

By Senator Passidomo

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1 A bill to be entitled
2 An act relating to covenants and restrictions;
3 creating s. 712.001, F.S.; providing a short title;
4 amending s. 712.01, F.S.; defining and redefining
5 terms; amending s. 712.05, F.S.; revising the notice
6 filing requirements for a person claiming an interest
7 in land and other rights; authorizing a property
8 owners' association to preserve and protect certain
9 covenants or restrictions from extinguishment, subject
10 to specified requirements; providing that a failure in
11 indexing does not affect the validity of the notice;
12 extending the length of time certain covenants or
13 restrictions are preserved; deleting a provision
14 requiring a two-thirds vote by members of an
15 incorporated homeowners' association to file certain
16 notices; providing that a property owners' association
17 or clerk of the circuit court is not required to
18 provide certain additional notice for a specified
19 notice that is filed; conforming provisions to changes
20 made by the act; amending s. 712.06, F.S.; exempting a
21 specified summary notice and amendment from certain
22 notice content requirements; revising the contents
23 required to be specified by certain notices;
24 conforming provisions to changes made by the act;
25 amending s. 712.11, F.S.; conforming provisions to
26 changes made by the act; creating s. 712.12, F.S.;
27 defining terms; authorizing the parcel owners of a
28 community not subject to a homeowners' association to
29 use specified procedures to revive certain covenants

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30 or restrictions, subject to certain exceptions and
31 requirements; authorizing a parcel owner to commence
32 an action by a specified date under certain
33 circumstances for a judicial determination that the
34 covenants or restrictions did not govern that parcel
35 as of a specified date and that any revitalization of
36 such covenants or restrictions as to that parcel would
37 unconstitutionally deprive the parcel owner of rights
38 or property; providing applicability; amending s.
39 720.303, F.S.; requiring a board to take up certain
40 provisions relating to notice filings at the first
41 board meeting; creating s. 720.3032, F.S.; requiring
42 any property owners' association desiring to preserve
43 covenants from potential termination after a specified
44 period by certain operation to record in the official
45 records of each county in which the community is
46 located a notice subject to certain requirements;
47 providing a document form for recording by an
48 association to preserve certain covenants or
49 restrictions; requiring a copy of the filed notice to
50 be sent to all members; requiring the original signed
51 notice to be recorded with the clerk of the circuit
52 court or other recorder; amending ss. 702.09 and
53 702.10, F.S.; conforming provisions to changes made by
54 the act; amending s. 712.095, F.S.; conforming a
55 cross-reference; amending ss. 720.403, 720.404,
56 720.405, and 720.407, F.S.; conforming provisions to
57 changes made by the act; providing an effective date.
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59 Be It Enacted by the Legislature of the State of Florida:

60
61 Section 1. Section 712.001, Florida Statutes, is created to
62 read:

63 712.001 Short title.—This chapter may be cited as the
64 “Marketable Record Title Act.”

65 Section 2. Section 712.01, Florida Statutes, is reordered
66 and amended to read:

67 712.01 Definitions.—As used in this chapter, the term law:

68 (1) “Community covenant or restriction” means any agreement
69 or limitation contained in a document recorded in the public
70 records of the county in which a parcel is located which:

71 (a) Subjects the parcel to any use restriction that may be
72 enforced by a property owners’ association; or

73 (b) Authorizes a property owners’ association to impose a
74 charge or assessment against the parcel or the parcel owner.

75 (4) ~~(1)~~ The term “Person” includes the as used herein
76 ~~denotes~~ singular or plural, natural or corporate, private or
77 governmental, including the state and any political subdivision
78 or agency thereof as the context for the use thereof requires or
79 denotes and including any property owners’ homeowners’
80 association.

81 (6) ~~(2)~~ “Root of title” means any title transaction
82 purporting to create or transfer the estate claimed by any
83 person ~~and~~ which is the last title transaction to have been
84 recorded at least 30 years before ~~prior to~~ the time when
85 marketability is being determined. The effective date of the
86 root of title is the date on which it was recorded.

87 (7) ~~(3)~~ “Title transaction” means any recorded instrument or

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88 court proceeding that ~~which~~ affects title to any estate or
89 interest in land and that ~~which~~ describes the land sufficiently
90 to identify its location and boundaries.

