

By Senator Rodriguez

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1                   A bill to be entitled  
2           An act relating to marketable record title to real  
3           property; amending s. 712.03, F.S.; providing that  
4           certain rights are extinguished for the redevelopment  
5           of a certain portion of a lake that meets certain  
6           criteria if such redevelopment is for the purpose of  
7           developing affordable housing; requiring the  
8           preservation of such rights to be evidenced by a  
9           recorded instrument; authorizing a parcel owner to  
10          seek a judicial determination within a certain  
11          timeframe; prohibiting the revitalization of certain  
12          lapsed covenants or restrictions; providing a method  
13          for service of process of quiet title and certain  
14          other actions; amending s. 712.065, F.S.; conforming a  
15          cross-reference; reenacting ss. 704.05(1), 712.02,  
16          712.04, and 712.10, F.S., relating to easements and  
17          rights of entry, marketable record title and  
18          suspension of applicability, interests extinguished by  
19          marketable record title, and law to be liberally  
20          construed, respectively, to incorporate the amendment  
21          made to s. 712.03, F.S., in references thereto;  
22          providing an effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Section 712.03, Florida Statutes, is amended to  
27           read:

28           712.03 Exceptions to marketability; redevelopment  
29           restrictions; legal action; service of process.-

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30           (1) Such marketable record title does ~~shall~~ not affect or  
31 extinguish the following rights:

32           (a)~~(1)~~ Estates or interests, easements and use restrictions  
33 disclosed by and defects inherent in the muniments of title on  
34 which said estate is based beginning with the root of title,  
35 provided that in the muniments of title those estates,  
36 interests, easements, or use restrictions created before the  
37 root of title are preserved by identification in the legal  
38 description of the property by specific reference to the  
39 official records book and page number, instrument number, or  
40 plat name or there is otherwise an affirmative statement in a  
41 muniment of title to preserve such estates, interests,  
42 easements, or use restrictions created before the root of title  
43 as identified by the official records book and page or  
44 instrument number; subject, however, to paragraph (e) ~~subsection~~  
45 ~~(5)~~.

46           (b)~~(2)~~ Estates, interests, claims, or charges, or any  
47 covenant or restriction, preserved by the filing of a proper  
48 notice in accordance with the provisions hereof.

49           (c)~~(3)~~ Rights of any person in possession of the lands, so  
50 long as such person is in such possession.

51           (d)~~(4)~~ Estates, interests, claims, or charges arising out  
52 of a title transaction which has been recorded subsequent to the  
53 effective date of the root of title.

54           (e)~~(5)~~ Recorded or unrecorded easements or rights, interest  
55 or servitude in the nature of easements, rights-of-way and  
56 terminal facilities, including those of a public utility or of a  
57 governmental agency, so long as the same are used and the use of  
58 any part thereof shall except from the operation hereof the

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59 right to the entire use thereof. No notice need be filed in  
60 order to preserve the lien of any mortgage or deed of trust or  
61 any supplement thereto encumbering any such recorded or  
62 unrecorded easements, or rights, interest, or servitude in the  
63 nature of easements, rights-of-way, and terminal facilities.  
64 However, nothing herein shall be construed as preserving to the  
65 mortgagee or grantee of any such mortgage or deed of trust or  
66 any supplement thereto any greater rights than the rights of the  
67 mortgagor or grantor.

68 (f)~~(6)~~ Rights of any person in whose name the land is  
69 assessed on the county tax rolls for such period of time as the  
70 land is so assessed and which rights are preserved for a period  
71 of 3 years after the land is last assessed in such person's  
72 name.

73 (g)~~(7)~~ State title to lands beneath navigable waters  
74 acquired by virtue of sovereignty.

75 (h)~~(8)~~ A restriction or covenant recorded pursuant to  
76 chapter 376 or chapter 403.

77 (i)~~(9)~~ Any right, title, or interest held by the Board of  
78 Trustees of the Internal Improvement Trust Fund, any water  
79 management district created under chapter 373, or the United  
80 States.

81 (2) Notwithstanding anything in paragraph (1) (e) to the  
82 contrary, in order to foster affordable housing development  
83 pursuant to s. 196.1978 in counties as defined under s.  
84 125.011(1), the redevelopment of lakes that are restricted by  
85 recorded or unrecorded easements or rights, interests, or  
86 servitudes in the nature of easements for use of or access to a  
87 lake which are in favor of the public or any other party, other

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88 than a public utility or a governmental agency, and meet the  
89 requirements of marketable record title pursuant to s. 712.02,  
90 but may not be extinguished under paragraph (1)(e), must  
91 nevertheless be extinguished with respect to no more than one-  
92 third of the area of such lake, including upland lake banks, as  
93 evidenced by means of an instrument recorded upon the applicable  
94 area of such lake which has been executed by the owner thereof  
95 with the formalities of a deed.

96 (3) With respect to any rights derived from recorded or  
97 unrecorded easements or rights, interests, or servitudes in the  
98 nature of easements, or rights-of-way or terminal facilities  
99 specified in paragraph (1)(e) which are subject to subsection  
100 (2), the parcel owner may commence an action no later than 1  
101 year from the effective date of this act for a judicial  
102 determination as to whether the extinguishment of such rights  
103 under subsection (2) would unconstitutionally deprive the parcel  
104 owner of rights or property.

105 (4) Any covenants or restrictions that have lapsed as  
106 provided in this chapter may not be revitalized under s. 712.11  
107 or s. 712.12 with respect to property that is used for  
108 affordable housing development, pursuant to s. 196.1978, in  
109 counties as defined under s. 125.011(1), and any such  
110 revitalization that becomes effective either before or after the  
111 development pursuant to s. 196.1978 of an affordable housing  
112 development in counties as defined under s. 125.011(1) is null  
113 and void with respect thereto.

