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HB 617, Engrossed 1

2018 Legislature

1
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

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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

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

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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.
 58

59 Be It Enacted by the Legislature of the State of Florida:

60
 61 Section 1. Section 712.001, Florida Statutes, is created
 62 to 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
 69 agreement or limitation contained in a document recorded in the
 70 public 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

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

100 (3)-(5) ~~The term~~ "Parcel" means any real property that

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101 ~~which is used for residential purposes that is subject to~~
 102 ~~exclusive ownership and which is subject to any covenant or~~
 103 ~~restriction of 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
 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
 125 protect a community covenant or restriction from extinguishment

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126 by the operation of this chapter by filing for record, at any
 127 time during the 30-year period immediately following the
 128 effective 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 community
 132 covenant or restriction that is indexed under the legal name of
 133 the property owners' association and references the recording
 134 information of the covenant or restriction to be preserved.

135 Failure of a summary notice or amendment to be indexed to the
 136 current owners of the affected property does not affect the
 137 validity of the notice or vitiate the effect of the filing of
 138 such notice.

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

149 (a) Under a disability;

150 (b) Unable to assert a claim on his or her behalf; or

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151 (c) One of a class, but whose identity cannot be
 152 established or is uncertain at the time of filing such notice of
 153 claim for record.

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

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

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

174 712.06 Contents of notice; recording and indexing.—

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

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

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

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

197 |
 198 | STATEMENT OF MARKETABLE TITLE ACTION
 199 |

200 | The [name of property owners' ~~homeowners'~~ association] (the

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201 "Association") has taken action to ensure that the [name of
202 declaration, covenant, or restriction], recorded in Official
203 Records Book, Page, of the public records of
204 County, Florida, as may be amended from time to time, currently
205 burdening the property of each and every member of the
206 Association, retains its status ~~as the source of marketable~~
207 ~~title~~ with regard to the affected real property ~~the transfer of~~
208 ~~a member's residence~~. To this end, the Association shall cause
209 the notice required by chapter 712, Florida Statutes, to be
210 recorded in the public records of County, Florida. Copies
211 of this notice and its attachments are available through the
212 Association pursuant to the Association's governing documents
213 regarding official records of the Association.

214

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

223 (d) A statement of the claim showing the nature,
224 description, and extent of such claim or other right subject to
225 extinguishment under this chapter or, in the case of a covenant

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226 or restriction, a copy of the covenant or restriction or a
 227 reference to the book and page or instrument number in which the
 228 same is recorded, except that it is ~~shall~~ not be necessary to
 229 show the amount of any claim for money or the terms of payment.

230 (e) If such claim or other right subject to extinguishment
 231 under this chapter is based upon an instrument of record or a
 232 recorded covenant or restriction, such instrument of record or
 233 recorded covenant or restriction shall be deemed sufficiently
 234 described to identify the same if the notice includes a
 235 reference to the book and page in which the same is recorded.

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

238 (3) The person providing the notice referred to in s.
 239 712.05, other than a notice for preservation of a community
 240 covenant or restriction, shall:

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

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251 several addresses stated, and the clerk shall send one such copy
 252 to the purported owners named at each respective address. Such
 253 certificate shall be sufficient if the same reads substantially
 254 as follows:

255

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

259

260 ...(Clerk of the circuit court)...
 261 of County, Florida,
 262 By...(Deputy clerk)...

263

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

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

273 Section 5. Section 712.11, Florida Statutes, is amended to
 274 read:

275 712.11 Covenant revitalization.—A property owners'

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276 ~~homeowners'~~ association not otherwise subject to chapter 720 may
 277 use the procedures set forth in ss. 720.403-720.407 to revive
 278 covenants that have lapsed under the terms of this chapter.

279 Section 6. Section 712.12, Florida Statutes, is created to
 280 read:

281 712.12 Covenant or restriction revitalization by parcel
 282 owners not subject to a homeowners' association.—

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

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

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

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

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

300 (2) The parcel owners of a community not subject to a

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301 homeowners' association may use the procedures set forth in ss.
302 720.403-720.407 to revive covenants or restrictions that have
303 lapsed under the terms of this chapter, except:

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

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

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

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

317 (3) With respect to any parcel that has ceased to be
318 governed by covenants or restrictions as of October 1, 2018, the
319 parcel owner may commence an action by October 1, 2019, for a
320 judicial determination that the covenants or restrictions did
321 not govern that parcel as of October 1, 2018, and that any
322 revitalization of such covenants or restrictions as to that
323 parcel would unconstitutionally deprive the parcel owner of
324 rights or property.

325 (4) Revived covenants or restrictions that are implemented

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

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

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

337 (2) BOARD MEETINGS.—

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

346 Section 8. Section 720.3032, Florida Statutes, is created
 347 to read:

348 720.3032 Notice of association information; preservation
 349 from Marketable Record Title Act.—

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

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

354 (a) The legal name of the association.

