



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; requiring a two-thirds

45 approval of the affected parcel owners of a property

46 owners' association for the preservation of covenants

47 and restrictions; conforming provisions to changes

48 made by the act; amending s. 712.06, F.S.; exempting a

49 specified summary notice regarding real property from

50 certain notice content requirements; revising the



51 contents 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; providing for
67 future repeal; amending s. 720.303, F.S.; requiring a
68 homeowners association board to take up certain
69 provisions relating to notice filings at the first
70 board meeting; creating s. 720.3032, F.S.; providing
71 recording requirements for an association; providing a
72 document form for recording by an association to
73 preserve certain covenants or restrictions affecting
74 real property; providing that failure to file one or
75 more notices does not affect the validity or



76 enforceability of a covenant or restriction or alter
 77 the time before extinguishment under certain
 78 circumstances; requiring a copy of the filed notice to
 79 be sent to all members; requiring the original signed
 80 notice to be recorded with the clerk of the circuit
 81 court or other recorder; amending ss. 702.09 and
 82 702.10, F.S.; conforming provisions to changes made by
 83 the act; amending s. 712.095, F.S.; conforming a
 84 cross-reference; amending ss. 720.403 and 720.404,
 85 F.S.; conforming provisions to changes made by the
 86 act; amending s. 720.405, F.S.; increasing the
 87 percentage of affected parcel owners required for
 88 revitalization of covenants and restrictions of a
 89 property owners' association; amending s. 720.407,
 90 F.S.; conforming provisions to changes made by the
 91 act; providing an effective date.

92
 93 Be It Enacted by the Legislature of the State of Florida:

94
 95 Section 1. Subsection (6) of section 125.022, Florida
 96 Statutes, is amended to read:

97 125.022 Development permits.—

98 (6) A county may not delegate its police power to a third
 99 party by restriction, covenant, or otherwise. The imposition by
 100 a county of a recorded or unrecorded restriction or covenant as



101 a condition of a county's approval or issuance of a development
102 permit does not preclude the county from exercising its police
103 power to later amend, release, or terminate the restriction or
104 covenant. Any such amendment, release, or termination of the
105 restriction or covenant must follow the procedural requirements
106 in s. 125.66(4). ~~This section does not prohibit a county from~~
107 ~~providing information to an applicant regarding what other state~~
108 ~~or federal permits may apply.~~

109 Section 2. Section 163.035, Florida Statutes, is created
110 to read:

111 163.035 Ordinances or regulations relating to customary
112 use of real property.—A local government shall not promulgate,
113 adopt, or enforce any ordinance or regulation that purports to
114 establish a common law customary use of property.

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

117 166.033 Development permits.—

118 (6) A municipality may not delegate its police power to a
119 third party by restriction, covenant, or otherwise. The
120 imposition by a municipality of a recorded or unrecorded
121 restriction or covenant as a condition of a municipality's
122 approval or issuance of a development permit does not preclude a
123 municipality from exercising its police power to later amend,
124 release, or terminate the restriction or covenant. Any such
125 amendment, release, or termination of the restriction or



126 covenant must follow the procedural requirements in s.
127 166.041(3)(c). ~~This section does not prohibit a municipality~~
128 ~~from providing information to an applicant regarding what other~~
129 ~~state or federal permits may apply.~~

130 Section 4. Section 702.12, Florida Statutes, is created to
131 read:

132 702.12 Actions in foreclosure.—

133 (1)(a) A lienholder, in an action to foreclose a mortgage
134 encumbering an interest in real property, may submit any
135 document the defendant filed in the defendant's bankruptcy case
136 under penalty of perjury for use as an admission by the
137 defendant.

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

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



151 (3) This section does not preclude the defendant in a
152 foreclosure action from raising a defense based upon the
153 lienholder's conduct subsequent to the filing of the document
154 filed in the bankruptcy case that evidenced the defendant's
155 intention to surrender the mortgaged property to the lienholder.

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

158 Section 5. Section 712.001, Florida Statutes, is created
159 to read:

160 712.001 Short title.—This chapter may be cited as the
161 "Marketable Record Title Act."

