certificate
 359 showing such mailing. For preparing the certificate, the
 360 claimant shall pay to the clerk the service charge as prescribed
 361 in s. 28.24(8) and the necessary costs of mailing, in addition
 362 to the recording charges as prescribed in s. 28.24(12). If the
 363 notice names purported owners having more than one address, the
 364 person filing the same shall furnish a true copy for each of the
 365 several addresses stated, and the clerk shall send one such copy
 366 to the purported owners named at each respective address. Such
 367 certificate shall be sufficient if the same reads substantially
 368 as follows:

369
 370 I hereby certify that I did on this, mail by
 371 registered (or certified) mail a copy of the foregoing notice to
 372 each of the following at the address stated:

373
 374 ...(Clerk of the circuit court)...
 375 of County, Florida,

376 By... (Deputy clerk)...

377 The clerk of the circuit court is not required to mail to the
 378 purported owner of such property any such notice that pertains
 379 solely to the preserving of any covenant or restriction or any
 380 portion of a covenant or restriction; or

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

386 Section 10. Section 712.11, Florida Statutes, is amended
 387 to read:

388 712.11 Covenant revitalization.—A property owners'
 389 ~~homeowners'~~ association not otherwise subject to chapter 720 may
 390 use the procedures set forth in ss. 720.403-720.407 to revive
 391 covenants that have lapsed under the terms of this chapter.

392 Section 11. Section 712.12, Florida Statutes, is created
 393 to read:

394 712.12 Covenant or restriction revitalization by parcel
 395 owners not subject to a homeowners' association.—

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

397 (a) "Community" means a group of parcels near one another
 398 sharing a common interest due to their proximity to one another
 399 and sharing a neighborhood name or identity, which parcels are
 400 or will be subject to covenants and restrictions which are

401 recorded in the county where the property is located.

402 (b) "Covenant or restriction" means any agreement or
403 limitation imposed by a private party and not required by a
404 governmental agency as a condition of a development permit, as
405 defined in s. 163.3164, which is contained in a document
406 recorded in the public records of the county in which a parcel
407 is located and which subjects the parcel to any use restriction
408 that may be enforced by a parcel owner.

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

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

415 (2) The parcel owners of a community not subject to a
416 homeowners' association may use the procedures set forth in ss.
417 720.403-720.407 to revive covenants or restrictions that have
418 lapsed under the terms of this chapter, except:

419 (a) A reference to a homeowners' association or articles
420 of incorporation or bylaws of a homeowners' association under
421 ss. 720.403-720.407 is not required to revive the covenants or
422 restrictions.

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

425 (c) The requirements under s. 720.407(2) may be satisfied

426 by having the organizing committee execute the revived covenants
427 or restrictions in the name of the community.

428 (d) The indexing requirements under s. 720.407(3) may be
429 satisfied by indexing the community name in the covenants or
430 restrictions as the grantee and the parcel owners as the
431 grantors.

432 (3) With respect to any parcel that has ceased to be
433 governed by covenants or restrictions as of July 1, 2017, the
434 parcel owner may commence an action by July 1, 2018, for a
435 judicial determination that the covenants or restrictions did
436 not govern that parcel as of July 1, 2017, and that any
437 revitalization of such covenants or restrictions as to that
438 parcel would unconstitutionally deprive the parcel owner of
439 rights or property.

440 (4) Revived covenants or restrictions that are implemented
441 pursuant to this section do not apply to or affect the rights of
442 the parcel owner which are recognized by any court order or
443 judgment in any action commenced by July 1, 2018, and any such
444 rights so recognized may not be subsequently altered by revived
445 covenants or restrictions implemented under this section without
446 the consent of the affected parcel owner.

447 Section 12. Paragraph (e) is added to subsection (2) of
448 section 720.303, Florida Statutes, to read:

449 720.303 Association powers and duties; meetings of board;
450 official records; budgets; financial reporting; association

451 funds; recalls.—

452 (2) BOARD MEETINGS.—

453 (e) At the first board meeting, excluding the
454 organizational meeting, which follows the annual meeting of the
455 members, the board shall consider the desirability of filing
456 notices to preserve the covenants or restrictions affecting the
457 community or association from extinguishment under the
458 Marketable Record Title Act, chapter 712, and to authorize and
459 direct the appropriate officer to file notice in accordance with
460 s. 720.3032.

461 Section 13. Section 720.3032, Florida Statutes, is created
462 to read:

463 720.3032 Notice of association information; preservation
464 from Marketable Record Title Act.—

465 (1) Not less than once every 5 years, if an association
466 wishes to preserve its covenants and restrictions, the
467 association must record in the official records of each county
468 in which the community is located a notice specifying:

469 (a) The legal name of the association.

