

By Senator Perry

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1 A bill to be entitled
2 An act relating to the Marketable Record Title Act;
3 amending s. 712.03, F.S.; revising rights that are not
4 affected or extinguished by marketable record titles;
5 amending s. 712.04, F.S.; revising what types of
6 interests are extinguished by a marketable record
7 title; providing construction; creating s. 712.065,
8 F.S.; defining the term "discriminatory restriction";
9 providing that discriminatory restrictions are
10 unlawful, unenforceable, and declared null and void;
11 providing that certain discriminatory restrictions are
12 extinguished and severed from recorded title
13 transactions; specifying that the recording of certain
14 notices does not reimpose or preserve a discriminatory
15 restriction; providing requirements for a parcel owner
16 to remove a discriminatory restriction from a covenant
17 or restriction; authorizing a property owner to apply
18 to the Department of Economic Opportunity for a
19 written determination relating to certain
20 discriminatory restrictions; specifying that recording
21 such determination does not constitute a title
22 transaction occurring after the root of title;
23 amending s. 712.12, F.S.; revising the definition of
24 the term "covenant or restriction"; providing
25 applicability; requiring persons with certain
26 interests in land which may be extinguished by this
27 act to file a specified notice to preserve such
28 interests; providing a directive to the Division of
29 Law Revision; providing an effective date.

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

Section 1. Subsection (1) of section 712.03, Florida Statutes, is amended to read:

712.03 Exceptions to marketability.—Such marketable record title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title, ~~+~~ provided, ~~however,~~ that in the muniments of title those estates, interests, easements, or use restrictions created before the root of title are preserved by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates, interests, easements, or use restrictions created before the root of title as identified by the official records book and page or instrument number ~~a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions of subsection (5).~~

Section 2. Section 712.04, Florida Statutes, is amended to read:

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59 712.04 Interests extinguished by marketable record title.-
60 Subject to s. 712.03, a marketable record title is free and
61 clear of all estates, interests, claims, covenants,
62 restrictions, or charges, the existence of which depends upon
63 any act, title transaction, event, zoning requirement, building
64 or development permit, or omission that occurred before the
65 effective date of the root of title. Except as provided in s.
66 712.03, all such estates, interests, claims, covenants,
67 restrictions, or charges, however denominated, whether they are
68 or appear to be held or asserted by a person sui juris or under
69 a disability, whether such person is within or without the
70 state, natural or corporate, or private or governmental, are
71 declared to be null and void. However, this chapter does not
72 affect any right, title, or interest of the United States,
73 Florida, or any of its officers, boards, commissions, or other
74 agencies reserved in the patent or deed by which the United
75 States, Florida, or any of its agencies parted with title. This
76 section may not be construed to alter or invalidate a zoning
77 ordinance, land development regulation, building code, or other
78 law or regulation to the extent it operates independently of
79 matters recorded in the official records.

80 Section 3. Section 712.065, Florida Statutes, is created to
81 read:

82 712.065 Extinguishment of discriminatory restrictions.-
83 (1) As used in this section, the term "discriminatory
84 restriction" means a provision in a title transaction recorded
85 in this state which restricts the ownership, occupancy, or use
86 of any real property in this state by any natural person on the
87 basis of a characteristic that has been held, or is held after

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88 the effective date of this act, by the United States Supreme
89 Court or the Florida Supreme Court to be protected against
90 discrimination under the Fourteenth Amendment to the United
91 States Constitution or under s. 2, Art. I of the State
92 Constitution, including race, color, national origin, religion,
93 gender, or physical disability.

94 (2) A discriminatory restriction is not enforceable in this
95 state, and all discriminatory restrictions contained in any
96 title transaction recorded in this state are unlawful, are
97 unenforceable, and are declared null and void. Any
98 discriminatory restriction contained in a previously recorded
99 title transaction is extinguished and severed from the recorded
100 title transaction and the remainder of the title transaction
101 remains enforceable and effective. The recording of any notice
102 preserving or protecting interests or rights pursuant to s.
103 712.06 does not reimpose or preserve any discriminatory
104 restriction that is extinguished under this section.

105 (3) Upon request of a parcel owner, a discriminatory
106 restriction appearing in a covenant or restriction affecting the
107 parcel may be removed from the covenant or restriction by an
108 amendment approved by a majority vote of the board of directors
109 of the respective property owners' association, notwithstanding
110 any other requirements for approval of an amendment of the
111 covenant or restriction. Unless the amendment also changes other
112 provisions of the covenant or restriction, the recording of an
113 amendment removing a discriminatory restriction does not
114 constitute a title transaction occurring after the root of title
115 for purposes of s. 712.03(4).

116 (4) Any property owner may apply to the Department of

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117 Economic Opportunity for a written determination that a
118 particular discriminatory restriction appearing in a previous
119 title transaction for the property is within the scope of this
120 section and is extinguished by this section. The recording of
121 any such written determination does not constitute a title
122 transaction occurring after the root of title for purposes of s.
123 712.03(4).

124 Section 4. Paragraph (b) of subsection (1) of section
125 712.12, Florida Statutes, is amended to read:

126 712.12 Covenant or restriction revitalization by parcel
127 owners not subject to a homeowners' association.—

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

129 (b) "Covenant or restriction" means any agreement or
130 ~~limitation imposed by a private party and not required by a~~
131 ~~governmental agency as a condition of a development permit, as~~
132 ~~defined in s. 163.3164, which is contained in a document~~
133 recorded in the public records of the county in which a parcel
134 is located and which subjects the parcel to any use restriction
135 that may be enforced by a parcel owner.

136 Section 5. The amendments to ss. 712.03, 712.04, and
137 712.12, Florida Statutes, in this act are intended to clarify
138 existing law, are remedial in nature, and apply to all estates,
139 interests, claims, covenants, restrictions, and charges, whether
140 imposed or accepted before, on, or after the effective date of
141 this act.

142 Section 6. A person with an interest in land which may
143 potentially be extinguished by this act, and whose interest has
144 not been extinguished before July 1, 2020, must file a notice
145 pursuant to s. 712.06, Florida Statutes, by July 1, 2021, to

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146 preserve such interest.

147 Section 7. The Division of Law Revision is directed to
148 replace the phrase "the effective date of this act" wherever it
149 occurs in this act with the date the act becomes a law.

150 Section 8. This act shall take effect upon becoming a law.