162 Section 6. Section 712.01, Florida Statutes, is reordered
163 and amended to read:

164 712.01 Definitions.—As used in this chapter, ~~the term law:~~

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

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

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

172 (2) ~~(6)~~ The term "Covenant or restriction" means any
173 agreement or limitation contained in a document recorded in the
174 public records of the county in which a parcel is located which
175 subjects the parcel to any use or other restriction or



176 ~~obligation which may be enforced by a homeowners' association or~~
177 ~~which authorizes a homeowners' association to impose a charge or~~
178 ~~assessment against the parcel or the owner of the parcel or~~
179 ~~which may be enforced by the Florida Department of Environmental~~
180 ~~Protection pursuant to chapter 376 or chapter 403.~~

181 ~~(3)(5)~~ The term "Parcel" means real property that ~~which~~ is
182 used for residential purposes and that is subject to exclusive
183 ownership and ~~which is subject~~ to any covenant or restriction of
184 a property owners' homeowners' association.

185 ~~(4)(1)~~ The term "Person" includes the ~~as used herein~~
186 ~~denotes~~ singular or plural, natural or corporate, private or
187 governmental, including the state and any political subdivision
188 or agency thereof as the context for the use thereof requires or
189 denotes and including any property owners' homeowners'
190 association.

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

200 ~~(6)(2)~~ "Root of title" means any title transaction



201 | purporting to create or transfer the estate claimed by any
202 | person ~~and~~ which is the last title transaction to have been
203 | recorded at least 30 years before ~~prior to~~ the time when
204 | marketability is being determined. The effective date of the
205 | root of title is the date on which it was recorded.

206 | (7) ~~(3)~~ "Title transaction" means any recorded instrument
207 | or court proceeding that ~~which~~ affects title to any estate or
208 | interest in land and that ~~which~~ describes the land sufficiently
209 | to identify its location and boundaries.

210 | Section 7. Section 712.04, Florida Statutes, is amended to
211 | read:

212 | 712.04 Interests extinguished by marketable record title.—

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



226 Florida, or any of its officers, boards, commissions, or other
 227 agencies reserved in the patent or deed by which the United
 228 States, Florida, or any of its agencies parted with title.

229 (2) This section may not be construed to alter or
 230 invalidate a zoning ordinance, land development regulation,
 231 building code, or other ordinance, rule, regulation, or law if
 232 such ordinance, rule, regulation, or law operates independently
 233 of matters recorded in the official records.

234 (3) This section is intended to clarify existing law, is
 235 remedial in nature, and applies to all restrictions and
 236 covenants whether imposed or accepted before, on, or after July
 237 1, 2017.

238 Section 8. Section 712.05, Florida Statutes, is amended to
 239 read:

240 712.05 Effect of filing notice.—

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

249 (2) A property owners' association may preserve and
 250 protect a community covenant or restriction from extinguishment



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

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

255 (b) A summary notice in substantial form and content as
256 required under s. 720.3032(2). Failure of a summary notice to be
257 indexed to the current owners of the affected property does not
258 affect the validity of the notice or vitiate the effect of the
259 filing of such notice.

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

270 (a) Under a disability;

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

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

275



276 Such notice may be filed by a property owners' ~~homeowners'~~
277 association only if the preservation of such covenant or
278 restriction or portion of such covenant or restriction is
279 approved by the owners of at least two-thirds of the affected
280 parcels in writing or ~~members of the board of directors of an~~
281 ~~incorporated homeowners' association~~ at a meeting for which a
282 notice, stating the meeting's time and place and containing the
283 statement of marketable title action described in s.
284 712.06(1)(b), was mailed or hand delivered to members of the
285 property owners' ~~homeowners'~~ association at least 7 days before
286 such meeting. The property owners' ~~homeowners'~~ association or
287 clerk of the circuit court is not required to provide additional
288 notice pursuant to s. 712.06(3). The preceding sentence is
289 intended to clarify existing law.

290 ~~(4)(2)~~ It is ~~shall~~ not ~~be~~ necessary for the owner of the
291 marketable record title, as described in s. 712.02 ~~herein~~
292 ~~defined~~, to file a notice to protect his or her marketable
293 record title.