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

471 (c) The names of the affected subdivision plats and
472 condominiums or, if not applicable, the common name of the
473 community.

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

476 association manager, if any.

477 (e) Indication as to whether the association desires to
478 preserve the covenants or restrictions affecting the community
479 or association from extinguishment under the Marketable Record
480 Title Act, chapter 712.

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

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

487 (h) The signature of a duly authorized officer of the
488 association, acknowledged in the same manner as deeds are
489 acknowledged for record.

490 (2) Recording a document in substantially the following
491 form satisfies the notice obligation and constitutes a summary
492 notice as specified in s. 712.05(2)(b) sufficient to preserve
493 and protect the referenced covenants and restrictions from
494 extinguishment under the Marketable Record Title Act, chapter
495 712.

496
497 Notice of ...(name of association)... under s. 720.3032, Florida
498 Statutes, and notice to preserve and protect covenants and
499 restrictions from extinguishment under the Marketable Record
500 Title Act, chapter 712, Florida Statutes.

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

1. Legal name of association:

2. Mailing and physical addresses of association:

....

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

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

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

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

...(Name of instrument)...

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

...(List of instruments)...

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

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

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

526 ... (Name of association)...
 527
 528 By:
 529 ... (Name of individual officer)...
 530 ... (Title of officer)...
 531 ... (Notary acknowledgment)...
 532

533 (3) The failure to file one or more notices does not
 534 affect the validity or enforceability of any covenant or
 535 restriction nor in any way alter the remaining time before
 536 extinguishment by the Marketable Record Title Act, chapter 712.

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

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

543 Section 14. Section 702.09, Florida Statutes, is amended
 544 to read:

545 702.09 Definitions.—For the purposes of ss. 702.07 and
 546 702.08, the words "decree of foreclosure" shall include a
 547 judgment or order rendered or passed in the foreclosure
 548 proceedings in which the decree of foreclosure shall be
 549 rescinded, vacated, and set aside; the word "mortgage" shall
 550 mean any written instrument securing the payment of money or

551 advances and includes liens to secure payment of assessments
552 arising under chapters 718 and 719 and liens created pursuant to
553 the recorded covenants of a property owners' ~~homeowners'~~
554 association as defined in s. 712.01; the word "debt" shall
555 include promissory notes, bonds, and all other written
556 obligations given for the payment of money; the words
557 "foreclosure proceedings" shall embrace every action in the
558 circuit or county courts of this state wherein it is sought to
559 foreclose a mortgage and sell the property covered by the same;
560 and the word "property" shall mean and include both real and
561 personal property.

562 Section 15. Subsection (1) of section 702.10, Florida
563 Statutes, is amended to read:

564 702.10 Order to show cause; entry of final judgment of
565 foreclosure; payment during foreclosure.—

566 (1) A lienholder may request an order to show cause for
567 the entry of final judgment in a foreclosure action. For
568 purposes of this section, the term "lienholder" includes the
569 plaintiff and a defendant to the action who holds a lien
570 encumbering the property or a defendant who, by virtue of its
571 status as a condominium association, cooperative association, or
572 property owners' ~~homeowners'~~ association, may file a lien
573 against the real property subject to foreclosure. Upon filing,
574 the court shall immediately review the request and the court
575 file in chambers and without a hearing. If, upon examination of

576 the court file, the court finds that the complaint is verified,
577 complies with s. 702.015, and alleges a cause of action to
578 foreclose on real property, the court shall promptly issue an
579 order directed to the other parties named in the action to show
580 cause why a final judgment of foreclosure should not be entered.

581 (a) The order shall:

582 1. Set the date and time for a hearing to show cause. The
583 date for the hearing may not occur sooner than the later of 20
584 days after service of the order to show cause or 45 days after
585 service of the initial complaint. When service is obtained by
586 publication, the date for the hearing may not be set sooner than
587 30 days after the first publication.

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

590 3. State that the filing of defenses by a motion, a
591 responsive pleading, an affidavit, or other papers before the
592 hearing to show cause that raise a genuine issue of material
593 fact which would preclude the entry of summary judgment or
594 otherwise constitute a legal defense to foreclosure shall
595 constitute cause for the court not to enter final judgment.

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

599 5. State that, if a defendant files defenses by a motion,
600 a verified or sworn answer, affidavits, or other papers or

601 appears personally or by way of an attorney at the time of the
602 hearing, the hearing time will be used to hear and consider
603 whether the defendant's motion, answer, affidavits, other
604 papers, and other evidence and argument as may be presented by
605 the defendant or the defendant's attorney raise a genuine issue
606 of material fact which would preclude the entry of summary
607 judgment or otherwise constitute a legal defense to foreclosure.
608 The order shall also state that the court may enter an order of
609 final judgment of foreclosure at the hearing and order the clerk
610 of the court to conduct a foreclosure sale.

