

1                   A bill to be entitled  
2           An act relating to covenants and restrictions;  
3           amending ss. 125.022 and 166.033, F.S.; deleting  
4           provisions specifying that a county or municipality is  
5           not prohibited from providing information to an  
6           applicant regarding other state or federal permits  
7           that may apply under certain circumstances; specifying  
8           that the imposition or acceptance of certain  
9           restrictions or covenants does not preclude a county  
10          or municipality from exercising its police power, in  
11          its sole discretion, to later amend, release, or  
12          terminate such restrictions or covenants; prohibiting  
13          a county or municipality from delegating its police  
14          power to a third party by restriction, covenant, or  
15          otherwise; declaring any such purported delegation  
16          void; providing for retroactive applicability;  
17          creating s. 712.001, F.S.; providing a short title;  
18          amending s. 712.01, F.S.; defining and redefining  
19          terms; amending s. 712.04, F.S.; providing that a  
20          marketable title is free and clear of all covenants or  
21          restrictions, the existence of which depends upon any  
22          act, title transaction, event, zoning requirement,  
23          building or development permit, or omission that  
24          occurred before the effective date of the root of  
25          title; providing for construction; providing

26 applicability; amending s. 712.05, F.S.; revising the  
27 notice filing requirements for a person claiming an  
28 interest in land and other rights; authorizing a  
29 property owners' association to preserve and protect  
30 certain covenants or restrictions from extinguishment,  
31 subject to specified requirements; providing that a  
32 failure in indexing does not affect the validity of  
33 the notice; extending the length of time certain  
34 covenants or restrictions are preserved; deleting a  
35 provision requiring a two-thirds vote by members of an  
36 incorporated homeowners' association to file certain  
37 notices; conforming provisions to changes made by the  
38 act; amending s. 712.06, F.S.; exempting a specified  
39 summary notice from certain notice content  
40 requirements; revising the contents required to be  
41 specified by certain notices; conforming provisions to  
42 changes made by the act; amending s. 712.11, F.S.;  
43 conforming provisions to changes made by the act;  
44 creating s. 712.12, F.S.; defining terms; authorizing  
45 the parcel owners of a community not subject to a  
46 homeowners' association to use specified procedures to  
47 revive certain covenants or restrictions, subject to  
48 certain exceptions and requirements; authorizing a  
49 parcel owner to commence an action by a specified date  
50 under certain circumstances for a judicial

51 determination that the covenants or restrictions did  
52 not govern that parcel as of a specified date and that  
53 any revitalization of such covenants or restrictions  
54 as to that parcel would unconstitutionally deprive the  
55 parcel owner of rights or property; providing  
56 applicability; amending s. 720.303, F.S.; requiring a  
57 board to take up certain provisions relating to notice  
58 filings at the first board meeting; creating s.  
59 720.3032, F.S.; providing recording requirements for  
60 an association; providing a document form for  
61 recording by an association to preserve certain  
62 covenants or restrictions; providing that failure to  
63 file one or more notices does not affect the validity  
64 or enforceability of a covenant or restriction or  
65 alter the time before extinguishment under certain  
66 circumstances; requiring a copy of the filed notice to  
67 be sent to all members; requiring the original signed  
68 notice to be recorded with the clerk of the circuit  
69 court or other recorder; amending ss. 702.09 and  
70 702.10, F.S.; conforming provisions to changes made by  
71 the act; amending s. 712.095, F.S.; conforming a  
72 cross-reference; amending ss. 720.403, 720.404,  
73 720.405, and 720.407, F.S.; conforming provisions to  
74 changes made by the act; providing an effective date.  
75

76 | Be It Enacted by the Legislature of the State of Florida:

77 |

78 |       Section 1. Subsection (6) of section 125.022, Florida  
79 | Statutes, is amended to read:

80 |           125.022 Development permits.—

81 |       (6) A county may not delegate its police power to a third  
82 | party by restriction, covenant, or otherwise, and any such  
83 | purported delegation is hereby declared to be void. The  
84 | imposition or acceptance of a recorded or unrecorded restriction  
85 | or covenant as a condition of a county's approval or issuance of  
86 | a development permit does not preclude the county from  
87 | exercising its police power, in its sole discretion, to later  
88 | amend, release, or terminate the restriction or covenant. Any  
89 | such amendment, release, or termination of the restriction or  
90 | covenant must follow the procedural requirements in s.  
91 | 125.66(4). ~~This section does not prohibit a county from~~  
92 | ~~providing information to an applicant regarding what other state~~  
93 | ~~or federal permits may apply.~~

94 |       Section 2. Subsection (6) of section 166.033, Florida  
95 | Statutes, is amended to read:

96 |           166.033 Development permits.—

97 |       (6) A municipality may not delegate its police power to a  
98 | third party by restriction, covenant, or otherwise, and any such  
99 | purported delegation is hereby declared to be void. The  
100 | imposition or acceptance of a recorded or unrecorded restriction

101 or covenant as a condition of a municipality's approval or  
 102 issuance of a development permit does not preclude a  
 103 municipality from exercising its police power, in its sole  
 104 discretion, to later amend, release, or terminate the  
 105 restriction or covenant. Any such amendment, release, or  
 106 termination of the restriction or covenant must follow the  
 107 procedural requirements in s. 166.041(3)(c). ~~This section does~~  
 108 ~~not prohibit a municipality from providing information to an~~  
 109 ~~applicant regarding what other state or federal permits may~~  
 110 ~~apply.~~

111 Section 3. The amendments by this act to ss. 125.022 and  
 112 166.033, Florida Statutes, which relate to development permits,  
 113 are remedial in nature and apply retroactively.

114 Section 4. Section 712.001, Florida Statutes, is created  
 115 to read:

116 712.001 Short title.—This chapter may be cited as the  
 117 "Marketable Record Title Act."

118 Section 5. Section 712.01, Florida Statutes, is reordered  
 119 and amended to read:

120 712.01 Definitions.—As used in this chapter, the term law:

121 (1) "Community covenant or restriction" means any  
 122 agreement or limitation contained in a document recorded in the  
 123 public records of the county in which a parcel is located which:

124 (a) Subjects the parcel to any use restriction that may be  
 125 enforced by a property owners' association; or

126 (b) Authorizes a property owners' association to impose a  
 127 charge or assessment against the parcel or the parcel owner.

128 (2)-(6) The term "Covenant or restriction" means any  
 129 agreement or limitation contained in a document recorded in the  
 130 public records of the county in which a parcel is located which  
 131 subjects the parcel to any use or other restriction or  
 132 obligation which may be enforced by a homeowners' association or  
 133 which authorizes a homeowners' association to impose a charge or  
 134 assessment against the parcel or the owner of the parcel or  
 135 which may be enforced by the Florida Department of Environmental  
 136 Protection pursuant to chapter 376 or chapter 403.

137 (3)-(5) The term "Parcel" means real property that which is  
 138 used for residential purposes and that is subject to exclusive  
 139 ownership and ~~which is subject~~ to any covenant or restriction of  
 140 a property owners' ~~homeowners'~~ association.

141 (4)-(1) The term "Person" includes the as used herein  
 142 denotes singular or plural, natural or corporate, private or  
 143 governmental, including the state and any political subdivision  
 144 or agency thereof as the context for the use thereof requires or  
 145 denotes and including any property owners' ~~homeowners'~~  
 146 association.

147 (5)-(4) "Property owners' association" ~~The term~~  
 148 "~~homeowners' association~~" means a homeowners' association as  
 149 defined in s. 720.301, a corporation or other entity responsible  
 150 for the operation of property in which the voting membership is

151 made up of the owners of the property or their agents, or a  
152 combination thereof, and in which membership is a mandatory  
153 condition of property ownership, or an association of parcel  
154 owners which is authorized to enforce a community covenant or  
155 restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.

156 (6)-(2) "Root of title" means any title transaction  
157 purporting to create or transfer the estate claimed by any  
158 person ~~and~~ which is the last title transaction to have been  
159 recorded at least 30 years before ~~prior to~~ the time when  
160 marketability is being determined. The effective date of the  
161 root of title is the date on which it was recorded.

162 (7)-(3) "Title transaction" means any recorded instrument  
163 or court proceeding that ~~which~~ affects title to any estate or  
164 interest in land and that ~~which~~ describes the land sufficiently  
165 to identify its location and boundaries.

166 Section 6. Section 712.04, Florida Statutes, is amended to  
167 read:

168 712.04 Interests extinguished by marketable record title.-

169 (1) Subject to s. 712.03, a marketable record title is  
170 free and clear of all estates, interests, claims, covenants,  
171 restrictions, or charges, the existence of which depends upon  
172 any act, title transaction, event, zoning requirement, building  
173 or development permit, or omission that occurred before the  
174 effective date of the root of title. Except as provided in s.  
175 712.03, all such estates, interests, claims, covenants,

176 restrictions, or charges, however denominated, whether they are  
 177 or appear to be held or asserted by a person sui juris or under  
 178 a disability, whether such person is within or without the  
 179 state, natural or corporate, or private or governmental, are  
 180 declared to be null and void. However, this chapter does not  
 181 affect any right, title, or interest of the United States,  
 182 Florida, or any of its officers, boards, commissions, or other  
 183 agencies reserved in the patent or deed by which the United  
 184 States, Florida, or any of its agencies parted with title.