91 (5)-(4) "Property owners' association" ~~The term "homeowners'~~
92 ~~association"~~ means a homeowners' association as defined in s.
93 720.301, a corporation or other entity responsible for the
94 operation of property in which the voting membership is made up
95 of the owners of the property or their agents, or a combination
96 thereof, and in which membership is a mandatory condition of
97 property ownership, or an association of parcel owners which is
98 authorized to enforce a community covenant or restriction ~~use~~
99 ~~restrictions~~ that is ~~are~~ imposed on the parcels.

100 (3)-(5) The term "Parcel" means any real property that ~~which~~
101 ~~is used for residential purposes that is subject to exclusive~~
102 ~~ownership and which is subject to any covenant or restriction of~~
103 a property owners' homeowners' association.

104 (2)-(6) The term "Covenant or restriction" means any
105 agreement or limitation contained in a document recorded in the
106 public records of the county in which a parcel is located which
107 subjects the parcel to any use or other restriction or
108 obligation ~~which may be enforced by a homeowners' association or~~
109 ~~which authorizes a homeowners' association to impose a charge or~~
110 ~~assessment against the parcel or the owner of the parcel or~~
111 ~~which may be enforced by the Florida Department of Environmental~~
112 ~~Protection pursuant to chapter 376 or chapter 403.~~

113 Section 3. Section 712.05, Florida Statutes, is amended to
114 read:

115 712.05 Effect of filing notice.—

116 (1) A person claiming an interest in land or other right

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117 subject to extinguishment under this chapter ~~a homeowners'~~
 118 ~~association desiring to preserve a covenant or restriction~~ may
 119 preserve and protect such interest or right ~~the same~~ from
 120 extinguishment by the operation of this chapter ~~act~~ by filing
 121 for record, at any time during the 30-year period immediately
 122 following the effective date of the root of title, a written
 123 notice in accordance with s. 712.06 ~~this chapter~~.

124 (2) A property owners' association may preserve and protect
 125 a community covenant or restriction from extinguishment by the
 126 operation of this chapter by filing for record, at any time
 127 during the 30-year period immediately following the effective
 128 date of the root of title:

129 (a) A written notice in accordance with s. 712.06; or

130 (b) A summary notice in substantial form and content as
 131 required under s. 720.3032(2); or an amendment to a covenant or
 132 restriction that is indexed under the legal name of the property
 133 owners' association and references the recording information of
 134 the covenant or restriction to be preserved. Failure of a
 135 summary notice or amendment to be indexed to the current owners
 136 of the affected property does not affect the validity of the
 137 notice or vitiate the effect of the filing of such notice.

138 (3) A ~~Such~~ notice under subsection (1) or subsection (2)
 139 preserves an interest in land or other ~~such claim of right~~
 140 subject to extinguishment under this chapter, or a ~~such~~ covenant
 141 or restriction or portion of such covenant or restriction, for
 142 not less than ~~up to~~ 30 years after filing the notice unless the
 143 notice is filed again as required in this chapter. A person's
 144 disability or lack of knowledge of any kind may not delay the
 145 commencement of or suspend the running of the 30-year period.

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146 Such notice may be filed for record by the claimant or by any
147 other person acting on behalf of a claimant who is:
148 (a) Under a disability;
149 (b) Unable to assert a claim on his or her behalf; or
150 (c) One of a class, but whose identity cannot be
151 established or is uncertain at the time of filing such notice of
152 claim for record.

153
154 ~~Such notice may be filed by a homeowners' association only if~~
155 ~~the preservation of such covenant or restriction or portion of~~
156 ~~such covenant or restriction is approved by at least two-thirds~~
157 ~~of the members of the board of directors of an incorporated~~
158 ~~homeowners' association at a meeting for which a notice, stating~~
159 ~~the meeting's time and place and containing the statement of~~
160 ~~marketable title action described in s. 712.06(1)(b), was mailed~~
161 ~~or hand delivered to members of the homeowners' association at~~
162 ~~least 7 days before such meeting. The property owners'~~
163 ~~homeowners' association or clerk of the circuit court is not~~
164 ~~required to provide additional notice pursuant to s. 712.06(3)~~
165 ~~for a notice filed under subsection (2). The preceding sentence~~
166 ~~is intended to clarify existing law.~~

167 ~~(4)(2)~~ It is shall not be necessary for the owner of the
168 marketable record title, as described in s. 712.02 herein
169 ~~defined~~, to file a notice to protect his or her marketable
170 record title.

