

By the Committee on Rules; and 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 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

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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

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.—

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

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

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

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



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233 described to identify the same if the notice includes a  
234 reference to the book and page in which the same is recorded.

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

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

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

254

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

258

259 ... (Clerk of the circuit court) ...

260 of .... County, Florida,

261 By... (Deputy clerk) ...

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

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

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

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

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

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

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

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

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

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291 is located and which subjects the parcel to any use restriction  
292 that may be enforced by a parcel owner.

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

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

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

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

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

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

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

316 (3) With respect to any parcel that has ceased to be  
317 governed by covenants or restrictions as of October 1, 2018, the  
318 parcel owner may commence an action by October 1, 2019, for a  
319 judicial determination that the covenants or restrictions did

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320 not govern that parcel as of October 1, 2018, and that any  
321 revitalization of such covenants or restrictions as to that  
322 parcel would unconstitutionally deprive the parcel owner of  
323 rights or property.

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

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

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

336 (2) BOARD MEETINGS.—

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

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

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

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349 (1) Any property owners' association desiring to preserve  
350 covenants from potential termination after 30 years by operation  
351 of chapter 712 may record in the official records of each county  
352 in which the community is located a notice specifying:

353 (a) The legal name of the association.

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

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

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

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

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

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

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

374 (2) Recording a document in substantially the following  
375 form satisfies the notice obligation and constitutes a summary  
376 notice as specified in s. 712.05(2)(b) sufficient to preserve  
377 and protect the referenced covenants and restrictions from

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378 extinguishment under the Marketable Record Title Act, chapter  
379 712.

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

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

388 1. Legal name of association: ....

389 2. Mailing and physical addresses of association: ....

390 3. Names of the subdivision plats, or, if none, common name  
391 of community: ....

392 4. Name, address, and telephone number for management  
393 company, if any: .....

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

397 6. The following covenants or restrictions affecting the  
398 community which the association desires to be preserved from  
399 extinguishment:

400 ...(Name of instrument)...

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

402 ...(List of instruments)...

403 ...(List of recording information)...

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



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

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

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

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

460 (a) The order shall:

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



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465 publication, the date for the hearing may not be set sooner than  
466 30 days after the first publication.

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

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

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

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

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

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494 the right to a hearing, and in such case, the court may enter a  
495 default against such defendant and, if appropriate, a final  
496 judgment of foreclosure ordering the clerk of the court to  
497 conduct a foreclosure sale.

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

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

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

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

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

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

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523 The Legislature intends that this alternative procedure may run  
524 simultaneously with other court procedures.

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

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

550 (d) If the court finds that all defendants have waived the  
551 right to be heard as provided in paragraph (b), the court shall

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

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

571 712.095 Notice required by July 1, 1983.—Any person whose  
572 interest in land is derived from an instrument or court  
573 proceeding recorded subsequent to the root of title, which  
574 instrument or proceeding did not contain a description of the  
575 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose  
576 interest had not been extinguished prior to July 1, 1981, shall  
577 have until July 1, 1983, to file a notice in accordance with s.  
578 712.06 to preserve the interest.

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

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581           720.403 Preservation of ~~residential~~ communities; revival of  
582 declaration of covenants.—

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

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

608           (3) Part III of this chapter is intended to provide  
609 mechanisms for the revitalization of covenants or restrictions

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610 for all types of communities and property associations and is  
611 not limited to residential communities.

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

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

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

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

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

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

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

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

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

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

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639 Section 14. Subsections (1), (3), (5), and (6) of section  
640 720.405, Florida Statutes, are amended to read:

641 720.405 Organizing committee; parcel owner approval.—

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

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

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

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

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

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

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

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

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