185 (2) This section may not be construed to alter or  
 186 invalidate a zoning ordinance, land development regulation,  
 187 building code, or other ordinance, rule, regulation, or law if  
 188 such ordinance, rule, regulation, or law operates independently  
 189 of matters recorded in the official records.

190 (3) This section is intended to clarify existing law, is  
 191 remedial in nature, and applies to all restrictions and  
 192 covenants whether imposed or accepted before, on, or after  
 193 October 1, 2017.

194 Section 7. Section 712.05, Florida Statutes, is amended to  
 195 read:

196 712.05 Effect of filing notice.-

197 (1) A person claiming an interest in land or other right  
 198 subject to extinguishment under this chapter ~~a homeowners'~~  
 199 ~~association desiring to preserve a covenant or restriction~~ may  
 200 preserve and protect such interest or right ~~the same~~ from



201 | extinguishment by the operation of this chapter ~~act~~ by filing  
202 | for record, at any time during the 30-year period immediately  
203 | following the effective date of the root of title, a written  
204 | notice in accordance with s. 712.06 ~~this chapter~~.

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

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

211 |           (b) A summary notice in substantial form and content as  
212 | required under s. 720.3032(2). Failure of a summary notice to be  
213 | indexed to the current owners of the affected property does not  
214 | affect the validity of the notice or vitiate the effect of the  
215 | filing of such notice.

216 |       (3) A ~~Such~~ notice under subsection (1) or subsection (2)  
217 | preserves an interest in land or other ~~such claim of right~~  
218 | subject to extinguishment under this chapter, or a ~~such~~ covenant  
219 | or restriction or portion of such covenant or restriction, for  
220 | not less than ~~up to~~ 30 years after filing the notice unless the  
221 | notice is filed again as required in this chapter. A person's  
222 | disability or lack of knowledge of any kind may not delay the  
223 | commencement of or suspend the running of the 30-year period.  
224 | Such notice may be filed for record by the claimant or by any  
225 | other person acting on behalf of a claimant who is:

- 226 (a) Under a disability;
- 227 (b) Unable to assert a claim on his or her behalf; or
- 228 (c) One of a class, but whose identity cannot be
- 229 established or is uncertain at the time of filing such notice of
- 230 claim for record.

231

232 ~~Such notice may be filed by a homeowners' association only if~~

233 ~~the preservation of such covenant or restriction or portion of~~

234 ~~such covenant or restriction is approved by at least two-thirds~~

235 ~~of the members of the board of directors of an incorporated~~

236 ~~homeowners' association at a meeting for which a notice, stating~~

237 ~~the meeting's time and place and containing the statement of~~

238 ~~marketable title action described in s. 712.06(1)(b), was mailed~~

239 ~~or hand delivered to members of the homeowners' association at~~

240 ~~least 7 days before such meeting. The property owners'~~

241 ~~homeowners' association or clerk of the circuit court is not~~

242 ~~required to provide additional notice pursuant to s. 712.06(3).~~

243 The preceding sentence is intended to clarify existing law.

244 (4) ~~(2)~~ It is ~~shall~~ not be necessary for the owner of the

245 marketable record title, as described in s. 712.02 herein

246 ~~defined~~, to file a notice to protect his or her marketable

247 record title.

248 Section 8. Subsections (1) and (3) of section 712.06,

249 Florida Statutes, are amended to read:

250 712.06 Contents of notice; recording and indexing.—

251 (1) To be effective, the notice referred to in s. 712.05,  
 252 other than the summary notice referred to in s. 712.05(2)(b),  
 253 must ~~shall~~ contain:

254 (a) The name or description and mailing address of the  
 255 claimant or the property owners' homeowners' association  
 256 desiring to preserve any covenant or restriction ~~and the name~~  
 257 ~~and particular post office address of the person filing the~~  
 258 ~~claim or the homeowners' association.~~

259 (b) The name and mailing ~~post office~~ address of an owner,  
 260 or the name and mailing ~~post office~~ address of the person in  
 261 whose name the ~~said~~ property is assessed on the last completed  
 262 tax assessment roll of the county at the time of filing, who,  
 263 for purpose of such notice, shall be deemed to be an owner;  
 264 ~~provided,~~ however, if a property owners' homeowners' association  
 265 is filing the notice, ~~then~~ the requirements of this paragraph  
 266 may be satisfied by attaching to and recording with the notice  
 267 an affidavit executed by the appropriate member of the board of  
 268 directors of the property owners' homeowners' association  
 269 affirming that the board of directors of the property owners'  
 270 ~~homeowners'~~ association caused a statement in substantially the  
 271 following form to be mailed or hand delivered to the members of  
 272 that property owners' homeowners' association:

