

HB 1229

2024

1 A bill to be entitled

2 An act relating to marketable record title to real
3 property; amending s. 712.03, F.S.; providing that
4 certain rights are extinguished for the redevelopment
5 of a certain portion of a lake that meets certain
6 criteria if such redevelopment is for the purpose of
7 developing affordable housing; requiring the
8 preservation of such rights to be evidenced by a
9 recorded instrument; authorizing a parcel owner to
10 seek a judicial determination within a certain
11 timeframe; prohibiting the revitalization of certain
12 lapsed covenants or restrictions; providing a method
13 for service of process of quiet title and certain
14 other actions; amending s. 712.065, F.S.; conforming a
15 cross-reference; reenacting ss. 704.05(1), 712.02,
16 712.04, and 712.10, F.S., relating to easements and
17 rights of entry, marketable record title and
18 suspension of applicability, interests extinguished by
19 marketable record title, and law to be liberally
20 construed, respectively, to incorporate the amendment
21 made to s. 712.03, F.S., in references thereto;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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26 Section 1. Section 712.03, Florida Statutes, is amended to
 27 read:

28 712.03 Exceptions to marketability; redevelopment
 29 restrictions; legal action; service of process.—

30 (1) Such marketable record title does ~~shall~~ not affect or
 31 extinguish the following rights:

32 (a)~~(1)~~ Estates or interests, easements and use
 33 restrictions disclosed by and defects inherent in the muniments
 34 of title on which said estate is based beginning with the root
 35 of title, provided that in the muniments of title those estates,
 36 interests, easements, or use restrictions created before the
 37 root of title are preserved by identification in the legal
 38 description of the property by specific reference to the
 39 official records book and page number, instrument number, or
 40 plat name or there is otherwise an affirmative statement in a
 41 muniment of title to preserve such estates, interests,
 42 easements, or use restrictions created before the root of title
 43 as identified by the official records book and page or
 44 instrument number; subject, however, to paragraph (e) ~~subsection~~
 45 ~~(5)~~.

46 (b)~~(2)~~ Estates, interests, claims, or charges, or any
 47 covenant or restriction, preserved by the filing of a proper
 48 notice in accordance with the provisions hereof.

49 (c)~~(3)~~ Rights of any person in possession of the lands, so
 50 long as such person is in such possession.

51 (d)~~(4)~~ Estates, interests, claims, or charges arising out
52 of a title transaction which has been recorded subsequent to the
53 effective date of the root of title.

54 (e)~~(5)~~ Recorded or unrecorded easements or rights,
55 interest or servitude in the nature of easements, rights-of-way
56 and terminal facilities, including those of a public utility or
57 of a governmental agency, so long as the same are used and the
58 use of any part thereof shall except from the operation hereof
59 the right to the entire use thereof. No notice need be filed in
60 order to preserve the lien of any mortgage or deed of trust or
61 any supplement thereto encumbering any such recorded or
62 unrecorded easements, or rights, interest, or servitude in the
63 nature of easements, rights-of-way, and terminal facilities.
64 However, nothing herein shall be construed as preserving to the
65 mortgagee or grantee of any such mortgage or deed of trust or
66 any supplement thereto any greater rights than the rights of the
67 mortgagor or grantor.

68 (f)~~(6)~~ Rights of any person in whose name the land is
69 assessed on the county tax rolls for such period of time as the
70 land is so assessed and which rights are preserved for a period
71 of 3 years after the land is last assessed in such person's
72 name.

73 (g)~~(7)~~ State title to lands beneath navigable waters
74 acquired by virtue of sovereignty.

75 (h)~~(8)~~ A restriction or covenant recorded pursuant to

76 | chapter 376 or chapter 403.

77 | ~~(i)(9)~~ Any right, title, or interest held by the Board of
 78 | Trustees of the Internal Improvement Trust Fund, any water
 79 | management district created under chapter 373, or the United
 80 | States.

81 | (2) Notwithstanding any provision in paragraph (1)(e) to
 82 | the contrary, in order to foster affordable housing development
 83 | pursuant to s. 196.1978 in a county as defined under s.
 84 | 125.011(1), the redevelopment of lakes that are restricted by
 85 | recorded or unrecorded easements or rights, interests, or
 86 | servitudes in the nature of easements for use of or access to a
 87 | lake which are in favor of the public or any other party, other
 88 | than a public utility or a governmental agency, and meet the
 89 | requirements of marketable record title pursuant to s. 712.02,
 90 | but which may not be extinguished under paragraph (1)(e), must
 91 | nevertheless be extinguished with respect to no more than one-
 92 | third of the area of such lake, including upland lake banks, as
 93 | evidenced by means of an instrument recorded upon the applicable
 94 | area of such lake which has been executed by the owner thereof
 95 | with the formalities of a deed.

96 | (3) With respect to any rights derived from recorded or
 97 | unrecorded easements or rights, interests, or servitudes in the
 98 | nature of easements, or rights-of-way or terminal facilities
 99 | specified in paragraph (1)(e) which are subject to subsection
 100 | (2), the parcel owner may commence an action no later than 1

101 year after the effective date of this act for a judicial
 102 determination as to whether the extinguishment of such rights
 103 under subsection (2) would unconstitutionally deprive the parcel
 104 owner of rights or property.

105 (4) Any covenants or restrictions that have lapsed as
 106 provided in this chapter may not be revitalized under s. 712.11
 107 or s. 712.12 with respect to property that is used for
 108 affordable housing development, pursuant to s. 196.1978, in a
 109 county as defined under s. 125.011(1) and any such
 110 revitalization that becomes effective either before or after the
 111 development pursuant to s. 196.1978 of an affordable housing
 112 development in a county as defined under s. 125.011(1) is null
 113 and void with respect thereto.