171 Section 4. Subsections (1) and (3) of section 712.06,
172 Florida Statutes, are amended to read:

173 712.06 Contents of notice; recording and indexing.—

174 (1) To be effective, the notice referred to in s. 712.05,

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175 other than the summary notice and the amendment referred to in
176 s. 712.05(2)(b), must ~~shall~~ contain:

177 (a) The name or description and mailing address of the
178 claimant or the property owners' ~~homeowners'~~ association
179 desiring to preserve any covenant or restriction ~~and the name~~
180 ~~and particular post office address of the person filing the~~
181 ~~claim or the homeowners' association.~~

182 (b) The name and mailing ~~post office~~ address of an owner,
183 or the name and mailing ~~post office~~ address of the person in
184 whose name the said property is assessed on the last completed
185 tax assessment roll of the county at the time of filing, who,
186 for purpose of such notice, shall be deemed to be an owner;
187 ~~provided,~~ however, if a property owners' ~~homeowners'~~ association
188 is filing the notice, ~~then~~ the requirements of this paragraph
189 may be satisfied by attaching to and recording with the notice
190 an affidavit executed by the appropriate member of the board of
191 directors of the property owners' ~~homeowners'~~ association
192 affirming that the board of directors of the property owners'
193 ~~homeowners'~~ association caused a statement in substantially the
194 following form to be mailed or hand delivered to the members of
195 that property owners' ~~homeowners'~~ association:

196
197 STATEMENT OF MARKETABLE TITLE ACTION
198

199 The [name of property owners' ~~homeowners'~~ association] (the
200 "Association") has taken action to ensure that the [name of
201 declaration, covenant, or restriction], recorded in Official
202 Records Book, Page, of the public records of
203 County, Florida, as may be amended from time to time, currently

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204 burdening the property of each and every member of the
205 Association, retains its status ~~as the source of marketable~~
206 ~~title with regard to~~ the affected real property ~~the transfer of~~
207 ~~a member's residence~~. To this end, the Association shall cause
208 the notice required by chapter 712, Florida Statutes, to be
209 recorded in the public records of County, Florida. Copies
210 of this notice and its attachments are available through the
211 Association pursuant to the Association's governing documents
212 regarding official records of the Association.

213

214 (c) A full and complete description of all land affected by
215 such notice, which description shall be set forth in particular
216 terms and not by general reference, but if said claim is founded
217 upon a recorded instrument or a covenant or a restriction, ~~then~~
218 the description in such notice may be the same as that contained
219 in such recorded instrument or covenant or restriction, provided
220 the same shall be sufficient to identify the property.

221 (d) A statement of the claim showing the nature,
222 description, and extent of such claim or other right subject to
223 extinguishment under this chapter or, in the case of a covenant
224 or restriction, a copy of the covenant or restriction or a
225 reference to the book and page or instrument number in which the
226 same is recorded, except that it is ~~shall~~ not be necessary to
227 show the amount of any claim for money or the terms of payment.

228 (e) If such claim or other right subject to extinguishment
229 under this chapter is based upon an instrument of record or a
230 recorded covenant or restriction, such instrument of record or
231 recorded covenant or restriction shall be deemed sufficiently
232 described to identify the same if the notice includes a

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233 reference to the book and page in which the same is recorded.

234 (f) Such notice shall be acknowledged in the same manner as
235 deeds are acknowledged for record.