273  
 274 STATEMENT OF MARKETABLE TITLE ACTION  
 275

276           The [name of property owners' ~~homeowners'~~ association] (the  
277 "Association") has taken action to ensure that the [name of  
278 declaration, covenant, or restriction], recorded in Official  
279 Records Book . . . ., Page . . . ., of the public records of . . . .  
280 County, Florida, as may be amended from time to time, currently  
281 burdening the property of each and every member of the  
282 Association, retains its status ~~as the source of marketable~~  
283 ~~title with regard to~~ the affected real property ~~the transfer of~~  
284 ~~a member's residence~~. To this end, the Association shall cause  
285 the notice required by chapter 712, Florida Statutes, to be  
286 recorded in the public records of . . . . County, Florida. Copies  
287 of this notice and its attachments are available through the  
288 Association pursuant to the Association's governing documents  
289 regarding official records of the Association.

290

291           (c) A full and complete description of all land affected  
292 by such notice, which description shall be set forth in  
293 particular terms and not by general reference, but if said claim  
294 is founded upon a recorded instrument or a covenant or a  
295 restriction, ~~then~~ the description in such notice may be the same  
296 as that contained in such recorded instrument or covenant or  
297 restriction, provided the same shall be sufficient to identify  
298 the property.

299           (d) A statement of the claim showing the nature,  
300 description, and extent of such claim or other right subject to

301 extinguishment under this chapter or, in the case of a covenant  
302 or restriction, a copy of the covenant or restriction, except  
303 that it is ~~shall~~ not be necessary to show the amount of any  
304 claim for money or the terms of payment.

305 (e) If such claim or other right subject to extinguishment  
306 under this chapter is based upon an instrument of record or a  
307 recorded covenant or restriction, such instrument of record or  
308 recorded covenant or restriction shall be deemed sufficiently  
309 described to identify the same if the notice includes a  
310 reference to the book and page in which the same is recorded.

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

313 (3) The person providing the notice referred to in s.  
314 712.05, other than a notice for preservation of a community  
315 covenant or restriction, shall:

316 (a) Cause the clerk of the circuit court to mail by  
317 registered or certified mail to the purported owner of said  
318 property, as stated in such notice, a copy thereof and shall  
319 enter on the original, before recording the same, a certificate  
320 showing such mailing. For preparing the certificate, the  
321 claimant shall pay to the clerk the service charge as prescribed  
322 in s. 28.24(8) and the necessary costs of mailing, in addition  
323 to the recording charges as prescribed in s. 28.24(12). If the  
324 notice names purported owners having more than one address, the  
325 person filing the same shall furnish a true copy for each of the

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

330  
 331 I hereby certify that I did on this ....., mail by  
 332 registered (or certified) mail a copy of the foregoing notice to  
 333 each of the following at the address stated:

334  
 335 ... (Clerk of the circuit court) ...  
 336 of .... County, Florida,  
 337 By... (Deputy clerk) ...

338  
 339 The clerk of the circuit court is not required to mail to the  
 340 purported owner of such property any such notice that pertains  
 341 solely to the preserving of any covenant or restriction or any  
 342 portion of a covenant or restriction; or

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

348 Section 9. Section 712.11, Florida Statutes, is amended to  
 349 read:

350 712.11 Covenant revitalization.—A property owners'

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

354 Section 10. Section 712.12, Florida Statutes, is created  
355 to read:

356 712.12 Covenant or restriction revitalization by parcel  
357 owners not subject to a homeowners' association.—

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

359 (a) "Community" means a group of parcels near one another  
360 sharing a common interest due to their proximity to one another  
361 and sharing a neighborhood name or identity, which parcels are  
362 or will be subject to covenants and restrictions which are  
363 recorded in the county where the property is located.

364 (b) "Covenant or restriction" means any agreement or  
365 limitation imposed by a private party and not required by a  
366 governmental agency as a condition of a development permit, as  
367 defined in s. 163.3164, which is contained in a document  
368 recorded in the public records of the county in which a parcel  
369 is located and which subjects the parcel to any use restriction  
370 that may be enforced by a parcel owner.

371 (c) "Parcel" means real property that is used for  
372 residential purposes and which is subject to exclusive ownership  
373 and any covenant or restriction that may be enforced by a parcel  
374 owner.

375 (d) "Parcel owner" means the record owner of legal title

376 to a parcel.