611 6. State that, if a defendant fails to appear at the
612 hearing to show cause or fails to file defenses by a motion or
613 by a verified or sworn answer or files an answer not contesting
614 the foreclosure, such defendant may be considered to have waived
615 the right to a hearing, and in such case, the court may enter a
616 default against such defendant and, if appropriate, a final
617 judgment of foreclosure ordering the clerk of the court to
618 conduct a foreclosure sale.

619 7. State that if the mortgage provides for reasonable
620 attorney fees and the requested attorney fees do not exceed 3
621 percent of the principal amount owed at the time of filing the
622 complaint, it is unnecessary for the court to hold a hearing or
623 adjudge the requested attorney fees to be reasonable.

624 8. Attach the form of the proposed final judgment of
625 foreclosure which the movant requests the court to enter at the

626 hearing on the order to show cause.

627 9. Require the party seeking final judgment to serve a
628 copy of the order to show cause on the other parties in the
629 following manner:

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

635 b. If a defendant has not been served pursuant to chapter
636 48 with the complaint and original process, the order to show
637 cause, together with the summons and a copy of the complaint,
638 shall be served on the party in the same manner as provided by
639 law for original process.

640

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

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

651 motion or by a sworn or verified answer, affidavits, or other
652 papers or to appear personally or by way of an attorney at the
653 hearing duly scheduled on the order to show cause presumptively
654 constitutes conduct that clearly shows that the defendant has
655 relinquished the right to be heard. If a defendant files
656 defenses by a motion, a verified answer, affidavits, or other
657 papers or presents evidence at or before the hearing which raise
658 a genuine issue of material fact which would preclude entry of
659 summary judgment or otherwise constitute a legal defense to
660 foreclosure, such action constitutes cause and precludes the
661 entry of a final judgment at the hearing to show cause.

662 (c) In a mortgage foreclosure proceeding, when a final
663 judgment of foreclosure has been entered against the mortgagor
664 and the note or mortgage provides for the award of reasonable
665 attorney fees, it is unnecessary for the court to hold a hearing
666 or adjudge the requested attorney fees to be reasonable if the
667 fees do not exceed 3 percent of the principal amount owed on the
668 note or mortgage at the time of filing, even if the note or
669 mortgage does not specify the percentage of the original amount
670 that would be paid as liquidated damages.

671 (d) If the court finds that all defendants have waived the
672 right to be heard as provided in paragraph (b), the court shall
673 promptly enter a final judgment of foreclosure without the need
674 for further hearing if the plaintiff has shown entitlement to a
675 final judgment and upon the filing with the court of the

676 original note, satisfaction of the conditions for establishment
677 of a lost note, or upon a showing to the court that the
678 obligation to be foreclosed is not evidenced by a promissory
679 note or other negotiable instrument. If the court finds that a
680 defendant has not waived the right to be heard on the order to
681 show cause, the court shall determine whether there is cause not
682 to enter a final judgment of foreclosure. If the court finds
683 that the defendant has not shown cause, the court shall promptly
684 enter a judgment of foreclosure. If the time allotted for the
685 hearing is insufficient, the court may announce at the hearing a
686 date and time for the continued hearing. Only the parties who
687 appear, individually or through an attorney, at the initial
688 hearing must be notified of the date and time of the continued
689 hearing.

690 Section 16. Section 712.095, Florida Statutes, is amended
691 to read:

692 712.095 Notice required by July 1, 1983.—Any person whose
693 interest in land is derived from an instrument or court
694 proceeding recorded subsequent to the root of title, which
695 instrument or proceeding did not contain a description of the
696 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
697 interest had not been extinguished prior to July 1, 1981, shall
698 have until July 1, 1983, to file a notice in accordance with s.
699 712.06 to preserve the interest.

700 Section 17. Section 720.403, Florida Statutes, is amended

701 to read:

702 720.403 Preservation of ~~residential~~ communities; revival
703 of declaration of covenants.—

704 (1) Consistent with required and optional elements of
705 local comprehensive plans and other applicable provisions of the
706 Community Planning Act, property owners ~~homeowners~~ are
707 encouraged to preserve existing residential and other
708 communities, promote available and affordable housing, protect
709 structural and aesthetic elements of their ~~residential~~
710 community, and, as applicable, maintain roads and streets,
711 easements, water and sewer systems, utilities, drainage
712 improvements, conservation and open areas, recreational
713 amenities, and other infrastructure and common areas that serve
714 and support the ~~residential~~ community by the revival of a
715 previous declaration of covenants and other governing documents
716 that may have ceased to govern some or all parcels in the
717 community.