114 (5) Service of process for quiet title or other action to
 115 confirm the extinguishment of the matters described in this
 116 chapter may be made to a party by certified mail, return receipt
 117 requested. This method of service of process also applies to any
 118 other quiet title action that is otherwise made together with
 119 any action under this chapter, even though such other actions
 120 may not arise out of this chapter.

121 Section 2. Subsection (3) of section 712.065, Florida
 122 Statutes, is amended to read:

123 712.065 Extinguishment of discriminatory restrictions.—

124 (3) Upon request of a parcel owner, a discriminatory
 125 restriction appearing in a covenant or restriction affecting the

126 parcel may be removed from the covenant or restriction by an
 127 amendment approved by a majority vote of the board of directors
 128 of the respective property owners' association or an owners'
 129 association in which all owners may voluntarily join,
 130 notwithstanding any other requirements for approval of an
 131 amendment of the covenant or restriction. Unless the amendment
 132 also changes other provisions of the covenant or restriction,
 133 the recording of an amendment removing a discriminatory
 134 restriction does not constitute a title transaction occurring
 135 after the root of title for purposes of s. 712.03(1)(d) ~~s.~~
 136 ~~712.03(4)~~.

137 Section 3. For the purpose of incorporating the amendment
 138 made by this act to section 712.03, Florida Statutes, in a
 139 reference thereto, subsection (1) of section 704.05, Florida
 140 Statutes, is reenacted to read:

141 704.05 Easements and rights of entry.—

142 (1) The rights and interests in land which are subject to
 143 being extinguished by marketable record title pursuant to the
 144 provisions of s. 712.04 shall include rights of entry or of an
 145 easement, given or reserved in any conveyance or devise of
 146 realty, when given or reserved for the purpose of mining,
 147 drilling, exploring, or developing for oil, gas, minerals, or
 148 fissionable materials, unless those rights of entry or easement
 149 are excepted or not affected by the provisions of s. 712.03 or
 150 s. 712.04. However, the provisions of this section shall not

151 apply to interests reserved or otherwise held by the state or by
152 any of its agencies, boards, or departments.

153 Section 4. For the purpose of incorporating the amendment
154 made by this act to section 712.03, Florida Statutes, in a
155 reference thereto, section 712.02, Florida Statutes, is
156 reenacted to read:

157 712.02 Marketable record title; suspension of
158 applicability.—Any person having the legal capacity to own land
159 in this state, who, alone or together with her or his
160 predecessors in title, has been vested with any estate in land
161 of record for 30 years or more, shall have a marketable record
162 title to such estate in said land, which shall be free and clear
163 of all claims except the matters set forth as exceptions to
164 marketability in s. 712.03. A person shall have a marketable
165 record title when the public records disclosed a record title
166 transaction affecting the title to the land which has been of
167 record for not less than 30 years purporting to create such
168 estate either in:

169 (1) The person claiming such estate; or

170 (2) Some other person from whom, by one or more title
171 transactions, such estate has passed to the person claiming such
172 estate, with nothing appearing of record, in either case,
173 purporting to divest such claimant of the estate claimed.

174 Section 5. For the purpose of incorporating the amendment
175 made by this act to section 712.03, Florida Statutes, in

176 references thereto, section 712.04, Florida Statutes, is
 177 reenacted to read:

178 712.04 Interests extinguished by marketable record title.—
 179 Subject to s. 712.03, a marketable record title is free and
 180 clear of all estates, interests, claims, covenants,
 181 restrictions, or charges, the existence of which depends upon
 182 any act, title transaction, event, zoning requirement, building
 183 or development permit, or omission that occurred before the
 184 effective date of the root of title. Except as provided in s.
 185 712.03, all such estates, interests, claims, covenants,
 186 restrictions, or charges, however denominated, whether they are
 187 or appear to be held or asserted by a person sui juris or under
 188 a disability, whether such person is within or without the
 189 state, natural or corporate, or private or governmental, are
 190 declared to be null and void. However, this chapter does not
 191 affect any right, title, or interest of the United States,
 192 Florida, or any of its officers, boards, commissions, or other
 193 agencies reserved in the patent or deed by which the United
 194 States, Florida, or any of its agencies parted with title. This
 195 section may not be construed to alter or invalidate:

196 (1) A comprehensive plan or plan amendment; zoning
 197 ordinance; land development regulation; building code;
 198 development permit; development order; or other law, regulation,
 199 or regulatory approval, to the extent such law, regulation, or
 200 regulatory approval operates independently of matters recorded

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201 in the official records; or

202 (2) Any recorded covenant or restriction that on the face
203 of the first page of the document states that it was accepted by
204 a governmental entity as part of, or as a condition of, any such
205 comprehensive plan or plan amendment; zoning ordinance; land
206 development regulation; building code; development permit;
207 development order; or other law, regulation, or regulatory
208 approval.

209 Section 6. For the purpose of incorporating the amendment
210 made by this act to section 712.03, Florida Statutes, in a
211 reference thereto, section 712.10, Florida Statutes, is
212 reenacted to read:

213 712.10 Law to be liberally construed.—This law shall be
214 liberally construed to effect the legislative purpose of
215 simplifying and facilitating land title transactions by allowing
216 persons to rely on a record title as described in s. 712.02
217 subject only to such limitations as appear in s. 712.03.

218 Section 7. This act shall take effect July 1, 2024.