236 (3) The person providing the notice referred to in s.
237 712.05, other than a notice for preservation of a community
238 covenant or restriction, shall:

239 (a) Cause the clerk of the circuit court to mail by
240 registered or certified mail to the purported owner of said
241 property, as stated in such notice, a copy thereof and shall
242 enter on the original, before recording the same, a certificate
243 showing such mailing. For preparing the certificate, the
244 claimant shall pay to the clerk the service charge as prescribed
245 in s. 28.24(8) and the necessary costs of mailing, in addition
246 to the recording charges as prescribed in s. 28.24(12). If the
247 notice names purported owners having more than one address, the
248 person filing the same shall furnish a true copy for each of the
249 several addresses stated, and the clerk shall send one such copy
250 to the purported owners named at each respective address. Such
251 certificate shall be sufficient if the same reads substantially
252 as follows:

253
254 I hereby certify that I did on this, mail by
255 registered (or certified) mail a copy of the foregoing notice to
256 each of the following at the address stated:

257
258 ... (Clerk of the circuit court) ...

259 of County, Florida,

260 By... (Deputy clerk) ...

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262 The clerk of the circuit court is not required to mail to the
263 purported owner of such property any such notice that pertains
264 solely to the preserving of any covenant or restriction or any
265 portion of a covenant or restriction; or

266 (b) Publish once a week, for 2 consecutive weeks, the
267 notice referred to in s. 712.05, with the official record book
268 and page number in which such notice was recorded, in a
269 newspaper as defined in chapter 50 in the county in which the
270 property is located.

271 Section 5. Section 712.11, Florida Statutes, is amended to
272 read:

273 712.11 Covenant revitalization.—A property owners'
274 ~~homeowners'~~ association not otherwise subject to chapter 720 may
275 use the procedures set forth in ss. 720.403-720.407 to revive
276 covenants that have lapsed under the terms of this chapter.

277 Section 6. Section 712.12, Florida Statutes, is created to
278 read:

279 712.12 Covenant or restriction revitalization by parcel
280 owners not subject to a homeowners' association.—

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

282 (a) "Community" means the real property that is subject to
283 a covenant or restriction that is recorded in the county where
284 the property is located.

285 (b) "Covenant or restriction" means any agreement or
286 limitation imposed by a private party and not required by a
287 governmental agency as a condition of a development permit, as
288 defined in s. 163.3164, which is contained in a document
289 recorded in the public records of the county in which a parcel
290 is located and which subjects the parcel to any use restriction

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291 that may be enforced by a parcel owner.

292 (c) "Parcel" means real property that is used for
293 residential purposes and that is subject to exclusive ownership
294 and any covenant or restriction that may be enforced by a parcel
295 owner.

296 (d) "Parcel owner" means the record owner of legal title to
297 a parcel.

298 (2) The parcel owners of a community not subject to a
299 homeowners' association may use the procedures set forth in ss.
300 720.403-720.407 to revive covenants or restrictions that have
301 lapsed under the terms of this chapter, except:

302 (a) A reference to a homeowners' association or articles of
303 incorporation or bylaws of a homeowners' association under ss.
304 720.403-720.407 is not required to revive the covenants or
305 restrictions.

306 (b) The approval required under s. 720.405(6) must be in
307 writing, and not at a meeting.

308 (c) The requirements under s. 720.407(2) may be satisfied
309 by having the organizing committee execute the revived covenants
310 or restrictions in the name of the community.

311 (d) The indexing requirements under s. 720.407(3) may be
312 satisfied by indexing the community name in the covenants or
313 restrictions as the grantee and the parcel owners as the
314 grantors.

315 (3) With respect to any parcel that has ceased to be
316 governed by covenants or restrictions as of October 1, 2018, the
317 parcel owner may commence an action by October 1, 2019, for a
318 judicial determination that the covenants or restrictions did
319 not govern that parcel as of October 1, 2018, and that any

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320 revitalization of such covenants or restrictions as to that
321 parcel would unconstitutionally deprive the parcel owner of
322 rights or property.

323 (4) Revived covenants or restrictions that are implemented
324 pursuant to this section do not apply to or affect the rights of
325 the parcel owner which are recognized by any court order or
326 judgment in any action commenced by October 1, 2019, and any
327 such rights so recognized may not be subsequently altered by
328 revived covenants or restrictions implemented under this section
329 without the consent of the affected parcel owner.

