

1 A bill to be entitled
2 An act relating to covenants and restrictions;
3 creating s. 712.001, F.S.; providing a short title;
4 amending s. 712.01, F.S.; defining and redefining
5 terms; amending s. 712.05, F.S.; revising the notice
6 filing requirements for a person claiming an interest
7 in land and other rights; authorizing a property
8 owners' association to preserve and protect certain
9 covenants or restrictions from extinguishment, subject
10 to specified requirements; providing that a failure in
11 indexing does not affect the validity of the notice;
12 extending the length of time certain covenants or
13 restrictions are preserved; deleting a provision
14 requiring a two-thirds vote by members of an
15 incorporated homeowners' association to file certain
16 notices; providing that a property owners' association
17 or clerk of the circuit court is not required to
18 provide certain additional notice for a specified
19 notice that is filed; conforming provisions to changes
20 made by the act; amending s. 712.06, F.S.; exempting a
21 specified summary notice and amendment from certain
22 notice content requirements; revising the contents
23 required to be specified by certain notices;
24 conforming provisions to changes made by the act;
25 amending s. 712.11, F.S.; conforming provisions to

26 | changes made by the act; creating s. 712.12, F.S.;

27 | defining terms; authorizing the parcel owners of a

28 | community not subject to a homeowners' association to

29 | use specified procedures to revive certain covenants

30 | or restrictions, subject to certain exceptions and

31 | requirements; authorizing a parcel owner to commence

32 | an action by a specified date under certain

33 | circumstances for a judicial determination that the

34 | covenants or restrictions did not govern that parcel

35 | as of a specified date and that any revitalization of

36 | such covenants or restrictions as to that parcel would

37 | unconstitutionally deprive the parcel owner of rights

38 | or property; providing applicability; amending s.

39 | 720.303, F.S.; requiring a board to take up certain

40 | provisions relating to notice filings at the first

41 | board meeting; creating s. 720.3032, F.S.; requiring

42 | any property owners' association desiring to preserve

43 | covenants from potential termination after a specified

44 | period by certain operation to record in the official

45 | records of each county in which the community is

46 | located a notice subject to certain requirements;

47 | providing a document form for recording by an

48 | association to preserve certain covenants or

49 | restrictions; requiring a copy of the filed notice to

50 | be sent to all members; requiring the original signed

51 notice to be recorded with the clerk of the circuit
 52 court or other recorder; amending ss. 702.09 and
 53 702.10, F.S.; conforming provisions to changes made by
 54 the act; amending s. 712.095, F.S.; conforming a
 55 cross-reference; amending ss. 720.403, 720.404,
 56 720.405, and 720.407, F.S.; conforming provisions to
 57 changes made by the act; providing an effective date.
 58

59 Be It Enacted by the Legislature of the State of Florida:
 60

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

63 712.001 Short title.—This chapter may be cited as the
 64 "Marketable Record Title Act."

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

67 712.01 Definitions.—As used in this chapter, the term ~~law~~:

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

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

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

75 (4) ~~(1)~~ The term "Person" includes the ~~as used herein~~

76 ~~denotes~~ singular or plural, natural or corporate, private or
 77 governmental, including the state and any political subdivision
 78 or agency thereof as the context for the use thereof requires or
 79 denotes and including any property owners' ~~homeowners'~~
 80 association.

81 (6)-(2) "Root of title" means any title transaction
 82 purporting to create or transfer the estate claimed by any
 83 person ~~and~~ which is the last title transaction to have been
 84 recorded at least 30 years before ~~prior to~~ the time when
 85 marketability is being determined. The effective date of the
 86 root of title is the date on which it was recorded.

87 (7)-(3) "Title transaction" means any recorded instrument
 88 or court proceeding that ~~which~~ affects title to any estate or
 89 interest in land and that ~~which~~ describes the land sufficiently
 90 to identify its location and boundaries.

91 (5)-(4) "Property owners' association" ~~The term~~
 92 "~~homeowners' association~~" means a homeowners' association as
 93 defined in s. 720.301, a corporation or other entity responsible
 94 for the operation of property in which the voting membership is
 95 made up of the owners of the property or their agents, or a
 96 combination thereof, and in which membership is a mandatory
 97 condition of property ownership, or an association of parcel
 98 owners which is authorized to enforce a community covenant or
 99 restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.

