



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; providing construction; creating s. 702.12,
19 F.S.; authorizing certain lienholders to use certain
20 documents as an admission in an action to foreclose a
21 mortgage against real property; providing that
22 submission of certain documents in a foreclosure
23 action creates certain presumptions; authorizing a
24 lienholder to make a request for judicial notice;
25 providing construction; providing applicability;



26 | creating s. 712.001, F.S.; providing a short title;
27 | amending s. 712.01, F.S.; defining and redefining
28 | terms; amending s. 712.04, F.S.; providing that a
29 | marketable title to real property is free and clear of
30 | all covenants or restrictions, the existence of which
31 | depends upon any act, title transaction, event, zoning
32 | requirement, building or development permit, or
33 | omission that occurred before the effective date of
34 | the root of title; providing for construction;
35 | providing applicability; amending s. 712.05, F.S.;
36 | revising the notice filing requirements for a person
37 | claiming an interest in real property and other
38 | rights; authorizing a property owners' association to
39 | preserve and protect certain covenants or restrictions
40 | from extinguishment, subject to specified
41 | requirements; providing that a failure in indexing
42 | does not affect the validity of the notice; extending
43 | the length of time certain covenants or restrictions
44 | affecting real property are preserved; requiring a
45 | two-thirds approval of the affected parcel owners of a
46 | property owners' association for the preservation of
47 | covenants and restrictions; conforming provisions to
48 | changes made by the act; amending s. 712.06, F.S.;
49 | exempting a specified summary notice regarding real
50 | property from certain notice content requirements;



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



76 | does not affect the validity or enforceability of a
 77 | covenant or restriction or alter the time before
 78 | extinguishment under certain circumstances; requiring
 79 | a copy of the filed notice to be sent to all members;
 80 | requiring the original signed notice to be recorded
 81 | with the clerk of the circuit court or other recorder;
 82 | amending ss. 702.09 and 702.10, F.S.; conforming
 83 | provisions to changes made by the act; amending s.
 84 | 712.095, F.S.; conforming a cross-reference; amending
 85 | ss. 720.403 and 720.404, F.S.; conforming provisions
 86 | to changes made by the act; amending s. 720.405, F.S.;
 87 | increasing the percentage of affected parcel owners
 88 | required for revitalization of covenants and
 89 | restrictions of a property owners' association;
 90 | amending s. 720.407, F.S.; conforming provisions to
 91 | changes made by the 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. This section
115 is not intended to prohibit a local government from intervening
116 in a judicial proceeding involving customary use.

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

119 166.033 Development permits.-

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



126 release, or terminate the restriction or covenant. Any such
127 amendment, release, or termination of the restriction or
128 covenant must follow the procedural requirements in s.
129 166.041(3)(c). ~~This section does not prohibit a municipality~~
130 ~~from providing information to an applicant regarding what other~~
131 ~~state or federal permits may apply.~~

132 Section 4. Section 702.12, Florida Statutes, is created to
133 read:

134 702.12 Actions in foreclosure.-

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

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

150 (2) In addition to a request set forth in s. 90.203, the



151 lienholder may request that the court take judicial notice of
152 any final order entered in a bankruptcy case.

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

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

160 Section 5. Section 712.001, Florida Statutes, is created
161 to read:

162 712.001 Short title.—This chapter may be cited as the
163 "Marketable Record Title Act."

164 Section 6. Section 712.01, Florida Statutes, is reordered
165 and amended to read:

166 712.01 Definitions.—As used in this chapter, the term ~~law~~:

167 (1) "Community 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 (a) Subjects the parcel to any use restriction that may be
171 enforced by a property owners' association; or

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

174 (2) ~~(6)~~ The term "Covenant or restriction" means any
175 agreement or limitation contained in a document recorded in the



176 public records of the county in which a parcel is located which
177 subjects the parcel to any use or other restriction or
178 obligation ~~which may be enforced by a homeowners' association or~~
179 ~~which authorizes a homeowners' association to impose a charge or~~
180 ~~assessment against the parcel or the owner of the parcel or~~
181 ~~which may be enforced by the Florida Department of Environmental~~
182 ~~Protection pursuant to chapter 376 or chapter 403.~~

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

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

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



201 restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.