330 Section 7. Paragraph (e) is added to subsection (2) of
331 section 720.303, Florida Statutes, to read:

332 720.303 Association powers and duties; meetings of board;
333 official records; budgets; financial reporting; association
334 funds; recalls.—

335 (2) BOARD MEETINGS.—

336 (e) At the first board meeting, excluding the
337 organizational meeting, which follows the annual meeting of the
338 members, the board shall consider the desirability of filing
339 notices to preserve the covenants or restrictions affecting the
340 community or association from extinguishment under the
341 Marketable Record Title Act, chapter 712, and to authorize and
342 direct the appropriate officer to file notice in accordance with
343 s. 720.3032.

344 Section 8. Section 720.3032, Florida Statutes, is created
345 to read:

346 720.3032 Notice of association information; preservation
347 from Marketable Record Title Act.—

348 (1) Any property owners' association desiring to preserve

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349 covenants from potential termination after 30 years by operation
350 of chapter 712 may record in the official records of each county
351 in which the community is located a notice specifying:

352 (a) The legal name of the association.

353 (b) The mailing and physical addresses of the association.

354 (c) The names of the affected subdivision plats and
355 condominiums or, if not applicable, the common name of the
356 community.

357 (d) The name, address, and telephone number for the current
358 community association management company or community
359 association manager, if any.

360 (e) Indication as to whether the association desires to
361 preserve the covenants or restrictions affecting the community
362 or association from extinguishment under the Marketable Record
363 Title Act, chapter 712.

364 (f) A listing by name and recording information of those
365 covenants or restrictions affecting the community which the
366 association desires to be preserved from extinguishment.

367 (g) The legal description of the community affected by the
368 covenants or restrictions, which may be satisfied by a reference
369 to a recorded plat.

370 (h) The signature of a duly authorized officer of the
371 association, acknowledged in the same manner as deeds are
372 acknowledged for record.

373 (2) Recording a document in substantially the following
374 form satisfies the notice obligation and constitutes a summary
375 notice as specified in s. 712.05(2) (b) sufficient to preserve
376 and protect the referenced covenants and restrictions from
377 extinguishment under the Marketable Record Title Act, chapter

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712.

Notice of ... (name of association) ... under s. 720.3032, Florida Statutes, and notice to preserve and protect covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter 712, Florida Statutes.

Instructions to recorder: Please index both the legal name of the association and the names shown in item 3.

1. Legal name of association:
2. Mailing and physical addresses of association:
3. Names of the subdivision plats, or, if none, common name of community:
4. Name, address, and telephone number for management company, if any:
5. This notice does does not constitute a notice to preserve and protect covenants or restrictions from extinguishment under the Marketable Record Title Act.
6. The following covenants or restrictions affecting the community which the association desires to be preserved from extinguishment:
 - ... (Name of instrument) ...
 - ... (Official Records Book where recorded & page) ...
 - ... (List of instruments) ...
 - ... (List of recording information) ...
7. The legal description of the community affected by the listed covenants or restrictions is: ... (Legal description, which may be satisfied by reference to a recorded plat) ...

This notice is filed on behalf of ... (Name of

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407 association)... as of ...(Date)....
 408 ...(Name of association)...
 409
 410 By:
 411 ...(Name of individual officer)...
 412 ...(Title of officer)...
 413 ...(Notary acknowledgment)...
 414

415 (3) A copy of the notice, as filed, must be included as
 416 part of the next notice of meeting or other mailing sent to all
 417 members.

418 (4) The original signed notice must be recorded in the
 419 official records of the clerk of the circuit court or other
 420 recorder for the county.

421 Section 9. Section 702.09, Florida Statutes, is amended to
 422 read:

423 702.09 Definitions.—For the purposes of ss. 702.07 and
 424 702.08, the words “decree of foreclosure” shall include a
 425 judgment or order rendered or passed in the foreclosure
 426 proceedings in which the decree of foreclosure shall be
 427 rescinded, vacated, and set aside; the word “mortgage” shall
 428 mean any written instrument securing the payment of money or
 429 advances and includes liens to secure payment of assessments
 430 arising under chapters 718 and 719 and liens created pursuant to
 431 the recorded covenants of a property owners’ ~~homeowners’~~
 432 association as defined in s. 712.01; the word “debt” shall
 433 include promissory notes, bonds, and all other written
 434 obligations given for the payment of money; the words
 435 “foreclosure proceedings” shall embrace every action in the

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436 circuit or county courts of this state wherein it is sought to
437 foreclose a mortgage and sell the property covered by the same;
438 and the word "property" shall mean and include both real and
439 personal property.