377 (2) The parcel owners of a community not subject to a  
378 homeowners' association may use the procedures set forth in ss.  
379 720.403-720.407 to revive covenants or restrictions that have  
380 lapsed under the terms of this chapter, except:

381 (a) A reference to a homeowners' association or articles  
382 of incorporation or bylaws of a homeowners' association under  
383 ss. 720.403-720.407 is not required to revive the covenants or  
384 restrictions.

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

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

390 (d) The indexing requirements under s. 720.407(3) may be  
391 satisfied by indexing the community name in the covenants or  
392 restrictions as the grantee and the parcel owners as the  
393 grantors.

394 (3) With respect to any parcel that has ceased to be  
395 governed by covenants or restrictions as of October 1, 2017, the  
396 parcel owner may commence an action by October 1, 2018, for a  
397 judicial determination that the covenants or restrictions did  
398 not govern that parcel as of October 1, 2017, and that any  
399 revitalization of such covenants or restrictions as to that  
400 parcel would unconstitutionally deprive the parcel owner of



401 rights or property.

402 (4) Revived covenants or restrictions that are implemented  
403 pursuant to this section do not apply to or affect the rights of  
404 the parcel owner which are recognized by any court order or  
405 judgment in any action commenced by October 1, 2018, and any  
406 such rights so recognized may not be subsequently altered by  
407 revived covenants or restrictions implemented under this section  
408 without the consent of the affected parcel owner.

409 Section 11. Paragraph (e) is added to subsection (2) of  
410 section 720.303, Florida Statutes, to read:

411 720.303 Association powers and duties; meetings of board;  
412 official records; budgets; financial reporting; association  
413 funds; recalls.—

414 (2) BOARD MEETINGS.—

415 (e) At the first board meeting, excluding the  
416 organizational meeting, which follows the annual meeting of the  
417 members, the board shall consider the desirability of filing  
418 notices to preserve the covenants or restrictions affecting the  
419 community or association from extinguishment under the  
420 Marketable Record Title Act, chapter 712, and to authorize and  
421 direct the appropriate officer to file notice in accordance with  
422 s. 720.3032.

423 Section 12. Section 720.3032, Florida Statutes, is created  
424 to read:

425 720.3032 Notice of association information; preservation

426 from Marketable Record Title Act.—

427 (1) Not less than once every 5 years, if an association  
428 wishes to preserve its covenants and restrictions, the  
429 association must record in the official records of each county  
430 in which the community is located a notice specifying:

431 (a) The legal name of the association.

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

433 (c) The names of the affected subdivision plats and  
434 condominiums or, if not applicable, the common name of the  
435 community.

436 (d) The name, address, and telephone number for the  
437 current community association management company or community  
438 association manager, if any.

439 (e) Indication as to whether the association desires to  
440 preserve the covenants or restrictions affecting the community  
441 or association from extinguishment under the Marketable Record  
442 Title Act, chapter 712.

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

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

449 (h) The signature of a duly authorized officer of the  
450 association, acknowledged in the same manner as deeds are

451 acknowledged for record.

452 (2) Recording a document in substantially the following  
 453 form satisfies the notice obligation and constitutes a summary  
 454 notice as specified in s. 712.05(2)(b) sufficient to preserve  
 455 and protect the referenced covenants and restrictions from  
 456 extinguishment under the Marketable Record Title Act, chapter  
 457 712.

458  
 459 Notice of ...(name of association)... under s. 720.3032, Florida  
 460 Statutes, and notice to preserve and protect covenants and  
 461 restrictions from extinguishment under the Marketable Record  
 462 Title Act, chapter 712, Florida Statutes.

463  
 464 Instructions to recorder: Please index both the legal name  
 465 of the association and the names shown in item 3.

466 1. Legal name of association: ....

467 2. Mailing and physical addresses of association: ....  
 468 ....

469 3. Names of the subdivision plats, or, if none, common  
 470 name of community: ....

471 4. Name, address, and telephone number for management  
 472 company, if any: .....

473 5. This notice does .... does not .... constitute a notice  
 474 to preserve and protect covenants or restrictions from  
 475 extinguishment under the Marketable Record Title Act.

476        6. The following covenants or restrictions affecting the  
 477 community which the association desires to be preserved from  
 478 extinguishment:

479                                ...(Name of instrument)...

480                        ...(Official Records Book where recorded & page)...

481                                ...(List of instruments)...

482                                ...(List of recording information)...

483        7. The legal description of the community affected by the  
 484 listed covenants or restrictions is: ...(Legal description,  
 485 which may be satisfied by reference to a recorded plat)...

486                This notice is filed on behalf of ...(Name of  
 487 association)... as of ...(Date)....

488                                ...(Name of association)...