202 (6)~~(2)~~ "Root of title" means any title transaction
203 purporting to create or transfer the estate claimed by any
204 person ~~and~~ which is the last title transaction to have been
205 recorded at least 30 years before ~~prior to~~ the time when
206 marketability is being determined. The effective date of the
207 root of title is the date on which it was recorded.

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

212 Section 7. Section 712.04, Florida Statutes, is amended to
213 read:

214 712.04 Interests extinguished by marketable record title.—

215 (1) Subject to s. 712.03, a marketable record title is
216 free and clear of all estates, interests, claims, covenants,
217 restrictions, or charges, the existence of which depends upon
218 any act, title transaction, event, zoning requirement, building
219 or development permit, or omission that occurred before the
220 effective date of the root of title. Except as provided in s.
221 712.03, all such estates, interests, claims, covenants,
222 restrictions, or charges, however denominated, whether they are
223 or appear to be held or asserted by a person sui juris or under
224 a disability, whether such person is within or without the
225 state, natural or corporate, or private or governmental, are



226 declared to be null and void. However, this chapter does not
227 affect any right, title, or interest of the United States,
228 Florida, or any of its officers, boards, commissions, or other
229 agencies reserved in the patent or deed by which the United
230 States, Florida, or any of its agencies parted with title.

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

236 (3) This section is intended to clarify existing law, is
237 remedial in nature, and applies to all restrictions and
238 covenants whether imposed or accepted before, on, or after July
239 1, 2017.

240 Section 8. Section 712.05, Florida Statutes, is amended to
241 read:

242 712.05 Effect of filing notice.—

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



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

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

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

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

272 (a) Under a disability;

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

274 (c) One of a class, but whose identity cannot be

275 established or is uncertain at the time of filing such notice of



276 claim for record.

277

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

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

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

298 712.06 Contents of notice; recording and indexing.—

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



301 must ~~shall~~ contain:

302 (a) The name or description and mailing address of the
303 claimant or the property owners' ~~homeowners'~~ association
304 desiring to preserve any covenant or restriction ~~and the name~~
305 ~~and particular post office address of the person filing the~~
306 ~~claim or the homeowners' association.~~

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

321
322 STATEMENT OF MARKETABLE TITLE ACTION

323
324 The [name of property owners' ~~homeowners'~~ association] (the
325 "Association") has taken action to ensure that the [name of



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

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

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



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

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

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

361 (3) The person providing the notice referred to in s.
362 712.05, other than a notice for preservation of a community
363 covenant or restriction, shall:

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



376 certificate shall be sufficient if the same reads substantially
 377 as follows:

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

382
 383 ... (Clerk of the circuit court) ...
 384 of County, Florida,
 385 By... (Deputy clerk) ...

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

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

395 Section 10. Section 712.11, Florida Statutes, is amended
 396 to read:

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



401 Section 11. Section 712.12, Florida Statutes, is created
402 to read:

403 712.12 Covenant or restriction revitalization by parcel
404 owners not subject to chapter 720.-

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

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

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

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

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

424 (2) The parcel owners of a community not subject to ch.
425 720 may use the procedures set forth in ss. 720.403-720.407 to



426 revive covenants or restrictions that have lapsed under the
427 terms of this chapter, except:

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

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

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

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

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

449 (4) Revived covenants or restrictions that are implemented
450 pursuant to this section do not apply to or affect the rights of



451 a parcel owner:

452 (a) Which are recognized by any court order or judgment in
453 any action commenced by July 1, 2018, and any such rights so
454 recognized may not be subsequently altered by revived covenants
455 or restrictions implemented under this section without the
456 consent of the affected parcel owner; or

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

461 (5) This section expires and shall stand repealed June 30,
462 2019.

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

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

468 (2) BOARD MEETINGS.—

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



476 s. 720.3032.

477 Section 13. Section 720.3032, Florida Statutes, is created
478 to read:

479 720.3032 Notice of association information; preservation
480 from Marketable Record Title Act.—

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

485 (a) The legal name of the association.

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

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

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

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

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

500 (g) The legal description of the community affected by the



501 covenants or restrictions, which may be satisfied by a reference
 502 to a recorded plat.

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

506 (2) Recording a document in substantially the following
 507 form satisfies the notice obligation and constitutes a summary
 508 notice as specified in s. 712.05(2)(b) sufficient to preserve
 509 and protect the referenced covenants and restrictions from
 510 extinguishment under the Marketable Record Title Act, chapter
 511 712.