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

296 712.06 Contents of notice; recording and indexing.—

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

300 (a) The name or description and mailing address of the



301 claimant or the property owners' ~~homeowners'~~ association
302 desiring to preserve any covenant or restriction ~~and the name~~
303 ~~and particular post office address of the person filing the~~
304 ~~claim or the homeowners' association.~~

305 (b) The name and mailing ~~post office~~ address of an owner,
306 or the name and mailing ~~post office~~ address of the person in
307 whose name the ~~said~~ property is assessed on the last completed
308 tax assessment roll of the county at the time of filing, who,
309 for purpose of such notice, shall be deemed to be an owner;
310 ~~provided,~~ however, if a property owners' ~~homeowners'~~ association
311 is filing the notice, ~~then~~ the requirements of this paragraph
312 may be satisfied by attaching to and recording with the notice
313 an affidavit executed by the appropriate member of the board of
314 directors of the property owners' ~~homeowners'~~ association
315 affirming that the board of directors of the property owners'
316 ~~homeowners'~~ association caused a statement in substantially the
317 following form to be mailed or hand delivered to the members of
318 that property owners' ~~homeowners'~~ association:

319
320 STATEMENT OF MARKETABLE TITLE ACTION
321

322 The [name of property owners' ~~homeowners'~~ association] (the
323 "Association") has taken action to ensure that the [name of
324 declaration, covenant, or restriction], recorded in Official
325 Records Book, Page, of the public records of



326 County, Florida, as may be amended from time to time, currently
327 burdening the property of each and every member of the
328 Association, retains ~~its status as the source of marketable~~
329 ~~title~~ with regard to the affected real property ~~the transfer of~~
330 ~~a member's residence~~. To this end, the Association shall cause
331 the notice required by chapter 712, Florida Statutes, to be
332 recorded in the public records of County, Florida. Copies
333 of this notice and its attachments are available through the
334 Association pursuant to the Association's governing documents
335 regarding official records of the Association.

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

345 (d) A statement of the claim showing the nature,
346 description, and extent of such claim or other right subject to
347 extinguishment under this chapter or, in the case of a covenant
348 or restriction, a copy of the covenant or restriction, except
349 that it is ~~shall~~ not be necessary to show the amount of any
350 claim for money or the terms of payment.



351 (e) If such claim or other right subject to extinguishment
352 under this chapter is based upon an instrument of record or a
353 recorded covenant or restriction, such instrument of record or
354 recorded covenant or restriction shall be deemed sufficiently
355 described to identify the same if the notice includes a
356 reference to the book and page in which the same is recorded.

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

359 (3) The person providing the notice referred to in s.
360 712.05, other than a notice for preservation of a community
361 covenant or restriction, shall:

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



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376

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

380

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

382 of County, Florida,

383 By...(Deputy clerk)...

384 The clerk of the circuit court is not required to mail to the
385 purported owner of such property any such notice that pertains
386 solely to the preserving of any covenant or restriction or any
387 portion of a covenant or restriction; or

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

393 Section 10. Section 712.11, Florida Statutes, is amended
394 to read:

395 712.11 Covenant revitalization.—A property owners'
396 ~~homeowners'~~ association not otherwise subject to chapter 720 may
397 use the procedures set forth in ss. 720.403-720.407 to revive
398 covenants that have lapsed under the terms of this chapter.

399 Section 11. Section 712.12, Florida Statutes, is created
400 to read:



401 712.12 Covenant or restriction revitalization by parcel
402 owners not subject to chapter 720.—

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

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

409 (b) "Covenant or restriction" means any agreement or
410 limitation imposed by a private party and not required by a
411 governmental agency as a condition of a development permit, as
412 defined in s. 163.3164, which is contained in a document
413 recorded in the public records of the county in which a parcel
414 is located and which subjects the parcel to any use restriction
415 that may be enforced by a parcel owner.