490    By: ....

491                                ...(Name of individual officer)...

492                                ...(Title of officer)...

493                                ...(Notary acknowledgment)...

495        (3) The failure to file one or more notices does not  
 496 affect the validity or enforceability of any covenant or  
 497 restriction nor in any way alter the remaining time before  
 498 extinguishment by the Marketable Record Title Act, chapter 712.

499        (4) A copy of the notice, as filed, must be included as  
 500 part of the next notice of meeting or other mailing sent to all

501 members.

502 (5) The original signed notice must be recorded in the  
 503 official records of the clerk of the circuit court or other  
 504 recorder for the county.

505 Section 13. Section 702.09, Florida Statutes, is amended  
 506 to read:

507 702.09 Definitions.—For the purposes of ss. 702.07 and  
 508 702.08, the words "decree of foreclosure" shall include a  
 509 judgment or order rendered or passed in the foreclosure  
 510 proceedings in which the decree of foreclosure shall be  
 511 rescinded, vacated, and set aside; the word "mortgage" shall  
 512 mean any written instrument securing the payment of money or  
 513 advances and includes liens to secure payment of assessments  
 514 arising under chapters 718 and 719 and liens created pursuant to  
 515 the recorded covenants of a property owners' ~~homeowners'~~  
 516 association as defined in s. 712.01; the word "debt" shall  
 517 include promissory notes, bonds, and all other written  
 518 obligations given for the payment of money; the words  
 519 "foreclosure proceedings" shall embrace every action in the  
 520 circuit or county courts of this state wherein it is sought to  
 521 foreclose a mortgage and sell the property covered by the same;  
 522 and the word "property" shall mean and include both real and  
 523 personal property.

524 Section 14. Subsection (1) of section 702.10, Florida  
 525 Statutes, is amended to read:

526           702.10 Order to show cause; entry of final judgment of  
527 foreclosure; payment during foreclosure.—

528           (1) A lienholder may request an order to show cause for  
529 the entry of final judgment in a foreclosure action. For  
530 purposes of this section, the term "lienholder" includes the  
531 plaintiff and a defendant to the action who holds a lien  
532 encumbering the property or a defendant who, by virtue of its  
533 status as a condominium association, cooperative association, or  
534 property owners' ~~homeowners'~~ association, may file a lien  
535 against the real property subject to foreclosure. Upon filing,  
536 the court shall immediately review the request and the court  
537 file in chambers and without a hearing. If, upon examination of  
538 the court file, the court finds that the complaint is verified,  
539 complies with s. 702.015, and alleges a cause of action to  
540 foreclose on real property, the court shall promptly issue an  
541 order directed to the other parties named in the action to show  
542 cause why a final judgment of foreclosure should not be entered.

543           (a) The order shall:

544           1. Set the date and time for a hearing to show cause. The  
545 date for the hearing may not occur sooner than the later of 20  
546 days after service of the order to show cause or 45 days after  
547 service of the initial complaint. When service is obtained by  
548 publication, the date for the hearing may not be set sooner than  
549 30 days after the first publication.

550           2. Direct the time within which service of the order to

551 show cause and the complaint must be made upon the defendant.

552 3. State that the filing of defenses by a motion, a  
553 responsive pleading, an affidavit, or other papers before the  
554 hearing to show cause that raise a genuine issue of material  
555 fact which would preclude the entry of summary judgment or  
556 otherwise constitute a legal defense to foreclosure shall  
557 constitute cause for the court not to enter final judgment.

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

561 5. State that, if a defendant files defenses by a motion,  
562 a verified or sworn answer, affidavits, or other papers or  
563 appears personally or by way of an attorney at the time of the  
564 hearing, the hearing time will be used to hear and consider  
565 whether the defendant's motion, answer, affidavits, other  
566 papers, and other evidence and argument as may be presented by  
567 the defendant or the defendant's attorney raise a genuine issue  
568 of material fact which would preclude the entry of summary  
569 judgment or otherwise constitute a legal defense to foreclosure.  
570 The order shall also state that the court may enter an order of  
571 final judgment of foreclosure at the hearing and order the clerk  
572 of the court to conduct a foreclosure sale.

573 6. State that, if a defendant fails to appear at the  
574 hearing to show cause or fails to file defenses by a motion or  
575 by a verified or sworn answer or files an answer not contesting

576 the foreclosure, such defendant may be considered to have waived  
577 the right to a hearing, and in such case, the court may enter a  
578 default against such defendant and, if appropriate, a final  
579 judgment of foreclosure ordering the clerk of the court to  
580 conduct a foreclosure sale.