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

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

520 1. Legal name of association:

521 2. Mailing and physical addresses of association:

522

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

525 4. Name, address, and telephone number for management



526 company, if any:

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

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

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

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

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

542 ...(Name of association)...

544 By:
 545 ...(Name of individual officer)...
 546 ...(Title of officer)...
 547 ...(Notary acknowledgment)...

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



551 restriction nor in any way alter the remaining time before
552 extinguishment by the Marketable Record Title Act, chapter 712.

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

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

559 Section 14. Section 702.09, Florida Statutes, is amended
560 to read:

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



576 and the word "property" shall mean and include both real and
577 personal property.

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

580 702.10 Order to show cause; entry of final judgment of
581 foreclosure; payment during foreclosure.—

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

597 (a) The order shall:

598 1. Set the date and time for a hearing to show cause. The
599 date for the hearing may not occur sooner than the later of 20
600 days after service of the order to show cause or 45 days after



601 service of the initial complaint. When service is obtained by
602 publication, the date for the hearing may not be set sooner than
603 30 days after the first publication.

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

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

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

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



626 of the court to conduct a foreclosure sale.

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

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

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

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

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



651 b. If a defendant has not been served pursuant to chapter
652 48 with the complaint and original process, the order to show
653 cause, together with the summons and a copy of the complaint,
654 shall be served on the party in the same manner as provided by
655 law for original process.

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

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



676 foreclosure, such action constitutes cause and precludes the
677 entry of a final judgment at the hearing to show cause.

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

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



701 hearing is insufficient, the court may announce at the hearing a
702 date and time for the continued hearing. Only the parties who
703 appear, individually or through an attorney, at the initial
704 hearing must be notified of the date and time of the continued
705 hearing.

706 Section 16. Section 712.095, Florida Statutes, is amended
707 to read:

708 712.095 Notice required by July 1, 1983.—Any person whose
709 interest in land is derived from an instrument or court
710 proceeding recorded subsequent to the root of title, which
711 instrument or proceeding did not contain a description of the
712 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
713 interest had not been extinguished prior to July 1, 1981, shall
714 have until July 1, 1983, to file a notice in accordance with s.
715 712.06 to preserve the interest.

716 Section 17. Section 720.403, Florida Statutes, is amended
717 to read:

718 720.403 Preservation of ~~residential~~ communities; revival
719 of declaration of covenants.—

720 (1) Consistent with required and optional elements of
721 local comprehensive plans and other applicable provisions of the
722 Community Planning Act, property owners ~~homeowners~~ are
723 encouraged to preserve existing residential and other
724 communities, promote available and affordable housing, protect
725 structural and aesthetic elements of their ~~residential~~



726 community, and, as applicable, maintain roads and streets,
727 easements, water and sewer systems, utilities, drainage
728 improvements, conservation and open areas, recreational
729 amenities, and other infrastructure and common areas that serve
730 and support the ~~residential~~ community by the revival of a
731 previous declaration of covenants and other governing documents
732 that may have ceased to govern some or all parcels in the
733 community.

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

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

749 Section 18. Section 720.404, Florida Statutes, is amended
750 to read:



751 720.404 Eligible ~~residential~~ communities; requirements for
752 revival of declaration.—Parcel owners in a community are
753 eligible to seek approval from the Department of Economic
754 Opportunity to revive a declaration of covenants under this act
755 if all of the following requirements are met:

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

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

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

765 (a) Have an effective term of longer duration than the
766 term of the previous declaration;

767 (b) Omit restrictions contained in the previous
768 declaration;

769 (c) Govern fewer than all of the parcels governed by the
770 previous declaration;

771 (d) Provide for amendments to the declaration and other
772 governing documents; and

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



776 Section 19. Subsections (1), (3), (5), and (6) of section
777 720.405, Florida Statutes, are amended to read:

778 720.405 Organizing committee; parcel owner approval.—

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

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

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



801 before the time that the consent of the affected parcel owners
802 to the proposed governing documents is sought by the organizing
803 committee.

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

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

816 720.407 Recording; notice of recording; applicability and
817 effective date.—

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



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826 | the grantors in the title transaction.

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