100 (3)-(5) ~~The term~~ "Parcel" means any real property that

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101 ~~which is used for residential purposes that is subject to~~
102 ~~exclusive ownership and which is subject to any covenant or~~
103 ~~restriction of a property owners' ~~homeowners'~~ association.~~

104 ~~(2) (6) The term "Covenant or restriction" means any~~
105 ~~agreement or limitation contained in a document recorded in the~~
106 ~~public records of the county in which a parcel is located which~~
107 ~~subjects the parcel to any use or other restriction or~~
108 ~~obligation which may be enforced by a ~~homeowners'~~ association or~~
109 ~~which authorizes a ~~homeowners'~~ association to impose a charge or~~
110 ~~assessment against the parcel or the owner of the parcel or~~
111 ~~which may be enforced by the Florida Department of Environmental~~
112 ~~Protection pursuant to chapter 376 or chapter 403.~~

113 Section 3. Section 712.05, Florida Statutes, is amended to
114 read:

115 712.05 Effect of filing notice.-

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

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

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

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

130 (b) A summary notice in substantial form and content as
 131 required under s. 720.3032(2); or an amendment to a covenant or
 132 restriction that is indexed under the legal name of the property
 133 owners' association and references the recording information of
 134 the covenant or restriction to be preserved. Failure of a
 135 summary notice or amendment to be indexed to the current owners
 136 of the affected property does not affect the validity of the
 137 notice or vitiate the effect of the filing of such notice.

138 (3) A ~~Such~~ notice under subsection (1) or subsection (2)
 139 preserves an interest in land or other ~~such claim of~~ right
 140 subject to extinguishment under this chapter, or a ~~such~~ covenant
 141 or restriction or portion of such covenant or restriction, for
 142 not less than ~~up to~~ 30 years after filing the notice unless the
 143 notice is filed again as required in this chapter. A person's
 144 disability or lack of knowledge of any kind may not delay the
 145 commencement of or suspend the running of the 30-year period.
 146 Such notice may be filed for record by the claimant or by any
 147 other person acting on behalf of a claimant who is:

148 (a) Under a disability;

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

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

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151 established or is uncertain at the time of filing such notice of
152 claim for record.

153
154 ~~Such notice may be filed by a homeowners' association only if~~
155 ~~the preservation of such covenant or restriction or portion of~~
156 ~~such covenant or restriction is approved by at least two-thirds~~
157 ~~of the members of the board of directors of an incorporated~~
158 ~~homeowners' association at a meeting for which a notice, stating~~
159 ~~the meeting's time and place and containing the statement of~~
160 ~~marketable title action described in s. 712.06(1)(b), was mailed~~
161 ~~or hand delivered to members of the homeowners' association at~~
162 ~~least 7 days before such meeting. The property owners'~~
163 ~~homeowners' association or clerk of the circuit court is not~~
164 ~~required to provide additional notice pursuant to s. 712.06(3)~~
165 ~~for a notice filed under subsection (2).~~ The preceding sentence
166 is intended to clarify existing law.

167 ~~(4)(2)~~ It is ~~shall~~ not be necessary for the owner of the
168 marketable record title, as described in s. 712.02 herein
169 ~~defined~~, to file a notice to protect his or her marketable
170 record title.

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

173 712.06 Contents of notice; recording and indexing.—

174 (1) To be effective, the notice referred to in s. 712.05,
175 other than the summary notice and the amendment referred to in

176 | s. 712.05(2) (b), must ~~shall~~ contain:

177 | (a) The name or description and mailing address of the
 178 | claimant or the property owners' ~~homeowners'~~ association
 179 | desiring to preserve any covenant or restriction ~~and the name~~
 180 | ~~and particular post office address of the person filing the~~
 181 | ~~claim or the homeowners' association.~~

182 | (b) The name and mailing ~~post office~~ address of an owner,
 183 | or the name and mailing ~~post office~~ address of the person in
 184 | whose name the ~~said~~ property is assessed on the last completed
 185 | tax assessment roll of the county at the time of filing, who,
 186 | for purpose of such notice, shall be deemed to be an owner;
 187 | ~~provided,~~ however, if a property owners' ~~homeowners'~~ association
 188 | is filing the notice, ~~then~~ the requirements of this paragraph
 189 | may be satisfied by attaching to and recording with the notice
 190 | an affidavit executed by the appropriate member of the board of
 191 | directors of the property owners' ~~homeowners'~~ association
 192 | affirming that the board of directors of the property owners'
 193 | ~~homeowners'~~ association caused a statement in substantially the
 194 | following form to be mailed or hand delivered to the members of
 195 | that property owners' ~~homeowners'~~ association:

196 |
 197 | STATEMENT OF MARKETABLE TITLE ACTION
 198 |

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

201 | declaration, covenant, or restriction], recorded in Official
 202 | Records Book, Page, of the public records of
 203 | County, Florida, as may be amended from time to time, currently
 204 | burdening the property of each and every member of the
 205 | Association, retains its status ~~as the source of marketable~~
 206 | ~~title~~ with regard to the affected real property ~~the transfer of~~
 207 | ~~a member's residence~~. To this end, the Association shall cause
 208 | the notice required by chapter 712, Florida Statutes, to be
 209 | recorded in the public records of County, Florida. Copies
 210 | of this notice and its attachments are available through the
 211 | Association pursuant to the Association's governing documents
 212 | regarding official records of the Association.

213 |
 214 | (c) A full and complete description of all land affected
 215 | by such notice, which description shall be set forth in
 216 | particular terms and not by general reference, but if said claim
 217 | is founded upon a recorded instrument or a covenant or a
 218 | restriction, ~~then~~ the description in such notice may be the same
 219 | as that contained in such recorded instrument or covenant or
 220 | restriction, provided the same shall be sufficient to identify
 221 | the property.

222 | (d) A statement of the claim showing the nature,
 223 | description, and extent of such claim or other right subject to
 224 | extinguishment under this chapter or, in the case of a covenant
 225 | or restriction, a copy of the covenant or restriction or a

226 | reference to the book and page or instrument number in which the
 227 | same is recorded, except that it is ~~shall~~ not ~~be~~ necessary to
 228 | show the amount of any claim for money or the terms of payment.

229 | (e) If such claim or other right subject to extinguishment
 230 | under this chapter is based upon an instrument of record or a
 231 | recorded covenant or restriction, such instrument of record or
 232 | recorded covenant or restriction shall be deemed sufficiently
 233 | described to identify the same if the notice includes a
 234 | reference to the book and page in which the same is recorded.

235 | (f) Such notice shall be acknowledged in the same manner
 236 | as deeds are acknowledged for record.

237 | (3) The person providing the notice referred to in s.
 238 | 712.05, other than a notice for preservation of a community
 239 | covenant or restriction, shall:

240 | (a) Cause the clerk of the circuit court to mail by
 241 | registered or certified mail to the purported owner of said
 242 | property, as stated in such notice, a copy thereof and shall
 243 | enter on the original, before recording the same, a certificate
 244 | showing such mailing. For preparing the certificate, the
 245 | claimant shall pay to the clerk the service charge as prescribed
 246 | in s. 28.24(8) and the necessary costs of mailing, in addition
 247 | to the recording charges as prescribed in s. 28.24(12). If the
 248 | notice names purported owners having more than one address, the
 249 | person filing the same shall furnish a true copy for each of the
 250 | several addresses stated, and the clerk shall send one such copy

251 to the purported owners named at each respective address. Such
 252 certificate shall be sufficient if the same reads substantially
 253 as follows:

254
 255 I hereby certify that I did on this, mail by
 256 registered (or certified) mail a copy of the foregoing notice to
 257 each of the following at the address stated:

258
 259 ... (Clerk of the circuit court) ...
 260 of County, Florida,
 261 By... (Deputy clerk) ...

262
 263 The clerk of the circuit court is not required to mail to the
 264 purported owner of such property any such notice that pertains
 265 solely to the preserving of any covenant or restriction or any
 266 portion of a covenant or restriction; or

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

272 Section 5. Section 712.11, Florida Statutes, is amended to
 273 read:

274 712.11 Covenant revitalization.—A property owners'
 275 ~~homeowners'~~ association not otherwise subject to chapter 720 may

276 use the procedures set forth in ss. 720.403-720.407 to revive
277 covenants that have lapsed under the terms of this chapter.

278 Section 6. Section 712.12, Florida Statutes, is created to
279 read:

280 712.12 Covenant or restriction revitalization by parcel
281 owners not subject to a homeowners' association.-

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

283 (a) "Community" means the real property that is subject to
284 a covenant or restriction that is recorded in the county where
285 the property is located.