440 Section 10. Subsection (1) of section 702.10, Florida
441 Statutes, is amended to read:

442 702.10 Order to show cause; entry of final judgment of
443 foreclosure; payment during foreclosure.—

444 (1) A lienholder may request an order to show cause for the
445 entry of final judgment in a foreclosure action. For purposes of
446 this section, the term "lienholder" includes the plaintiff and a
447 defendant to the action who holds a lien encumbering the
448 property or a defendant who, by virtue of its status as a
449 condominium association, cooperative association, or property
450 owners' ~~homeowners'~~ association, may file a lien against the
451 real property subject to foreclosure. Upon filing, the court
452 shall immediately review the request and the court file in
453 chambers and without a hearing. If, upon examination of the
454 court file, the court finds that the complaint is verified,
455 complies with s. 702.015, and alleges a cause of action to
456 foreclose on real property, the court shall promptly issue an
457 order directed to the other parties named in the action to show
458 cause why a final judgment of foreclosure should not be entered.

459 (a) The order shall:

460 1. Set the date and time for a hearing to show cause. The
461 date for the hearing may not occur sooner than the later of 20
462 days after service of the order to show cause or 45 days after
463 service of the initial complaint. When service is obtained by
464 publication, the date for the hearing may not be set sooner than

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465 30 days after the first publication.

466 2. Direct the time within which service of the order to
467 show cause and the complaint must be made upon the defendant.

468 3. State that the filing of defenses by a motion, a
469 responsive pleading, an affidavit, or other papers before the
470 hearing to show cause that raise a genuine issue of material
471 fact which would preclude the entry of summary judgment or
472 otherwise constitute a legal defense to foreclosure shall
473 constitute cause for the court not to enter final judgment.

474 4. State that a defendant has the right to file affidavits
475 or other papers before the time of the hearing to show cause and
476 may appear personally or by way of an attorney at the hearing.

477 5. State that, if a defendant files defenses by a motion, a
478 verified or sworn answer, affidavits, or other papers or appears
479 personally or by way of an attorney at the time of the hearing,
480 the hearing time will be used to hear and consider whether the
481 defendant's motion, answer, affidavits, other papers, and other
482 evidence and argument as may be presented by the defendant or
483 the defendant's attorney raise a genuine issue of material fact
484 which would preclude the entry of summary judgment or otherwise
485 constitute a legal defense to foreclosure. The order shall also
486 state that the court may enter an order of final judgment of
487 foreclosure at the hearing and order the clerk of the court to
488 conduct a foreclosure sale.

489 6. State that, if a defendant fails to appear at the
490 hearing to show cause or fails to file defenses by a motion or
491 by a verified or sworn answer or files an answer not contesting
492 the foreclosure, such defendant may be considered to have waived
493 the right to a hearing, and in such case, the court may enter a

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494 default against such defendant and, if appropriate, a final
495 judgment of foreclosure ordering the clerk of the court to
496 conduct a foreclosure sale.

497 7. State that if the mortgage provides for reasonable
498 attorney fees and the requested attorney fees do not exceed 3
499 percent of the principal amount owed at the time of filing the
500 complaint, it is unnecessary for the court to hold a hearing or
501 adjudge the requested attorney fees to be reasonable.

502 8. Attach the form of the proposed final judgment of
503 foreclosure which the movant requests the court to enter at the
504 hearing on the order to show cause.

505 9. Require the party seeking final judgment to serve a copy
506 of the order to show cause on the other parties in the following
507 manner:

508 a. If a party has been served pursuant to chapter 48 with
509 the complaint and original process, or the other party is the
510 plaintiff in the action, service of the order to show cause on
511 that party may be made in the manner provided in the Florida
512 Rules of Civil Procedure.

513 b. If a defendant has not been served pursuant to chapter
514 48 with the complaint and original process, the order to show
515 cause, together with the summons and a copy of the complaint,
516 shall be served on the party in the same manner as provided by
517 law for original process.