718 (2) In order to preserve a ~~residential~~ community and the
719 associated infrastructure and common areas for the purposes
720 described in this section, the parcel owners in a community that
721 was previously subject to a declaration of covenants that has
722 ceased to govern one or more parcels in the community may revive
723 the declaration and the ~~homeowners'~~ association for the
724 community upon approval by the parcel owners to be governed
725 thereby as provided in this act, and upon approval of the

726 | declaration and the other governing documents for the
 727 | association by the Department of Economic Opportunity in a
 728 | manner consistent with this act.

729 | (3) Part III of this chapter is intended to provide
 730 | mechanisms for the revitalization of covenants or restrictions
 731 | for all types of communities and property associations and is
 732 | not limited to residential communities.

733 | Section 18. Section 720.404, Florida Statutes, is amended
 734 | to read:

735 | 720.404 Eligible ~~residential~~ communities; requirements for
 736 | revival of declaration.—Parcel owners in a community are
 737 | eligible to seek approval from the Department of Economic
 738 | Opportunity to revive a declaration of covenants under this act
 739 | if all of the following requirements are met:

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

743 | (2) The revived declaration must be approved in the manner
 744 | provided in s. 720.405(6); and

745 | (3) The revived declaration may not contain covenants that
 746 | are more restrictive on the parcel owners than the covenants
 747 | contained in the previous declaration, except that the
 748 | declaration may:

749 | (a) Have an effective term of longer duration than the
 750 | term of the previous declaration;

751 (b) Omit restrictions contained in the previous
752 declaration;

753 (c) Govern fewer than all of the parcels governed by the
754 previous declaration;

755 (d) Provide for amendments to the declaration and other
756 governing documents; and

757 (e) Contain provisions required by this chapter for new
758 declarations that were not contained in the previous
759 declaration.

760 Section 19. Subsections (1), (3), (5), and (6) of section
761 720.405, Florida Statutes, are amended to read:

762 720.405 Organizing committee; parcel owner approval.—

763 (1) The proposal to revive a declaration of covenants and
764 an ~~a homeowners'~~ association for a community under the terms of
765 this act shall be initiated by an organizing committee
766 consisting of not less than three parcel owners located in the
767 community that is proposed to be governed by the revived
768 declaration. The name, address, and telephone number of each
769 member of the organizing committee must be included in any
770 notice or other document provided by the committee to parcel
771 owners to be affected by the proposed revived declaration.

772 (3) The organizing committee shall prepare the full text
773 of the proposed articles of incorporation and bylaws of the
774 revived ~~homeowners'~~ association to be submitted to the parcel
775 owners for approval, unless the association is then an existing

776 corporation, in which case the organizing committee shall
777 prepare the existing articles of incorporation and bylaws to be
778 submitted to the parcel owners.

779 (5) A copy of the complete text of the proposed revised
780 declaration of covenants, the proposed new or existing articles
781 of incorporation and bylaws of the ~~homeowners'~~ association, and
782 a graphic depiction of the property to be governed by the
783 revived declaration shall be presented to all of the affected
784 parcel owners by mail or hand delivery not less than 14 days
785 before the time that the consent of the affected parcel owners
786 to the proposed governing documents is sought by the organizing
787 committee.

788 (6) A majority of the affected parcel owners must agree in
789 writing to the revived declaration of covenants and governing
790 documents of the ~~homeowners'~~ association or approve the revived
791 declaration and governing documents by a vote at a meeting of
792 the affected parcel owners noticed and conducted in the manner
793 prescribed by s. 720.306. Proof of notice of the meeting to all
794 affected owners of the meeting and the minutes of the meeting
795 recording the votes of the property owners shall be certified by
796 a court reporter or an attorney licensed to practice in the
797 state.

798 Section 20. Subsection (3) of section 720.407, Florida
799 Statutes, is amended to read:

800 720.407 Recording; notice of recording; applicability and

801 effective date.—

802 (3) The recorded documents shall include the full text of
803 the approved declaration of covenants, the articles of
804 incorporation and bylaws of the ~~homeowners'~~ association, the
805 letter of approval by the department, and the legal description
806 of each affected parcel of property. For purposes of chapter
807 712, the association is deemed to be and shall be indexed as the
808 grantee in a title transaction and the parcel owners named in
809 the revived declaration are deemed to be and shall be indexed as
810 the grantors in the title transaction.

811 Section 21. This act shall take effect July 1, 2017.