286 (b) "Covenant or restriction" means any agreement or
287 limitation imposed by a private party and not required by a
288 governmental agency as a condition of a development permit, as
289 defined in s. 163.3164, which is contained in a document
290 recorded in the public records of the county in which a parcel
291 is located and which subjects the parcel to any use restriction
292 that may be enforced by a parcel owner.

293 (c) "Parcel" means real property that is used for
294 residential purposes and that is subject to exclusive ownership
295 and any covenant or restriction that may be enforced by a parcel
296 owner.

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

299 (2) The parcel owners of a community not subject to a
300 homeowners' association may use the procedures set forth in ss.

301 720.403-720.407 to revive covenants or restrictions that have
302 lapsed under the terms of this chapter, except:

303 (a) A reference to a homeowners' association or articles
304 of incorporation or bylaws of a homeowners' association under
305 ss. 720.403-720.407 is not required to revive the covenants or
306 restrictions.

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

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

312 (d) The indexing requirements under s. 720.407(3) may be
313 satisfied by indexing the community name in the covenants or
314 restrictions as the grantee and the parcel owners as the
315 grantors.

316 (3) With respect to any parcel that has ceased to be
317 governed by covenants or restrictions as of October 1, 2018, the
318 parcel owner may commence an action by October 1, 2019, for a
319 judicial determination that the covenants or restrictions did
320 not govern that parcel as of October 1, 2018, and that any
321 revitalization of such covenants or restrictions as to that
322 parcel would unconstitutionally deprive the parcel owner of
323 rights or property.

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

326 the parcel owner which are recognized by any court order or
327 judgment in any action commenced by October 1, 2019, and any
328 such rights so recognized may not be subsequently altered by
329 revived covenants or restrictions implemented under this section
330 without the consent of the affected parcel owner.

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

333 720.303 Association powers and duties; meetings of board;
334 official records; budgets; financial reporting; association
335 funds; recalls.—

336 (2) BOARD MEETINGS.—

337 (e) At the first board meeting, excluding the
338 organizational meeting, which follows the annual meeting of the
339 members, the board shall consider the desirability of filing
340 notices to preserve the covenants or restrictions affecting the
341 community or association from extinguishment under the
342 Marketable Record Title Act, chapter 712, and to authorize and
343 direct the appropriate officer to file notice in accordance with
344 s. 720.3032.

345 Section 8. Section 720.3032, Florida Statutes, is created
346 to read:

347 720.3032 Notice of association information; preservation
348 from Marketable Record Title Act.—

349 (1) Any property owners' association desiring to preserve
350 covenants from potential termination after 30 years by operation

351 of chapter 712 may record in the official records of each county
352 in which the community is located a notice specifying:

353 (a) The legal name of the association.

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

355 (c) The names of the affected subdivision plats and
356 condominiums or, if not applicable, the common name of the
357 community.

358 (d) The name, address, and telephone number for the
359 current community association management company or community
360 association manager, if any.

361 (e) Indication as to whether the association desires to
362 preserve the covenants or restrictions affecting the community
363 or association from extinguishment under the Marketable Record
364 Title Act, chapter 712.

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

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

371 (h) The signature of a duly authorized officer of the
372 association, acknowledged in the same manner as deeds are
373 acknowledged for record.

374 (2) Recording a document in substantially the following
375 form satisfies the notice obligation and constitutes a summary

376 | notice as specified in s. 712.05(2)(b) sufficient to preserve
 377 | and protect the referenced covenants and restrictions from
 378 | extinguishment under the Marketable Record Title Act, chapter
 379 | 712.

380 |
 381 | Notice of ...(name of association)... under s. 720.3032, Florida
 382 | Statutes, and notice to preserve and protect covenants and
 383 | restrictions from extinguishment under the Marketable Record
 384 | Title Act, chapter 712, Florida Statutes.

385 |
 386 | Instructions to recorder: Please index both the legal name
 387 | of the association and the names shown in item 3.

388 | 1. Legal name of association:

389 | 2. Mailing and physical addresses of association:

390 |

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

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

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

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

401 ...(Name of instrument)...
 402 ...(Official Records Book where recorded & page)...
 403 ...(List of instruments)...
 404 ...(List of recording information)...