114 (5) Service of process for quiet title or other action to  
115 confirm the extinguishment of the matters described in this  
116 chapter may be made to a party by certified mail, return receipt

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117 requested. This method of service of process also applies to any  
118 other quiet title action that is otherwise made together with  
119 any action under this chapter, even though such other actions  
120 may not arise out of this chapter.

121 Section 2. Subsection (3) of section 712.065, Florida  
122 Statutes, is amended to read:

123 712.065 Extinguishment of discriminatory restrictions.—

124 (3) Upon request of a parcel owner, a discriminatory  
125 restriction appearing in a covenant or restriction affecting the  
126 parcel may be removed from the covenant or restriction by an  
127 amendment approved by a majority vote of the board of directors  
128 of the respective property owners' association or an owners'  
129 association in which all owners may voluntarily join,  
130 notwithstanding any other requirements for approval of an  
131 amendment of the covenant or restriction. Unless the amendment  
132 also changes other provisions of the covenant or restriction,  
133 the recording of an amendment removing a discriminatory  
134 restriction does not constitute a title transaction occurring  
135 after the root of title for purposes of s. 712.03(1)(d) ~~s.~~  
136 ~~712.03(4)~~.

137 Section 3. For the purpose of incorporating the amendment  
138 made by this act to section 712.03, Florida Statutes, in a  
139 reference thereto, subsection (1) of section 704.05, Florida  
140 Statutes, is reenacted to read:

141 704.05 Easements and rights of entry.—

142 (1) The rights and interests in land which are subject to  
143 being extinguished by marketable record title pursuant to the  
144 provisions of s. 712.04 shall include rights of entry or of an  
145 easement, given or reserved in any conveyance or devise of

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146 realty, when given or reserved for the purpose of mining,  
147 drilling, exploring, or developing for oil, gas, minerals, or  
148 fissionable materials, unless those rights of entry or easement  
149 are excepted or not affected by the provisions of s. 712.03 or  
150 s. 712.04. However, the provisions of this section shall not  
151 apply to interests reserved or otherwise held by the state or by  
152 any of its agencies, boards, or departments.

153 Section 4. For the purpose of incorporating the amendment  
154 made by this act to section 712.03, Florida Statutes, in a  
155 reference thereto, section 712.02, Florida Statutes, is  
156 reenacted to read:

157 712.02 Marketable record title; suspension of  
158 applicability.—Any person having the legal capacity to own land  
159 in this state, who, alone or together with her or his  
160 predecessors in title, has been vested with any estate in land  
161 of record for 30 years or more, shall have a marketable record  
162 title to such estate in said land, which shall be free and clear  
163 of all claims except the matters set forth as exceptions to  
164 marketability in s. 712.03. A person shall have a marketable  
165 record title when the public records disclosed a record title  
166 transaction affecting the title to the land which has been of  
167 record for not less than 30 years purporting to create such  
168 estate either in:

- 169 (1) The person claiming such estate; or  
170 (2) Some other person from whom, by one or more title  
171 transactions, such estate has passed to the person claiming such  
172 estate, with nothing appearing of record, in either case,  
173 purporting to divest such claimant of the estate claimed.

174 Section 5. For the purpose of incorporating the amendment

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175 made by this act to section 712.03, Florida Statutes, in  
176 references thereto, section 712.04, Florida Statutes, is  
177 reenacted to read:

178       712.04 Interests extinguished by marketable record title.-  
179 Subject to s. 712.03, a marketable record title is free and  
180 clear of all estates, interests, claims, covenants,  
181 restrictions, or charges, the existence of which depends upon  
182 any act, title transaction, event, zoning requirement, building  
183 or development permit, or omission that occurred before the  
184 effective date of the root of title. Except as provided in s.  
185 712.03, all such estates, interests, claims, covenants,  
186 restrictions, or charges, however denominated, whether they are  
187 or appear to be held or asserted by a person sui juris or under  
188 a disability, whether such person is within or without the  
189 state, natural or corporate, or private or governmental, are  
190 declared to be null and void. However, this chapter does not  
191 affect any right, title, or interest of the United States,  
192 Florida, or any of its officers, boards, commissions, or other  
193 agencies reserved in the patent or deed by which the United  
194 States, Florida, or any of its agencies parted with title. This  
195 section may not be construed to alter or invalidate:

196       (1) A comprehensive plan or plan amendment; zoning  
197 ordinance; land development regulation; building code;  
198 development permit; development order; or other law, regulation,  
199 or regulatory approval, to the extent such law, regulation, or  
200 regulatory approval operates independently of matters recorded  
201 in the official records; or

202       (2) Any recorded covenant or restriction that on the face  
203 of the first page of the document states that it was accepted by

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204 a governmental entity as part of, or as a condition of, any such  
205 comprehensive plan or plan amendment; zoning ordinance; land  
206 development regulation; building code; development permit;  
207 development order; or other law, regulation, or regulatory  
208 approval.

209 Section 6. For the purpose of incorporating the amendment  
210 made by this act to section 712.03, Florida Statutes, in a  
211 reference thereto, section 712.10, Florida Statutes, is  
212 reenacted to read:

213 712.10 Law to be liberally construed.—This law shall be  
214 liberally construed to effect the legislative purpose of  
215 simplifying and facilitating land title transactions by allowing  
216 persons to rely on a record title as described in s. 712.02  
217 subject only to such limitations as appear in s. 712.03.

218 Section 7. This act shall take effect July 1, 2024.