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

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

422 (2) The parcel owners of a community not subject to ch.
423 720 may use the procedures set forth in ss. 720.403-720.407 to
424 revive covenants or restrictions that have lapsed under the
425 terms of this chapter, except:



426 (a) A reference to a homeowners' association or articles
427 of incorporation or bylaws of a homeowners' association under
428 ss. 720.403-720.407 is not required to revive the covenants or
429 restrictions.

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

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

435 (d) The indexing requirements under s. 720.407(3) may be
436 satisfied by indexing the community name in the covenants or
437 restrictions as the grantee and the parcel owners as the
438 grantors.

439 (3) With respect to any parcel that has ceased to be
440 governed by covenants or restrictions as of July 1, 2017, the
441 parcel owner may commence an action by July 1, 2018, for a
442 judicial determination that the covenants or restrictions did
443 not govern that parcel as of July 1, 2017, and that any
444 revitalization of such covenants or restrictions as to that
445 parcel would unconstitutionally deprive the parcel owner of
446 rights or property.

447 (4) Revived covenants or restrictions that are implemented
448 pursuant to this section do not apply to or affect the rights of
449 a parcel owner:

450 (a) Which are recognized by any court order or judgment in



451 any action commenced by July 1, 2018, and any such rights so
452 recognized may not be subsequently altered by revived covenants
453 or restrictions implemented under this section without the
454 consent of the affected parcel owner; or

455 (b) To continue a use of the property that would be
456 prohibited by the revived covenants and restrictions. However,
457 this paragraph does not apply to a parcel owner who acquires
458 title to a parcel after the effective date of the revival.

459 (5) This section expires and shall stand repealed June 30,
460 2019.

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

463 720.303 Association powers and duties; meetings of board;
464 official records; budgets; financial reporting; association
465 funds; recalls.—

466 (2) BOARD MEETINGS.—

467 (e) At the first board meeting, excluding the
468 organizational meeting, which follows the annual meeting of the
469 members, the board shall consider the desirability of filing
470 notices to preserve the covenants or restrictions affecting the
471 community or association from extinguishment under the
472 Marketable Record Title Act, chapter 712, and to authorize and
473 direct the appropriate officer to file notice in accordance with
474 s. 720.3032.

475 Section 13. Section 720.3032, Florida Statutes, is created



476 to read:

477 720.3032 Notice of association information; preservation
478 from Marketable Record Title Act.-

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

483 (a) The legal name of the association.

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

485 (c) The names of the affected subdivision plats and
486 condominiums or, if not applicable, the common name of the
487 community.

488 (d) The name, address, and telephone number for the
489 current community association management company or community
490 association manager, if any.

491 (e) Indication as to whether the association desires to
492 preserve the covenants or restrictions affecting the community
493 or association from extinguishment under the Marketable Record
494 Title Act, chapter 712.

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

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



501 (h) The signature of a duly authorized officer of the
 502 association, acknowledged in the same manner as deeds are
 503 acknowledged for record.

504 (2) Recording a document in substantially the following
 505 form satisfies the notice obligation and constitutes a summary
 506 notice as specified in s. 712.05(2)(b) sufficient to preserve
 507 and protect the referenced covenants and restrictions from
 508 extinguishment under the Marketable Record Title Act, chapter
 509 712.

510
 511 Notice of ...(name of association)... under s. 720.3032, Florida
 512 Statutes, and notice to preserve and protect covenants and
 513 restrictions from extinguishment under the Marketable Record
 514 Title Act, chapter 712, Florida Statutes.

515
 516 Instructions to recorder: Please index both the legal name
 517 of the association and the names shown in item 3.

518 1. Legal name of association:

519 2. Mailing and physical addresses of association:

520

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

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

525 5. This notice does does not constitute a notice



526 to preserve and protect covenants or restrictions from
 527 extinguishment under the Marketable Record Title Act.

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

531 ...(Name of instrument)...
 532 ...(Official Records Book where recorded & page)...
 533 ...(List of instruments)...
 534 ...(List of recording information)...

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

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

540 ...(Name of association)...

541
 542 By:
 543 ...(Name of individual officer)...
 544 ...(Title of officer)...
 545 ...(Notary acknowledgment)...

