

By the Committee on Judiciary; and 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; amending s. 712.12, F.S.; revising the
18 definition of the term "covenant or restriction";
19 providing applicability; requiring persons with
20 certain interests in land which may be extinguished by
21 this act to file a specified notice to preserve such
22 interests; providing a directive to the Division of
23 Law Revision; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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

29 712.03 Exceptions to marketability.—Such marketable record

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30 title shall not affect or extinguish the following rights:

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

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

53 712.04 Interests extinguished by marketable record title.—
54 Subject to s. 712.03, a marketable record title is free and
55 clear of all estates, interests, claims, covenants,
56 restrictions, or charges, the existence of which depends upon
57 any act, title transaction, event, zoning requirement, building
58 or development permit, or omission that occurred before the

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

74 Section 3. Section 712.065, Florida Statutes, is created to
75 read:

76 712.065 Extinguishment of discriminatory restrictions.—

77 (1) As used in this section, the term "discriminatory
78 restriction" means a provision in a title transaction recorded
79 in this state which restricts the ownership, occupancy, or use
80 of any real property in this state by any natural person on the
81 basis of a characteristic that has been held, or is held after
82 the effective date of this act, by the United States Supreme
83 Court or the Florida Supreme Court to be protected against
84 discrimination under the Fourteenth Amendment to the United
85 States Constitution or under s. 2, Art. I of the State
86 Constitution, including race, color, national origin, religion,
87 gender, or physical disability.

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

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

110 Section 4. Paragraph (b) of subsection (1) of section
111 712.12, Florida Statutes, is amended to read:

112 712.12 Covenant or restriction revitalization by parcel
113 owners not subject to a homeowners' association.—

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

115 (b) "Covenant or restriction" means any agreement or
116 limitation ~~imposed by a private party and not required by a~~

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117 ~~governmental agency as a condition of a development permit, as~~
118 ~~defined in s. 163.3164, which is~~ contained in a document
119 recorded in the public records of the county in which a parcel
120 is located and which subjects the parcel to any use restriction
121 that may be enforced by a parcel owner.

122 Section 5. The amendments to ss. 712.03, 712.04, and
123 712.12, Florida Statutes, in this act are intended to clarify
124 existing law, are remedial in nature, and apply to all estates,
125 interests, claims, covenants, restrictions, and charges, whether
126 imposed or accepted before, on, or after the effective date of
127 this act.

128 Section 6. A person with an interest in land which may
129 potentially be extinguished by this act, and whose interest has
130 not been extinguished before July 1, 2020, must file a notice
131 pursuant to s. 712.06, Florida Statutes, by July 1, 2021, to
132 preserve such interest.

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

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