518

519 Any final judgment of foreclosure entered under this subsection
520 is for in rem relief only. This subsection does not preclude the
521 entry of a deficiency judgment where otherwise allowed by law.
522 The Legislature intends that this alternative procedure may run

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523 simultaneously with other court procedures.

524 (b) The right to be heard at the hearing to show cause is
525 waived if a defendant, after being served as provided by law
526 with an order to show cause, engages in conduct that clearly
527 shows that the defendant has relinquished the right to be heard
528 on that order. The defendant's failure to file defenses by a
529 motion or by a sworn or verified answer, affidavits, or other
530 papers or to appear personally or by way of an attorney at the
531 hearing duly scheduled on the order to show cause presumptively
532 constitutes conduct that clearly shows that the defendant has
533 relinquished the right to be heard. If a defendant files
534 defenses by a motion, a verified answer, affidavits, or other
535 papers or presents evidence at or before the hearing which raise
536 a genuine issue of material fact which would preclude entry of
537 summary judgment or otherwise constitute a legal defense to
538 foreclosure, such action constitutes cause and precludes the
539 entry of a final judgment at the hearing to show cause.

540 (c) In a mortgage foreclosure proceeding, when a final
541 judgment of foreclosure has been entered against the mortgagor
542 and the note or mortgage provides for the award of reasonable
543 attorney fees, it is unnecessary for the court to hold a hearing
544 or adjudge the requested attorney fees to be reasonable if the
545 fees do not exceed 3 percent of the principal amount owed on the
546 note or mortgage at the time of filing, even if the note or
547 mortgage does not specify the percentage of the original amount
548 that would be paid as liquidated damages.

549 (d) If the court finds that all defendants have waived the
550 right to be heard as provided in paragraph (b), the court shall
551 promptly enter a final judgment of foreclosure without the need

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552 for further hearing if the plaintiff has shown entitlement to a
553 final judgment and upon the filing with the court of the
554 original note, satisfaction of the conditions for establishment
555 of a lost note, or upon a showing to the court that the
556 obligation to be foreclosed is not evidenced by a promissory
557 note or other negotiable instrument. If the court finds that a
558 defendant has not waived the right to be heard on the order to
559 show cause, the court shall determine whether there is cause not
560 to enter a final judgment of foreclosure. If the court finds
561 that the defendant has not shown cause, the court shall promptly
562 enter a judgment of foreclosure. If the time allotted for the
563 hearing is insufficient, the court may announce at the hearing a
564 date and time for the continued hearing. Only the parties who
565 appear, individually or through an attorney, at the initial
566 hearing must be notified of the date and time of the continued
567 hearing.

568 Section 11. Section 712.095, Florida Statutes, is amended
569 to read:

570 712.095 Notice required by July 1, 1983.—Any person whose
571 interest in land is derived from an instrument or court
572 proceeding recorded subsequent to the root of title, which
573 instrument or proceeding did not contain a description of the
574 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
575 interest had not been extinguished prior to July 1, 1981, shall
576 have until July 1, 1983, to file a notice in accordance with s.
577 712.06 to preserve the interest.

578 Section 12. Section 720.403, Florida Statutes, is amended
579 to read:

580 720.403 Preservation of ~~residential~~ communities; revival of

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581 declaration of covenants.-

582 (1) Consistent with required and optional elements of local
583 comprehensive plans and other applicable provisions of the
584 Community Planning Act, property owners ~~homeowners~~ are
585 encouraged to preserve existing residential and other
586 communities, promote available and affordable housing, protect
587 structural and aesthetic elements of their ~~residential~~
588 community, and, as applicable, maintain roads and streets,
589 easements, water and sewer systems, utilities, drainage
590 improvements, conservation and open areas, recreational
591 amenities, and other infrastructure and common areas that serve
592 and support the ~~residential~~ community by the revival of a
593 previous declaration of covenants and other governing documents
594 that may have ceased to govern some or all parcels in the
595 community.