546
 547 (3) The failure to file one or more notices does not
 548 affect the validity or enforceability of any covenant or
 549 restriction nor in any way alter the remaining time before
 550 extinguishment by the Marketable Record Title Act, chapter 712.



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

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

557 Section 14. Section 702.09, Florida Statutes, is amended
558 to read:

559 702.09 Definitions.—For the purposes of ss. 702.07 and
560 702.08, the words "decree of foreclosure" shall include a
561 judgment or order rendered or passed in the foreclosure
562 proceedings in which the decree of foreclosure shall be
563 rescinded, vacated, and set aside; the word "mortgage" shall
564 mean any written instrument securing the payment of money or
565 advances and includes liens to secure payment of assessments
566 arising under chapters 718 and 719 and liens created pursuant to
567 the recorded covenants of a property owners' ~~homeowners'~~
568 association as defined in s. 712.01; the word "debt" shall
569 include promissory notes, bonds, and all other written
570 obligations given for the payment of money; the words
571 "foreclosure proceedings" shall embrace every action in the
572 circuit or county courts of this state wherein it is sought to
573 foreclose a mortgage and sell the property covered by the same;
574 and the word "property" shall mean and include both real and
575 personal property.



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

578 702.10 Order to show cause; entry of final judgment of
579 foreclosure; payment during foreclosure.—

580 (1) A lienholder may request an order to show cause for
581 the entry of final judgment in a foreclosure action. For
582 purposes of this section, the term "lienholder" includes the
583 plaintiff and a defendant to the action who holds a lien
584 encumbering the property or a defendant who, by virtue of its
585 status as a condominium association, cooperative association, or
586 property owners' homeowners' ~~homeowners'~~ association, may file a lien
587 against the real property subject to foreclosure. Upon filing,
588 the court shall immediately review the request and the court
589 file in chambers and without a hearing. If, upon examination of
590 the court file, the court finds that the complaint is verified,
591 complies with s. 702.015, and alleges a cause of action to
592 foreclose on real property, the court shall promptly issue an
593 order directed to the other parties named in the action to show
594 cause why a final judgment of foreclosure should not be entered.

595 (a) The order shall:

596 1. Set the date and time for a hearing to show cause. The
597 date for the hearing may not occur sooner than the later of 20
598 days after service of the order to show cause or 45 days after
599 service of the initial complaint. When service is obtained by
600 publication, the date for the hearing may not be set sooner than



601 30 days after the first publication.

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

604 3. State that the filing of defenses by a motion, a
605 responsive pleading, an affidavit, or other papers before the
606 hearing to show cause that raise a genuine issue of material
607 fact which would preclude the entry of summary judgment or
608 otherwise constitute a legal defense to foreclosure shall
609 constitute cause for the court not to enter final judgment.

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

613 5. State that, if a defendant files defenses by a motion,
614 a verified or sworn answer, affidavits, or other papers or
615 appears personally or by way of an attorney at the time of the
616 hearing, the hearing time will be used to hear and consider
617 whether the defendant's motion, answer, affidavits, other
618 papers, and other evidence and argument as may be presented by
619 the defendant or the defendant's attorney raise a genuine issue
620 of material fact which would preclude the entry of summary
621 judgment or otherwise constitute a legal defense to foreclosure.
622 The order shall also state that the court may enter an order of
623 final judgment of foreclosure at the hearing and order the clerk
624 of the court to conduct a foreclosure sale.

625 6. State that, if a defendant fails to appear at the



626 hearing to show cause or fails to file defenses by a motion or
627 by a verified or sworn answer or files an answer not contesting
628 the foreclosure, such defendant may be considered to have waived
629 the right to a hearing, and in such case, the court may enter a
630 default against such defendant and, if appropriate, a final
631 judgment of foreclosure ordering the clerk of the court to
632 conduct a foreclosure sale.

633 7. State that if the mortgage provides for reasonable
634 attorney fees and the requested attorney fees do not exceed 3
635 percent of the principal amount owed at the time of filing the
636 complaint, it is unnecessary for the court to hold a hearing or
637 adjudge the requested attorney fees to be reasonable.