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

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

412 By:
 413 ...(Name of individual officer)...
 414 ...(Title of officer)...
 415 ...(Notary acknowledgment)...

417 (3) A copy of the notice, as filed, must be included as
 418 part of the next notice of meeting or other mailing sent to all
 419 members.

420 (4) The original signed notice must be recorded in the
 421 official records of the clerk of the circuit court or other
 422 recorder for the county.

423 Section 9. Section 702.09, Florida Statutes, is amended to
 424 read:

425 702.09 Definitions.—For the purposes of ss. 702.07 and

426 | 702.08, the words "decree of foreclosure" shall include a
 427 | judgment or order rendered or passed in the foreclosure
 428 | proceedings in which the decree of foreclosure shall be
 429 | rescinded, vacated, and set aside; the word "mortgage" shall
 430 | mean any written instrument securing the payment of money or
 431 | advances and includes liens to secure payment of assessments
 432 | arising under chapters 718 and 719 and liens created pursuant to
 433 | the recorded covenants of a property owners' ~~homeowners'~~
 434 | association as defined in s. 712.01; the word "debt" shall
 435 | include promissory notes, bonds, and all other written
 436 | obligations given for the payment of money; the words
 437 | "foreclosure proceedings" shall embrace every action in the
 438 | circuit or county courts of this state wherein it is sought to
 439 | foreclose a mortgage and sell the property covered by the same;
 440 | and the word "property" shall mean and include both real and
 441 | personal property.

442 | Section 10. Subsection (1) of section 702.10, Florida
 443 | Statutes, is amended to read:

444 | 702.10 Order to show cause; entry of final judgment of
 445 | foreclosure; payment during foreclosure.—

446 | (1) A lienholder may request an order to show cause for
 447 | the entry of final judgment in a foreclosure action. For
 448 | purposes of this section, the term "lienholder" includes the
 449 | plaintiff and a defendant to the action who holds a lien
 450 | encumbering the property or a defendant who, by virtue of its

451 status as a condominium association, cooperative association, or
452 property owners' ~~homeowners'~~ association, may file a lien
453 against the real property subject to foreclosure. Upon filing,
454 the court shall immediately review the request and the court
455 file in chambers and without a hearing. If, upon examination of
456 the court file, the court finds that the complaint is verified,
457 complies with s. 702.015, and alleges a cause of action to
458 foreclose on real property, the court shall promptly issue an
459 order directed to the other parties named in the action to show
460 cause why a final judgment of foreclosure should not be entered.

461 (a) The order shall:

462 1. Set the date and time for a hearing to show cause. The
463 date for the hearing may not occur sooner than the later of 20
464 days after service of the order to show cause or 45 days after
465 service of the initial complaint. When service is obtained by
466 publication, the date for the hearing may not be set sooner than
467 30 days after the first publication.

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

470 3. State that the filing of defenses by a motion, a
471 responsive pleading, an affidavit, or other papers before the
472 hearing to show cause that raise a genuine issue of material
473 fact which would preclude the entry of summary judgment or
474 otherwise constitute a legal defense to foreclosure shall
475 constitute cause for the court not to enter final judgment.

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

479 5. State that, if a defendant files defenses by a motion,
480 a verified or sworn answer, affidavits, or other papers or
481 appears personally or by way of an attorney at the time of the
482 hearing, the hearing time will be used to hear and consider
483 whether the defendant's motion, answer, affidavits, other
484 papers, and other evidence and argument as may be presented by
485 the defendant or the defendant's attorney raise a genuine issue
486 of material fact which would preclude the entry of summary
487 judgment or otherwise constitute a legal defense to foreclosure.
488 The order shall also state that the court may enter an order of
489 final judgment of foreclosure at the hearing and order the clerk
490 of the court to conduct a foreclosure sale.

491 6. State that, if a defendant fails to appear at the
492 hearing to show cause or fails to file defenses by a motion or
493 by a verified or sworn answer or files an answer not contesting
494 the foreclosure, such defendant may be considered to have waived
495 the right to a hearing, and in such case, the court may enter a
496 default against such defendant and, if appropriate, a final
497 judgment of foreclosure ordering the clerk of the court to
498 conduct a foreclosure sale.

499 7. State that if the mortgage provides for reasonable
500 attorney fees and the requested attorney fees do not exceed 3

501 percent of the principal amount owed at the time of filing the
502 complaint, it is unnecessary for the court to hold a hearing or
503 adjudge the requested attorney fees to be reasonable.