581 7. State that if the mortgage provides for reasonable  
582 attorney fees and the requested attorney fees do not exceed 3  
583 percent of the principal amount owed at the time of filing the  
584 complaint, it is unnecessary for the court to hold a hearing or  
585 adjudge the requested attorney fees to be reasonable.

586 8. Attach the form of the proposed final judgment of  
587 foreclosure which the movant requests the court to enter at the  
588 hearing on the order to show cause.

589 9. Require the party seeking final judgment to serve a  
590 copy of the order to show cause on the other parties in the  
591 following manner:

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

597 b. If a defendant has not been served pursuant to chapter  
598 48 with the complaint and original process, the order to show  
599 cause, together with the summons and a copy of the complaint,  
600 shall be served on the party in the same manner as provided by



601 law for original process.

602

603 Any final judgment of foreclosure entered under this subsection  
604 is for in rem relief only. This subsection does not preclude the  
605 entry of a deficiency judgment where otherwise allowed by law.  
606 The Legislature intends that this alternative procedure may run  
607 simultaneously with other court procedures.

608 (b) The right to be heard at the hearing to show cause is  
609 waived if a defendant, after being served as provided by law  
610 with an order to show cause, engages in conduct that clearly  
611 shows that the defendant has relinquished the right to be heard  
612 on that order. The defendant's failure to file defenses by a  
613 motion or by a sworn or verified answer, affidavits, or other  
614 papers or to appear personally or by way of an attorney at the  
615 hearing duly scheduled on the order to show cause presumptively  
616 constitutes conduct that clearly shows that the defendant has  
617 relinquished the right to be heard. If a defendant files  
618 defenses by a motion, a verified answer, affidavits, or other  
619 papers or presents evidence at or before the hearing which raise  
620 a genuine issue of material fact which would preclude entry of  
621 summary judgment or otherwise constitute a legal defense to  
622 foreclosure, such action constitutes cause and precludes the  
623 entry of a final judgment at the hearing to show cause.

624 (c) In a mortgage foreclosure proceeding, when a final  
625 judgment of foreclosure has been entered against the mortgagor

626 and the note or mortgage provides for the award of reasonable  
627 attorney fees, it is unnecessary for the court to hold a hearing  
628 or adjudge the requested attorney fees to be reasonable if the  
629 fees do not exceed 3 percent of the principal amount owed on the  
630 note or mortgage at the time of filing, even if the note or  
631 mortgage does not specify the percentage of the original amount  
632 that would be paid as liquidated damages.

633 (d) If the court finds that all defendants have waived the  
634 right to be heard as provided in paragraph (b), the court shall  
635 promptly enter a final judgment of foreclosure without the need  
636 for further hearing if the plaintiff has shown entitlement to a  
637 final judgment and upon the filing with the court of the  
638 original note, satisfaction of the conditions for establishment  
639 of a lost note, or upon a showing to the court that the  
640 obligation to be foreclosed is not evidenced by a promissory  
641 note or other negotiable instrument. If the court finds that a  
642 defendant has not waived the right to be heard on the order to  
643 show cause, the court shall determine whether there is cause not  
644 to enter a final judgment of foreclosure. If the court finds  
645 that the defendant has not shown cause, the court shall promptly  
646 enter a judgment of foreclosure. If the time allotted for the  
647 hearing is insufficient, the court may announce at the hearing a  
648 date and time for the continued hearing. Only the parties who  
649 appear, individually or through an attorney, at the initial  
650 hearing must be notified of the date and time of the continued

651 hearing.

652 Section 15. Section 712.095, Florida Statutes, is amended  
653 to read:

654 712.095 Notice required by July 1, 1983.—Any person whose  
655 interest in land is derived from an instrument or court  
656 proceeding recorded subsequent to the root of title, which  
657 instrument or proceeding did not contain a description of the  
658 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose  
659 interest had not been extinguished prior to July 1, 1981, shall  
660 have until July 1, 1983, to file a notice in accordance with s.  
661 712.06 to preserve the interest.

662 Section 16. Section 720.403, Florida Statutes, is amended  
663 to read:

664 720.403 Preservation of ~~residential~~ communities; revival  
665 of declaration of covenants.—

666 (1) Consistent with required and optional elements of  
667 local comprehensive plans and other applicable provisions of the  
668 Community Planning Act, property owners ~~homeowners~~ are  
669 encouraged to preserve existing residential and other  
670 communities, promote available and affordable housing, protect  
671 structural and aesthetic elements of their ~~residential~~  
672 community, and, as applicable, maintain roads and streets,  
673 easements, water and sewer systems, utilities, drainage  
674 improvements, conservation and open areas, recreational  
675 amenities, and other infrastructure and common areas that serve

676 and support the ~~residential~~ community by the revival of a  
677 previous declaration of covenants and other governing documents  
678 that may have ceased to govern some or all parcels in the  
679 community.