596 (2) In order to preserve a ~~residential~~ community and the
597 associated infrastructure and common areas for the purposes
598 described in this section, the parcel owners in a community that
599 was previously subject to a declaration of covenants that has
600 ceased to govern one or more parcels in the community may revive
601 the declaration and the ~~homeowners'~~ association for the
602 community upon approval by the parcel owners to be governed
603 thereby as provided in this act, and upon approval of the
604 declaration and the other governing documents for the
605 association by the Department of Economic Opportunity in a
606 manner consistent with this act.

607 (3) Part III of this chapter is intended to provide
608 mechanisms for the revitalization of covenants or restrictions
609 for all types of communities and property associations and is

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610 not limited to residential communities.

611 Section 13. Section 720.404, Florida Statutes, is amended
612 to read:

613 720.404 Eligible ~~residential~~ communities; requirements for
614 revival of declaration.—Parcel owners in a community are
615 eligible to seek approval from the Department of Economic
616 Opportunity to revive a declaration of covenants under this act
617 if all of the following requirements are met:

618 (1) All parcels to be governed by the revived declaration
619 must have been once governed by a previous declaration that has
620 ceased to govern some or all of the parcels in the community;

621 (2) The revived declaration must be approved in the manner
622 provided in s. 720.405(6); and

623 (3) The revived declaration may not contain covenants that
624 are more restrictive on the parcel owners than the covenants
625 contained in the previous declaration, except that the
626 declaration may:

627 (a) Have an effective term of longer duration than the term
628 of the previous declaration;

629 (b) Omit restrictions contained in the previous
630 declaration;

631 (c) Govern fewer than all of the parcels governed by the
632 previous declaration;

633 (d) Provide for amendments to the declaration and other
634 governing documents; and

635 (e) Contain provisions required by this chapter for new
636 declarations that were not contained in the previous
637 declaration.

638 Section 14. Subsections (1), (3), (5), and (6) of section

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639 720.405, Florida Statutes, are amended to read:

640 720.405 Organizing committee; parcel owner approval.—

641 (1) The proposal to revive a declaration of covenants and
642 an a-homeowners' association for a community under the terms of
643 this act shall be initiated by an organizing committee
644 consisting of not less than three parcel owners located in the
645 community that is proposed to be governed by the revived
646 declaration. The name, address, and telephone number of each
647 member of the organizing committee must be included in any
648 notice or other document provided by the committee to parcel
649 owners to be affected by the proposed revived declaration.

650 (3) The organizing committee shall prepare the full text of
651 the proposed articles of incorporation and bylaws of the revived
652 homeowners' association to be submitted to the parcel owners for
653 approval, unless the association is then an existing
654 corporation, in which case the organizing committee shall
655 prepare the existing articles of incorporation and bylaws to be
656 submitted to the parcel owners.

657 (5) A copy of the complete text of the proposed revised
658 declaration of covenants, the proposed new or existing articles
659 of incorporation and bylaws of the homeowners' association, and
660 a graphic depiction of the property to be governed by the
661 revived declaration shall be presented to all of the affected
662 parcel owners by mail or hand delivery not less than 14 days
663 before the time that the consent of the affected parcel owners
664 to the proposed governing documents is sought by the organizing
665 committee.

666 (6) A majority of the affected parcel owners must agree in
667 writing to the revived declaration of covenants and governing

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668 documents of the ~~homeowners'~~ association or approve the revived
669 declaration and governing documents by a vote at a meeting of
670 the affected parcel owners noticed and conducted in the manner
671 prescribed by s. 720.306. Proof of notice of the meeting to all
672 affected owners of the meeting and the minutes of the meeting
673 recording the votes of the property owners shall be certified by
674 a court reporter or an attorney licensed to practice in the
675 state.

676 Section 15. Subsection (3) of section 720.407, Florida
677 Statutes, is amended to read:

678 720.407 Recording; notice of recording; applicability and
679 effective date.—

680 (3) The recorded documents shall include the full text of
681 the approved declaration of covenants, the articles of
682 incorporation and bylaws of the ~~homeowners'~~ association, the
683 letter of approval by the department, and the legal description
684 of each affected parcel of property. For purposes of chapter
685 712, the association is deemed to be and shall be indexed as the
686 grantee in a title transaction and the parcel owners named in
687 the revived declaration are deemed to be and shall be indexed as
688 the grantors in the title transaction.

689 Section 16. This act shall take effect October 1, 2018.