504 8. Attach the form of the proposed final judgment of
505 foreclosure which the movant requests the court to enter at the
506 hearing on the order to show cause.

507 9. Require the party seeking final judgment to serve a
508 copy of the order to show cause on the other parties in the
509 following manner:

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

515 b. If a defendant has not been served pursuant to chapter
516 48 with the complaint and original process, the order to show
517 cause, together with the summons and a copy of the complaint,
518 shall be served on the party in the same manner as provided by
519 law for original process.

520
521 Any final judgment of foreclosure entered under this subsection
522 is for in rem relief only. This subsection does not preclude the
523 entry of a deficiency judgment where otherwise allowed by law.
524 The Legislature intends that this alternative procedure may run
525 simultaneously with other court procedures.

526 (b) The right to be heard at the hearing to show cause is
527 waived if a defendant, after being served as provided by law
528 with an order to show cause, engages in conduct that clearly
529 shows that the defendant has relinquished the right to be heard
530 on that order. The defendant's failure to file defenses by a
531 motion or by a sworn or verified answer, affidavits, or other
532 papers or to appear personally or by way of an attorney at the
533 hearing duly scheduled on the order to show cause presumptively
534 constitutes conduct that clearly shows that the defendant has
535 relinquished the right to be heard. If a defendant files
536 defenses by a motion, a verified answer, affidavits, or other
537 papers or presents evidence at or before the hearing which raise
538 a genuine issue of material fact which would preclude entry of
539 summary judgment or otherwise constitute a legal defense to
540 foreclosure, such action constitutes cause and precludes the
541 entry of a final judgment at the hearing to show cause.

542 (c) In a mortgage foreclosure proceeding, when a final
543 judgment of foreclosure has been entered against the mortgagor
544 and the note or mortgage provides for the award of reasonable
545 attorney fees, it is unnecessary for the court to hold a hearing
546 or adjudge the requested attorney fees to be reasonable if the
547 fees do not exceed 3 percent of the principal amount owed on the
548 note or mortgage at the time of filing, even if the note or
549 mortgage does not specify the percentage of the original amount
550 that would be paid as liquidated damages.

551 (d) If the court finds that all defendants have waived the
552 right to be heard as provided in paragraph (b), the court shall
553 promptly enter a final judgment of foreclosure without the need
554 for further hearing if the plaintiff has shown entitlement to a
555 final judgment and upon the filing with the court of the
556 original note, satisfaction of the conditions for establishment
557 of a lost note, or upon a showing to the court that the
558 obligation to be foreclosed is not evidenced by a promissory
559 note or other negotiable instrument. If the court finds that a
560 defendant has not waived the right to be heard on the order to
561 show cause, the court shall determine whether there is cause not
562 to enter a final judgment of foreclosure. If the court finds
563 that the defendant has not shown cause, the court shall promptly
564 enter a judgment of foreclosure. If the time allotted for the
565 hearing is insufficient, the court may announce at the hearing a
566 date and time for the continued hearing. Only the parties who
567 appear, individually or through an attorney, at the initial
568 hearing must be notified of the date and time of the continued
569 hearing.

570 Section 11. Section 712.095, Florida Statutes, is amended
571 to read:

572 712.095 Notice required by July 1, 1983.—Any person whose
573 interest in land is derived from an instrument or court
574 proceeding recorded subsequent to the root of title, which
575 instrument or proceeding did not contain a description of the

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576 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
577 interest had not been extinguished prior to July 1, 1981, shall
578 have until July 1, 1983, to file a notice in accordance with s.
579 712.06 to preserve the interest.

580 Section 12. Section 720.403, Florida Statutes, is amended
581 to read:

582 720.403 Preservation of ~~residential~~ communities; revival
583 of declaration of covenants.—

584 (1) Consistent with required and optional elements of
585 local comprehensive plans and other applicable provisions of the
586 Community Planning Act, property owners ~~homeowners~~ are
587 encouraged to preserve existing residential and other
588 communities, promote available and affordable housing, protect
589 structural and aesthetic elements of their ~~residential~~
590 community, and, as applicable, maintain roads and streets,
591 easements, water and sewer systems, utilities, drainage
592 improvements, conservation and open areas, recreational
593 amenities, and other infrastructure and common areas that serve
594 and support the ~~residential~~ community by the revival of a
595 previous declaration of covenants and other governing documents
596 that may have ceased to govern some or all parcels in the
597 community.