680 (2) In order to preserve a ~~residential~~ community and the  
681 associated infrastructure and common areas for the purposes  
682 described in this section, the parcel owners in a community that  
683 was previously subject to a declaration of covenants that has  
684 ceased to govern one or more parcels in the community may revive  
685 the declaration and the ~~homeowners'~~ association for the  
686 community upon approval by the parcel owners to be governed  
687 thereby as provided in this act, and upon approval of the  
688 declaration and the other governing documents for the  
689 association by the Department of Economic Opportunity in a  
690 manner consistent with this act.

691 (3) Part III of this chapter is intended to provide  
692 mechanisms for the revitalization of covenants or restrictions  
693 for all types of communities and property associations and is  
694 not limited to residential communities.

695 Section 17. Section 720.404, Florida Statutes, is amended  
696 to read:

697 720.404 Eligible ~~residential~~ communities; requirements for  
698 revival of declaration.—Parcel owners in a community are  
699 eligible to seek approval from the Department of Economic  
700 Opportunity to revive a declaration of covenants under this act

701 if all of the following requirements are met:

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

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

707 (3) The revived declaration may not contain covenants that  
 708 are more restrictive on the parcel owners than the covenants  
 709 contained in the previous declaration, except that the  
 710 declaration may:

711 (a) Have an effective term of longer duration than the  
 712 term of the previous declaration;

713 (b) Omit restrictions contained in the previous  
 714 declaration;

715 (c) Govern fewer than all of the parcels governed by the  
 716 previous declaration;

717 (d) Provide for amendments to the declaration and other  
 718 governing documents; and

719 (e) Contain provisions required by this chapter for new  
 720 declarations that were not contained in the previous  
 721 declaration.

722 Section 18. Subsections (1), (3), (5), and (6) of section  
 723 720.405, Florida Statutes, are amended to read:

724 720.405 Organizing committee; parcel owner approval.—

725 (1) The proposal to revive a declaration of covenants and

726 an a ~~homeowners'~~ association for a community under the terms of  
727 this act shall be initiated by an organizing committee  
728 consisting of not less than three parcel owners located in the  
729 community that is proposed to be governed by the revived  
730 declaration. The name, address, and telephone number of each  
731 member of the organizing committee must be included in any  
732 notice or other document provided by the committee to parcel  
733 owners to be affected by the proposed revived declaration.

734 (3) The organizing committee shall prepare the full text  
735 of the proposed articles of incorporation and bylaws of the  
736 revived ~~homeowners'~~ association to be submitted to the parcel  
737 owners for approval, unless the association is then an existing  
738 corporation, in which case the organizing committee shall  
739 prepare the existing articles of incorporation and bylaws to be  
740 submitted to the parcel owners.

741 (5) A copy of the complete text of the proposed revised  
742 declaration of covenants, the proposed new or existing articles  
743 of incorporation and bylaws of the ~~homeowners'~~ association, and  
744 a graphic depiction of the property to be governed by the  
745 revived declaration shall be presented to all of the affected  
746 parcel owners by mail or hand delivery not less than 14 days  
747 before the time that the consent of the affected parcel owners  
748 to the proposed governing documents is sought by the organizing  
749 committee.

750 (6) A majority of the affected parcel owners must agree in

751 writing to the revived declaration of covenants and governing  
752 documents of the ~~homeowners'~~ association or approve the revived  
753 declaration and governing documents by a vote at a meeting of  
754 the affected parcel owners noticed and conducted in the manner  
755 prescribed by s. 720.306. Proof of notice of the meeting to all  
756 affected owners of the meeting and the minutes of the meeting  
757 recording the votes of the property owners shall be certified by  
758 a court reporter or an attorney licensed to practice in the  
759 state.

760 Section 19. Subsection (3) of section 720.407, Florida  
761 Statutes, is amended to read:

762 720.407 Recording; notice of recording; applicability and  
763 effective date.—

764 (3) The recorded documents shall include the full text of  
765 the approved declaration of covenants, the articles of  
766 incorporation and bylaws of the ~~homeowners'~~ association, the  
767 letter of approval by the department, and the legal description  
768 of each affected parcel of property. For purposes of chapter  
769 712, the association is deemed to be and shall be indexed as the  
770 grantee in a title transaction and the parcel owners named in  
771 the revived declaration are deemed to be and shall be indexed as  
772 the grantors in the title transaction.

773 Section 20. This act shall take effect July 1, 2017.