

By Senator Boyd

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1                   A bill to be entitled  
2           An act relating to ancillary property rights; creating  
3           s. 704.09, F.S.; defining the term "utility easement";  
4           providing that a utility easement is an interest in  
5           real property and subject to certain actions unless  
6           otherwise provided in the instrument creating the  
7           easement; providing that the easement is not an undue  
8           burden; amending s. 712.03, F.S.; revising rights that  
9           are not affected or extinguished by marketable record  
10          titles; amending s. 712.04, F.S.; revising what types  
11          of interests are extinguished by a marketable record  
12          title; providing construction; amending s. 712.12,  
13          F.S.; revising the definition of the term "covenant or  
14          restriction"; providing applicability; requiring  
15          persons with certain interests in land which may be  
16          extinguished by this act to file a specified notice to  
17          preserve such interests; providing a directive to the  
18          Division of Law Revision; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22           Section 1. Section 704.09, Florida Statutes, is created to  
23           read:

24           704.09 Utility easements.—

25           (1) For purposes of this section, the term "utility  
26           easement" means an easement, created by a written grant of  
27           easement, for the purpose of providing utility services such as  
28           water, wastewater, reclaimed water, natural gas, electricity,  
29           drainage, telephone, and other utility services.

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30       (2) A utility easement is an interest in real property  
31 subject to s. 695.01. Unless otherwise expressly provided in the  
32 instrument by which it is created, a utility easement may be  
33 alienated, assigned, partially assigned, divided, transferred,  
34 or apportioned as a divided or undivided interest by its grantee  
35 and its successors and assigns. Provided the assignment is  
36 consistent with the terms set forth in the instrument creating  
37 the utility easement, the assignment is not an undue burden upon  
38 the servient estate.

39       Section 2. Subsection (1) of section 712.03, Florida  
40 Statutes, is amended to read:

41       712.03 Exceptions to marketability.—Such marketable record  
42 title shall not affect or extinguish the following rights:

43       (1) Estates or interests, easements and use restrictions  
44 disclosed by and defects inherent in the muniments of title on  
45 which said estate is based beginning with the root of title,<sup>†</sup>  
46 ~~provided, however,~~ that in the muniments of title those estates,  
47 interests, easements, or use restrictions created before the  
48 root of title are preserved by identification in the legal  
49 description of the property by specific reference to the  
50 official records book and page number, instrument number, or  
51 plat name or there is otherwise an affirmative statement in a  
52 muniment of title to preserve such estates, interests,  
53 easements, or use restrictions created before the root of title  
54 as identified by the official records book and page or  
55 instrument number ~~a general reference in any of such muniments~~  
56 ~~to easements, use restrictions or other interests created prior~~  
57 ~~to the root of title shall not be sufficient to preserve them~~  
58 ~~unless specific identification by reference to book and page of~~

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59 ~~record or by name of recorded plat be made therein to a recorded~~  
60 ~~title transaction which imposed, transferred or continued such~~  
61 ~~easement, use restrictions or other interests; subject, however,~~  
62 ~~to the provisions of subsection (5).~~

63 Section 3. Section 712.04, Florida Statutes, is amended to  
64 read:

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

83 (1) A comprehensive plan or plan amendment; zoning  
84 ordinance; land development regulation; building code;  
85 development permit; development order; or other law, regulation,  
86 or regulatory approval, to the extent such law, regulation, or  
87 regulatory approval operates independently of matters recorded

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88 in the official records; or

89 (2) Any recorded covenant or restriction that on the face  
90 of the first page of the document states that it was accepted by  
91 a governmental entity as part of, or as a condition of, any such  
92 comprehensive plan or plan amendment; zoning ordinance; land  
93 development regulation; building code; development permit;  
94 development order; or other law, regulation, or regulatory  
95 approval.

96 Section 4. Paragraph (b) of subsection (1) of section  
97 712.12, Florida Statutes, is amended to read:

98 712.12 Covenant or restriction revitalization by parcel  
99 owners not subject to a homeowners' association.—

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

101 (b) "Covenant or restriction" means any agreement or  
102 ~~limitation imposed by a private party and not required by a~~  
103 ~~governmental agency as a condition of a development permit, as~~  
104 ~~defined in s. 163.3164, which is~~ contained in a document  
105 recorded in the public records of the county in which a parcel  
106 is located and which subjects the parcel to any use restriction  
107 that may be enforced by a parcel owner.

108 Section 5. The amendments to ss. 712.03, 712.04, and  
109 712.12, Florida Statutes, in this act are intended to clarify  
110 existing law, are remedial in nature, and apply to all estates,  
111 interests, claims, covenants, restrictions, and charges, whether  
112 imposed or accepted before, on, or after the effective date of  
113 this act.

114 Section 6. A person with an interest in land which may  
115 potentially be extinguished by this act, and whose interest has  
116 not been extinguished before July 1, 2021, must file a notice

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117 pursuant to s. 712.06, Florida Statutes, by July 1, 2022, to  
118 preserve such interest.

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

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