

By the Committee on Judiciary; and Senator Boyd

590-02627-21

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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, 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,;
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.