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

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

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

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

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

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

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

375 (2) Recording a document in substantially the following

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376 form satisfies the notice obligation and constitutes a summary
 377 notice as specified in s. 712.05(2)(b) sufficient to preserve
 378 and protect the referenced covenants and restrictions from
 379 extinguishment under the Marketable Record Title Act, chapter
 380 712.

381
 382 Notice of ...(name of association)... under s. 720.3032, Florida
 383 Statutes, and notice to preserve and protect covenants and
 384 restrictions from extinguishment under the Marketable Record
 385 Title Act, chapter 712, Florida Statutes.

386
 387 Instructions to recorder: Please index both the legal name
 388 of the association and the names shown in item 3.

389 1. Legal name of association:

390 2. Mailing and physical addresses of association:

391

392 3. Names of the subdivision plats, or, if none, common
 393 name of community:

394 4. Name, address, and telephone number for management
 395 company, if any:

396 5. This notice does does not constitute a notice
 397 to preserve and protect covenants or restrictions from
 398 extinguishment under the Marketable Record Title Act.

399 6. The following covenants or restrictions affecting the
 400 community which the association desires to be preserved from

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401 extinguishment:
 402 ...(Name of instrument)...
 403 ...(Official Records Book where recorded & page)...
 404 ...(List of instruments)...
 405 ...(List of recording information)...
 406 7. The legal description of the community affected by the
 407 listed covenants or restrictions is: ...(Legal description,
 408 which may be satisfied by reference to a recorded plat)...
 409 This notice is filed on behalf of ...(Name of
 410 association) ... as of ...(Date)....
 411 ...(Name of association)...
 412
 413 By:
 414 ...(Name of individual officer)...
 415 ...(Title of officer)...
 416 ...(Notary acknowledgment)...
 417
 418 (3) A copy of the notice, as filed, must be included as
 419 part of the next notice of meeting or other mailing sent to all
 420 members.
 421 (4) The original signed notice must be recorded in the
 422 official records of the clerk of the circuit court or other
 423 recorder for the county.
 424 Section 9. Section 702.09, Florida Statutes, is amended to
 425 read:

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426 702.09 Definitions.—For the purposes of ss. 702.07 and
 427 702.08, the words "decree of foreclosure" shall include a
 428 judgment or order rendered or passed in the foreclosure
 429 proceedings in which the decree of foreclosure shall be
 430 rescinded, vacated, and set aside; the word "mortgage" shall
 431 mean any written instrument securing the payment of money or
 432 advances and includes liens to secure payment of assessments
 433 arising under chapters 718 and 719 and liens created pursuant to
 434 the recorded covenants of a property owners' ~~homeowners'~~
 435 association as defined in s. 712.01; the word "debt" shall
 436 include promissory notes, bonds, and all other written
 437 obligations given for the payment of money; the words
 438 "foreclosure proceedings" shall embrace every action in the
 439 circuit or county courts of this state wherein it is sought to
 440 foreclose a mortgage and sell the property covered by the same;
 441 and the word "property" shall mean and include both real and
 442 personal property.

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

445 702.10 Order to show cause; entry of final judgment of
 446 foreclosure; payment during foreclosure.—

447 (1) A lienholder may request an order to show cause for
 448 the entry of final judgment in a foreclosure action. For
 449 purposes of this section, the term "lienholder" includes the
 450 plaintiff and a defendant to the action who holds a lien

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451 encumbering the property or a defendant who, by virtue of its
452 status as a condominium association, cooperative association, or
453 property owners' ~~homeowners'~~ association, may file a lien
454 against the real property subject to foreclosure. Upon filing,
455 the court shall immediately review the request and the court
456 file in chambers and without a hearing. If, upon examination of
457 the court file, the court finds that the complaint is verified,
458 complies with s. 702.015, and alleges a cause of action to
459 foreclose on real property, the court shall promptly issue an
460 order directed to the other parties named in the action to show
461 cause why a final judgment of foreclosure should not be entered.

462 (a) The order shall:

463 1. Set the date and time for a hearing to show cause. The
464 date for the hearing may not occur sooner than the later of 20
465 days after service of the order to show cause or 45 days after
466 service of the initial complaint. When service is obtained by
467 publication, the date for the hearing may not be set sooner than
468 30 days after the first publication.

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

471 3. State that the filing of defenses by a motion, a
472 responsive pleading, an affidavit, or other papers before the
473 hearing to show cause that raise a genuine issue of material
474 fact which would preclude the entry of summary judgment or
475 otherwise constitute a legal defense to foreclosure shall

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476 | constitute cause for the court not to enter final judgment.