638 8. Attach the form of the proposed final judgment of
639 foreclosure which the movant requests the court to enter at the
640 hearing on the order to show cause.

641 9. Require the party seeking final judgment to serve a
642 copy of the order to show cause on the other parties in the
643 following manner:

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

649 b. If a defendant has not been served pursuant to chapter
650 48 with the complaint and original process, the order to show



651 cause, together with the summons and a copy of the complaint,
652 shall be served on the party in the same manner as provided by
653 law for original process.

654

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

660 (b) The right to be heard at the hearing to show cause is
661 waived if a defendant, after being served as provided by law
662 with an order to show cause, engages in conduct that clearly
663 shows that the defendant has relinquished the right to be heard
664 on that order. The defendant's failure to file defenses by a
665 motion or by a sworn or verified answer, affidavits, or other
666 papers or to appear personally or by way of an attorney at the
667 hearing duly scheduled on the order to show cause presumptively
668 constitutes conduct that clearly shows that the defendant has
669 relinquished the right to be heard. If a defendant files
670 defenses by a motion, a verified answer, affidavits, or other
671 papers or presents evidence at or before the hearing which raise
672 a genuine issue of material fact which would preclude entry of
673 summary judgment or otherwise constitute a legal defense to
674 foreclosure, such action constitutes cause and precludes the
675 entry of a final judgment at the hearing to show cause.



676 (c) In a mortgage foreclosure proceeding, when a final
677 judgment of foreclosure has been entered against the mortgagor
678 and the note or mortgage provides for the award of reasonable
679 attorney fees, it is unnecessary for the court to hold a hearing
680 or adjudge the requested attorney fees to be reasonable if the
681 fees do not exceed 3 percent of the principal amount owed on the
682 note or mortgage at the time of filing, even if the note or
683 mortgage does not specify the percentage of the original amount
684 that would be paid as liquidated damages.

685 (d) If the court finds that all defendants have waived the
686 right to be heard as provided in paragraph (b), the court shall
687 promptly enter a final judgment of foreclosure without the need
688 for further hearing if the plaintiff has shown entitlement to a
689 final judgment and upon the filing with the court of the
690 original note, satisfaction of the conditions for establishment
691 of a lost note, or upon a showing to the court that the
692 obligation to be foreclosed is not evidenced by a promissory
693 note or other negotiable instrument. If the court finds that a
694 defendant has not waived the right to be heard on the order to
695 show cause, the court shall determine whether there is cause not
696 to enter a final judgment of foreclosure. If the court finds
697 that the defendant has not shown cause, the court shall promptly
698 enter a judgment of foreclosure. If the time allotted for the
699 hearing is insufficient, the court may announce at the hearing a
700 date and time for the continued hearing. Only the parties who



701 appear, individually or through an attorney, at the initial
702 hearing must be notified of the date and time of the continued
703 hearing.

704 Section 16. Section 712.095, Florida Statutes, is amended
705 to read:

706 712.095 Notice required by July 1, 1983.—Any person whose
707 interest in land is derived from an instrument or court
708 proceeding recorded subsequent to the root of title, which
709 instrument or proceeding did not contain a description of the
710 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
711 interest had not been extinguished prior to July 1, 1981, shall
712 have until July 1, 1983, to file a notice in accordance with s.
713 712.06 to preserve the interest.

714 Section 17. Section 720.403, Florida Statutes, is amended
715 to read:

716 720.403 Preservation of ~~residential~~ communities; revival
717 of declaration of covenants.—

718 (1) Consistent with required and optional elements of
719 local comprehensive plans and other applicable provisions of the
720 Community Planning Act, property owners ~~homeowners~~ are
721 encouraged to preserve existing residential and other
722 communities, promote available and affordable housing, protect
723 structural and aesthetic elements of their ~~residential~~
724 community, and, as applicable, maintain roads and streets,
725 easements, water and sewer systems, utilities, drainage



726 improvements, conservation and open areas, recreational
727 amenities, and other infrastructure and common areas that serve
728 and support the ~~residential~~ community by the revival of a
729 previous declaration of covenants and other governing documents
730 that may have ceased to govern some or all parcels in the
731 community.

