

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7031 PCB CJS 16-01 Marketable Record Titles to Real Property

**SPONSOR(S):** Judiciary Committee; Civil Justice Subcommittee; Passidomo

**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	12 Y, 0 N	Bond	Bond
1) Judiciary Committee	15 Y, 0 N, As CS	Bond	Havlicak

### SUMMARY ANALYSIS

The Marketable Record Title Act (MRTA) was enacted to simplify real estate transactions. In general, it provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. One effect of MRTA is that covenants and restrictions are extinguished 30 years after their creation.

Current law allows residential homeowners' associations to extend and renew their covenants, and provides a means by which expired covenants of a homeowners' association may be revived if previously extinguished by MRTA. The bill:

- creates an exception to the applicability of MRTA by which covenants and restrictions of a homeowners' association are not extinguished by operation of law, subject to conditions; and
- provides that a property owners' association is treated as a homeowners' association under MRTA, that is, the covenants and restrictions of such an association are exempt from extinguishment and may similarly be extended or revived.

The bill may have a minimal positive fiscal impact on state government should the number of revitalizations decrease as anticipated. The bill does not appear to have a fiscal impact on local governments.

The bill is not retroactive. The effective date of the bill is July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.<sup>1</sup> In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. Current law includes 9 exceptions to the applicability MRTA.<sup>2</sup>

One effect of MRTA is that homeowner association covenants can lose effect after 30 years unless the association timely files a renewal. A homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner in a form set by statute;<sup>3</sup>
- The notice must include notice of a meeting of the board of directors including where the directors will decide whether to renew the covenants;<sup>4</sup>
- The board of directors of the association must approve the renewal by a two-thirds vote;<sup>5</sup> and
- Notice of the renewal must be recorded in the Official Records of the county.<sup>6</sup>

Additionally, s. 712.06(3), F.S. requires that either the clerk of the court furnish (at the association's expense) notice by certified mail to each homeowner member of the association a copy of the notice, or a copy of the notice must be published once a week for 2 consecutive weeks in the form and manner as other legal notices are published.<sup>7</sup>

However, many homeowners' associations fail to timely file a renewal of their covenants. Formerly, MRTA would apply in such cases and accordingly the covenants and restrictions expired and were unenforceable. In 2004, part III of ch. 720, F.S., was enacted to provide a means by which covenants and restrictions of a mandatory homeowners' association may be revived.<sup>8</sup> In 2007, nonmandatory homeowners' associations became eligible for revitalization.<sup>9</sup> Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.<sup>10</sup>

There is a category of property owners who enact and enforce covenants and restrictions regarding their property and that of their neighbors who are impacted by MRTA, but have not been included in the laws regarding renewal or revival of their covenants and restrictions. These property owners are commercial landowners in office parks, industrial parks, and other commercial districts.

#### **Effect of the Bill - Residential Homeowners' Associations**

The bill amends s. 712.03, F.S., to add a new exception to MRTA to provide that the covenants and restrictions of a homeowners' association are not extinguished by operation of MRTA. The bill also amends the renewal provisions of s. 712.05, F.S., to only apply where renewal is required by the terms of the association documents.

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<sup>1</sup> *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).

<sup>2</sup> s. 712.03, F.S.

<sup>3</sup> s. 712.06(1)(b), F.S.

<sup>4</sup> s. 712.05(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> s. 712.06(2), F.S.

<sup>7</sup> s. 712.06(3)(b), F.S.

<sup>8</sup> ch. 2004-345, L.O.F.

<sup>9</sup> ch. 2007-173, L.O.F.

<sup>10</sup> part III of ch. 720, F.S.

The bill also creates 4 conditions under which the exception does not apply. Thus, where a condition applies, the following covenants and restrictions of an association remain subject to termination by operation of MRTA:

- A covenant or restriction that was extinguished by operation of MRTA prior to July 1, 2016;
- Where the terms of the covenant or restriction provide that the covenant or restriction as originally recorded, or subsequently amended, expires by its own terms;
- Where an affidavit by the property owner attests that the association no longer has responsibility under a government permit, and that the association has been administratively dissolved, or
- A covenant or restriction of an association where the circuit court finds in a declaratory judgment action that the association has been abandoned, no vote of the membership is practical, continued enforcement of the covenant or restriction is not equitable, and as a result thereof the covenant or restriction is void, terminated or released.

### **Effect of the Bill - Commercial Properties**

This bill adds a new definition to s. 712.01, F.S. that defines the term "mandatory property owners' association" as

a Florida corporation responsible for the operation of property in which the voting membership is made up of the owners of property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the property. The term does not include a community development district or similar special taxing district created by law.

The bill provides that the covenants and restrictions of a mandatory property owners' association are, like those of a residential homeowners' association, not subject to expiration by operation of MRTA, subject to the same conditions. Also, like a residential homeowners' association, the bill provides that a mandatory property owners' association may renew covenants and restrictions that are about to expire on their own terms and may revive covenants and restrictions that have expired.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 712.01, F.S., regarding definitions applicable to the Marketable Record Title Act.

Section 2 amends s. 712.03, F.S., regarding exceptions to marketability.

Section 3 amends s. 712.05, F.S., regarding effect of filing notice.

Section 4 amends s. 712.11, F.S., regarding covenant revitalization.

Section 5 provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

##### **2. Expenditures:**

The bill may have a positive recurring fiscal impact on state expenditures should the number of covenant revitalizations decrease as expected. See Fiscal Comments.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill slightly expands the authority and duties of the Department of Economic Opportunity by expanding the number of communities that are currently eligible for covenant revitalization. On the other hand, the provision of the bill exempting homeowners' associations from future application of MRTA is likely to significantly lessen the number of revitalizations that will be filed in future years. It is anticipated that the net fiscal impact on the agency is positive.

The bill appears to impact the private sector in indirect means. The exemption from MRTA is likely to lower legal costs of associations, which will have a positive impact on the members of such associations. However, this may have a corresponding negative fiscal impact on the service providers that assist associations in revitalization efforts.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2016, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment created four conditions under which the exception to MRTA for covenants and restrictions that is created by this bill will not apply. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.