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

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

492 | 6. State that, if a defendant fails to appear at the
 493 | hearing to show cause or fails to file defenses by a motion or
 494 | by a verified or sworn answer or files an answer not contesting
 495 | the foreclosure, such defendant may be considered to have waived
 496 | the right to a hearing, and in such case, the court may enter a
 497 | default against such defendant and, if appropriate, a final
 498 | judgment of foreclosure ordering the clerk of the court to
 499 | conduct a foreclosure sale.

500 | 7. State that if the mortgage provides for reasonable

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501 attorney fees and the requested attorney fees do not exceed 3
502 percent of the principal amount owed at the time of filing the
503 complaint, it is unnecessary for the court to hold a hearing or
504 adjudge the requested attorney fees to be reasonable.

505 8. Attach the form of the proposed final judgment of
506 foreclosure which the movant requests the court to enter at the
507 hearing on the order to show cause.

508 9. Require the party seeking final judgment to serve a
509 copy of the order to show cause on the other parties in the
510 following manner:

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

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

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

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526 | simultaneously with other court procedures.

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

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

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551 that would be paid as liquidated damages.

552 (d) If the court finds that all defendants have waived the
553 right to be heard as provided in paragraph (b), the court shall
554 promptly enter a final judgment of foreclosure without the need
555 for further hearing if the plaintiff has shown entitlement to a
556 final judgment and upon the filing with the court of the
557 original note, satisfaction of the conditions for establishment
558 of a lost note, or upon a showing to the court that the
559 obligation to be foreclosed is not evidenced by a promissory
560 note or other negotiable instrument. If the court finds that a
561 defendant has not waived the right to be heard on the order to
562 show cause, the court shall determine whether there is cause not
563 to enter a final judgment of foreclosure. If the court finds
564 that the defendant has not shown cause, the court shall promptly
565 enter a judgment of foreclosure. If the time allotted for the
566 hearing is insufficient, the court may announce at the hearing a
567 date and time for the continued hearing. Only the parties who
568 appear, individually or through an attorney, at the initial
569 hearing must be notified of the date and time of the continued
570 hearing.

571 Section 11. Section 712.095, Florida Statutes, is amended
572 to read:

573 712.095 Notice required by July 1, 1983.—Any person whose
574 interest in land is derived from an instrument or court
575 proceeding recorded subsequent to the root of title, which

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576 instrument or proceeding did not contain a description of the
577 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose
578 interest had not been extinguished prior to July 1, 1981, shall
579 have until July 1, 1983, to file a notice in accordance with s.
580 712.06 to preserve the interest.

581 Section 12. Section 720.403, Florida Statutes, is amended
582 to read:

583 720.403 Preservation of ~~residential~~ communities; revival
584 of declaration of covenants.—

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

599 (2) In order to preserve a ~~residential~~ community and the
600 associated infrastructure and common areas for the purposes

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601 described in this section, the parcel owners in a community that
602 was previously subject to a declaration of covenants that has
603 ceased to govern one or more parcels in the community may revive
604 the declaration and the ~~homeowners'~~ association for the
605 community upon approval by the parcel owners to be governed
606 thereby as provided in this act, and upon approval of the
607 declaration and the other governing documents for the
608 association by the Department of Economic Opportunity in a
609 manner consistent with this act.

610 (3) Part III of this chapter is intended to provide
611 mechanisms for the revitalization of covenants or restrictions
612 for all types of communities and property associations and is
613 not limited to residential communities.

614 Section 13. Section 720.404, Florida Statutes, is amended
615 to read:

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

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

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

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

630 (a) Have an effective term of longer duration than the
 631 term of the previous declaration;

632 (b) Omit restrictions contained in the previous
 633 declaration;

634 (c) Govern fewer than all of the parcels governed by the
 635 previous declaration;

636 (d) Provide for amendments to the declaration and other
 637 governing documents; and

638 (e) Contain provisions required by this chapter for new
 639 declarations that were not contained in the previous
 640 declaration.

641 Section 14. Subsections (1), (3), (5), and (6) of section
 642 720.405, Florida Statutes, are amended to read:

643 720.405 Organizing committee; parcel owner approval.—

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

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651 notice or other document provided by the committee to parcel
652 owners to be affected by the proposed revived declaration.

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

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

669 (6) A majority of the affected parcel owners must agree in
670 writing to the revived declaration of covenants and governing
671 documents of the ~~homeowners'~~ association or approve the revived
672 declaration and governing documents by a vote at a meeting of
673 the affected parcel owners noticed and conducted in the manner
674 prescribed by s. 720.306. Proof of notice of the meeting to all
675 affected owners of the meeting and the minutes of the meeting

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676 | recording the votes of the property owners shall be certified by
677 | a court reporter or an attorney licensed to practice in the
678 | state.

679 | Section 15. Subsection (3) of section 720.407, Florida
680 | Statutes, is amended to read:

681 | 720.407 Recording; notice of recording; applicability and
682 | effective date.—

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

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