598 (2) In order to preserve a ~~residential~~ community and the
599 associated infrastructure and common areas for the purposes
600 described in this section, the parcel owners in a community that

601 was previously subject to a declaration of covenants that has
602 ceased to govern one or more parcels in the community may revive
603 the declaration and the ~~homeowners'~~ association for the
604 community upon approval by the parcel owners to be governed
605 thereby as provided in this act, and upon approval of the
606 declaration and the other governing documents for the
607 association by the Department of Economic Opportunity in a
608 manner consistent with this act.

609 (3) Part III of this chapter is intended to provide
610 mechanisms for the revitalization of covenants or restrictions
611 for all types of communities and property associations and is
612 not limited to residential communities.

613 Section 13. Section 720.404, Florida Statutes, is amended
614 to read:

615 720.404 Eligible ~~residential~~ communities; requirements for
616 revival of declaration.—Parcel owners in a community are
617 eligible to seek approval from the Department of Economic
618 Opportunity to revive a declaration of covenants under this act
619 if all of the following requirements are met:

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

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

625 (3) The revived declaration may not contain covenants that

626 are more restrictive on the parcel owners than the covenants
 627 contained in the previous declaration, except that the
 628 declaration may:

629 (a) Have an effective term of longer duration than the
 630 term of the previous declaration;

631 (b) Omit restrictions contained in the previous
 632 declaration;

633 (c) Govern fewer than all of the parcels governed by the
 634 previous declaration;

635 (d) Provide for amendments to the declaration and other
 636 governing documents; and

637 (e) Contain provisions required by this chapter for new
 638 declarations that were not contained in the previous
 639 declaration.

640 Section 14. Subsections (1), (3), (5), and (6) of section
 641 720.405, Florida Statutes, are amended to read:

642 720.405 Organizing committee; parcel owner approval.—

643 (1) The proposal to revive a declaration of covenants and
 644 an ~~a homeowners'~~ association for a community under the terms of
 645 this act shall be initiated by an organizing committee
 646 consisting of not less than three parcel owners located in the
 647 community that is proposed to be governed by the revived
 648 declaration. The name, address, and telephone number of each
 649 member of the organizing committee must be included in any
 650 notice or other document provided by the committee to parcel

651 owners to be affected by the proposed revived declaration.

652 (3) The organizing committee shall prepare the full text
653 of the proposed articles of incorporation and bylaws of the
654 revived ~~homeowners'~~ association to be submitted to the parcel
655 owners for approval, unless the association is then an existing
656 corporation, in which case the organizing committee shall
657 prepare the existing articles of incorporation and bylaws to be
658 submitted to the parcel owners.

659 (5) A copy of the complete text of the proposed revised
660 declaration of covenants, the proposed new or existing articles
661 of incorporation and bylaws of the ~~homeowners'~~ association, and
662 a graphic depiction of the property to be governed by the
663 revived declaration shall be presented to all of the affected
664 parcel owners by mail or hand delivery not less than 14 days
665 before the time that the consent of the affected parcel owners
666 to the proposed governing documents is sought by the organizing
667 committee.

668 (6) A majority of the affected parcel owners must agree in
669 writing to the revived declaration of covenants and governing
670 documents of the ~~homeowners'~~ association or approve the revived
671 declaration and governing documents by a vote at a meeting of
672 the affected parcel owners noticed and conducted in the manner
673 prescribed by s. 720.306. Proof of notice of the meeting to all
674 affected owners of the meeting and the minutes of the meeting
675 recording the votes of the property owners shall be certified by

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676 a court reporter or an attorney licensed to practice in the
677 state.

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

680 720.407 Recording; notice of recording; applicability and
681 effective date.—

682 (3) The recorded documents shall include the full text of
683 the approved declaration of covenants, the articles of
684 incorporation and bylaws of the ~~homeowners'~~ association, the
685 letter of approval by the department, and the legal description
686 of each affected parcel of property. For purposes of chapter
687 712, the association is deemed to be and shall be indexed as the
688 grantee in a title transaction and the parcel owners named in
689 the revived declaration are deemed to be and shall be indexed as
690 the grantors in the title transaction.

691 Section 16. This act shall take effect October 1, 2018.