732 (2) In order to preserve a ~~residential~~ community and the
733 associated infrastructure and common areas for the purposes
734 described in this section, the parcel owners in a community that
735 was previously subject to a declaration of covenants that has
736 ceased to govern one or more parcels in the community may revive
737 the declaration and the ~~homeowners'~~ association for the
738 community upon approval by the parcel owners to be governed
739 thereby as provided in this act, and upon approval of the
740 declaration and the other governing documents for the
741 association by the Department of Economic Opportunity in a
742 manner consistent with this act.

743 (3) Part III of this chapter is intended to provide
744 mechanisms for the revitalization of covenants or restrictions
745 for all types of communities and property associations and is
746 not limited to residential communities.

747 Section 18. Section 720.404, Florida Statutes, is amended
748 to read:

749 720.404 Eligible ~~residential~~ communities; requirements for
750 revival of declaration.—Parcel owners in a community are



751 eligible to seek approval from the Department of Economic
752 Opportunity to revive a declaration of covenants under this act
753 if all of the following requirements are met:

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

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

759 (3) The revived declaration may not contain covenants that
760 are more restrictive on the parcel owners than the covenants
761 contained in the previous declaration, except that the
762 declaration may:

763 (a) Have an effective term of longer duration than the
764 term of the previous declaration;

765 (b) Omit restrictions contained in the previous
766 declaration;

767 (c) Govern fewer than all of the parcels governed by the
768 previous declaration;

769 (d) Provide for amendments to the declaration and other
770 governing documents; and

771 (e) Contain provisions required by this chapter for new
772 declarations that were not contained in the previous
773 declaration.

774 Section 19. Subsections (1), (3), (5), and (6) of section
775 720.405, Florida Statutes, are amended to read:



776 720.405 Organizing committee; parcel owner approval.—
777 (1) The proposal to revive a declaration of covenants and
778 an ~~a homeowners'~~ association for a community under the terms of
779 this act shall be initiated by an organizing committee
780 consisting of not less than three parcel owners located in the
781 community that is proposed to be governed by the revived
782 declaration. The name, address, and telephone number of each
783 member of the organizing committee must be included in any
784 notice or other document provided by the committee to parcel
785 owners to be affected by the proposed revived declaration.

786 (3) The organizing committee shall prepare the full text
787 of the proposed articles of incorporation and bylaws of the
788 revived ~~homeowners'~~ association to be submitted to the parcel
789 owners for approval, unless the association is then an existing
790 corporation, in which case the organizing committee shall
791 prepare the existing articles of incorporation and bylaws to be
792 submitted to the parcel owners.

793 (5) A copy of the complete text of the proposed revised
794 declaration of covenants, the proposed new or existing articles
795 of incorporation and bylaws of the ~~homeowners'~~ association, and
796 a graphic depiction of the property to be governed by the
797 revived declaration shall be presented to all of the affected
798 parcel owners by mail or hand delivery not less than 14 days
799 before the time that the consent of the affected parcel owners
800 to the proposed governing documents is sought by the organizing



801 committee.

802 (6) Two-thirds ~~A majority~~ of the affected parcel owners
803 must agree in writing to the revived declaration of covenants
804 and governing documents of the ~~homeowners'~~ association or
805 approve the revived declaration and governing documents by a
806 vote at a meeting of the affected parcel owners noticed and
807 conducted in the manner prescribed by s. 720.306. Proof of
808 notice of the meeting to all affected owners of the meeting and
809 the minutes of the meeting recording the votes of the property
810 owners shall be certified by a court reporter or an attorney
811 licensed to practice in the state.

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

814 720.407 Recording; notice of recording; applicability and
815 effective date.—

816 (3) The recorded documents shall include the full text of
817 the approved declaration of covenants, the articles of
818 incorporation and bylaws of the ~~homeowners'~~ association, the
819 letter of approval by the department, and the legal description
820 of each affected parcel of property. For purposes of chapter
821 712, the association is deemed to be and shall be indexed as the
822 grantee in a title transaction and the parcel owners named in
823 the revived declaration are deemed to be and shall be indexed as
824 the grantors in the title transaction.

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