

# **REAL PROPERTY DIVISION ROUNDTABLE AGENDA**

## **The Breakers - Palm Beach, Florida**

**Saturday, July 29, 2017 – 8:00-9:30 a.m.**

**THANK YOU TO FIDELITY NATIONAL TITLE GROUP FOR  
SPONSORING THE RP DIVISION ROUNDTABLE!**

**All discussion items and materials are attached to this Agenda!  
Bring this Agenda to the Roundtable!!!**

**WE WILL START PROMPTLY AT 8:00, SO PLEASE ARRIVE NOT  
LATER THAN 7:45 TO GET YOUR FOOD AND GET SETTLED!**

1. Sponsor Recognition
2. Recognition of guests, students, and dignitaries in attendance
3. Introduction of New Committees and RP Division Members of the Executive Council
4. Summary of Estero Roundtable Meeting
5. Executive Council Items:
  - (a) Action Items:
    - (i) Unlawful Detainer - *Art Menor* – p. 019 (also on p. 152-164 of Executive Council agenda)
    - (ii) Ejectment - *Art Menor* – p. 032 (also on p. 165-172 of Executive Council agenda)
    - (iii) Notice of Commencement - *Art Menor* – p. 040 (also on p. 173-182 of Executive Council agenda)
    - (iv) Open/Expired Permits - *Lee Weintraub* – p. 004 (also on p. 137-151 of Executive Council agenda)
    - (v) Lis Pendens - *Susan Spurgeon* – p. 050 (also see the supplement to Executive Council agenda, which provided the latest version)

- (b) Information Item:
    - (i) Disposition of Excess Proceeds from Tax Deed Sales – *Susan Spurgeon* – p. 059
      - (1) This will be a discussion about legislation proposed by the Florida Association of Court Clerks, Inc. (d/b/a Florida Court Clerks & Comptrollers) concerning disposition of excess proceeds from tax deed sales.
6. 2018 Legislative Proposal on Marketable Record Title Act – *Doug Christy*
    - (a) Sen. Passidomo current draft MRTA proposal – p. 072
    - (b) RPPTL current draft proposal as of 7-23-17 – p. 096
  7. Report on Inaugural Attorney-Loan Officer Conference – *Rob Stern*
  8. Report on Condominium and Planned Development Law Certification Review Course – *Richard DeBoest and Sandra Krumbein*
  9. Committee Reports (time permitting)
    - (a) **Attorney-Loan Officer Conference** – Robert G. Stern, Chair; Kristopher E. Fernandez and Wilhelmina F. Kightlinger, Co-Vice Chairs.
    - (b) **Commercial Real Estate** – Adele Ilene Stone, Chair; E. Burt Bruton, R. James Robbins, Jr. and Martin D. Schwartz, Co-Vice Chairs.
    - (c) **Condominium and Planned Development** – William P. Sklar, Chair; Kenneth S. Direktor and Alexander B. Dobrev, Co-Vice Chairs.
    - (d) **Condominium and Planned Development Law Certification Review Course** – Richard D. DeBoest and Sandra Krumbein, Co-Chairs.
    - (e) **Construction Law** – Scott P. Pence, Chair; Reese J. Henderson, Jr. and Neal A. Sivyer, Co-Vice Chairs.
    - (f) **Construction Law Certification Review Course** – Melinda S. Gentile and Deborah B. Mastin, Co-Chairs; Elizabeth B. Ferguson and Gregg E. Hutt, Co-Vice Chairs.
    - (g) **Construction Law Institute** – Sanjay Kurian, Chair; Diane S. Perera, Jason J. Quintero and Brian R. Rendzio, Co-Vice Chairs.
    - (h) **Development & Land Use Planning** – Vinette D. Godelia and Julia L. Jennison, Co-Chairs; Colleen C. Sachs, Vice Chair.
    - (i) **Insurance & Surety** – Scott P. Pence and W. Cary Wright, Co-Chairs; Frederick R. Dudley and Michael G. Meyer, Co-Vice Chairs.
    - (j) **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; James C. Russick, Vice Chair.
    - (k) **Real Estate Certification Review Course** – Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach and Brian W. Hoffman, Co-Vice Chairs.

- (l) **Real Estate Leasing** – Richard D. Eckhard, Chair; Brenda B. Ezell and Christopher A. Sajdera, Co-Vice Chairs.
- (m) **Real Estate Structures and Taxation** – Michael A. Bedke, Chair; Deborah Boyd, Lloyd Granet and Cristin C. Keane, Co-Vice Chairs.
- (n) **Real Property Finance & Lending** – David R. Brittain, Chair; Bridget Friedman, Richard S. McIver and Robert G. Stern, Co-Vice Chairs.
- (o) **Real Property Litigation** – Marty J. Solomon and Susan K. Spurgeon, Co-Chairs; Manuel Farach, Michael V. Hargett and Brian D. Leebrick, Co-Vice Chairs.
- (p) **Real Property Problems Study** – Arthur J. Menor, Chair; Mark A. Brown, Stacy O. Kalmanson, Patricia J. Hancock, Robert S. Swaine and Lee A. Weintraub, Co-Vice Chairs.
- (q) **Residential Real Estate and Industry Liaison** – Salome J. Zikakis, Chair; Louis E. “Trey” Goldman, James Marx and Nicole M. Villarroel, Co-Vice Chairs.
- (r) **Title Insurance and Title Insurance Liaison** – Raul P. Ballaga and Brian W. Hoffman, Co-Chairs; Alan B. Fields, Cynthia A. Riddell and Melissa N. VanSickle, Co-Vice Chairs.
- (s) **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Melissa Sloan Scaletta and Karla J. Staker, Co-Vice Chairs.

1 A Bill To Be Entitled

2 An Act relating to open and expired permits;  
3 creating s. 553.7905 to provide procedures for  
4 closing open and expired building permits;  
5 amending s. 489.129 to clarify that failure to  
6 obtain inspections and close permits is a  
7 violation of a contractor's license; providing an  
8 effective date.

9  
10 Section 1. Section 553.7905, Florida Statutes,  
11 is created to read:

12 553.7905 Open and expired permits; procedures  
13 for closing; notices to owners applying for permits.

14 (1) Any building permit issued for any portion  
15 of construction of any commercial, residential or  
16 mixed-use project that has not received final  
17 inspection approval and complied with other  
18 requirements of the permit at issue within one year  
19 from the expiration of the notice of commencement or  
20 last amendment thereto, or in the absence of a notice  
21 of commencement within one year from the last  
22 inspection conducted under the permit or, if no  
23 inspections have been performed on a project without a  
24 notice of commencement, within two years from the date  
25 of issuance of the permit, shall be considered an open  
26 permit. If an open permit expires without receiving  
27 final inspection approval and complying with other  
28 requirements of the permit at issue, it shall also be  
29 considered an expired permit as defined in Section  
30 105.4 of the Florida Building Code. A closed permit  
31 is a permit in which any of the following apply: 1) a  
32 final inspection approval is authorized along with  
33 other permit requirements, 2) where no work was  
34 started under the original permit within six months  
35 after issuance of the permit, or 3) where the  
36 requirements of subsections 1(a) or (b) below have

37 been satisfied. Uncompleted permitted projects may be  
38 transferred or sold and completed by a new owner in  
39 accordance with any local governing jurisdiction's  
40 procedures or requirements. Open and expired permits  
41 may be closed by or on behalf of the current property  
42 owner, regardless of whether the property owner is the  
43 same owner who originally applied for the permit or is  
44 a subsequent owner, by complying with requirements for  
45 closing permits pursuant to a mutual agreement between  
46 the current property owner and the building department  
47 that issued the permit or, absent such an agreement,  
48 by complying with the following procedures:

49 (a) The property owner may retain the original  
50 contractor who obtained the permit or hire a different  
51 Florida licensed contractor, bearing any license  
52 required for the performance of any work necessary to  
53 satisfy conditions of the permit at issue to close the  
54 open or expired permit, to reactivate the permit if it  
55 is expired, perform any necessary work to fulfill all  
56 requirements of the open or expired permit, including  
57 correction of any code violations in accordance with  
58 the code in effect when the application for the permit  
59 was filed, satisfy any requirements of the permit at  
60 issue not yet satisfied, and obtain any necessary  
61 inspections and perform any other actions required for  
62 a proper closure of the permit. The Florida license  
63 of whichever contractor performs these functions shall  
64 be current and active. Said contractor and owner  
65 shall comply with the building department's change of  
66 contractor process, after which said contractor shall  
67 not be liable for any existing defects or existing  
68 work failing to comply with any applicable code,  
69 regulation, ordinance, requirement of the permit at  
70 issue or law other than as to work actually performed  
71 by said contractor. The property owner and permit  
72 holder under the original open or expired permit shall

73 remain liable, within the period of any applicable  
74 statute of limitations or repose, for any defects in  
75 its work or failure to comply with any applicable  
76 code, regulation, ordinance, permit requirement or  
77 law. To the extent required by Chapter 489, Fla.  
78 Stats., the owner or contractor may hire licensed  
79 subcontractors in the scope of the permitted work who  
80 may perform the functions of the contractor as  
81 outlined in this subsection to the extent of work  
82 covered by its license. All work required to properly  
83 close an open or expired permit under this section  
84 shall be performed in accordance with the building  
85 code in effect on the date of filing of the  
86 application for the open or expired permit.

87 (b) As an alternative to the procedure in  
88 subsection 1(a) above, the property owner may hire a  
89 licensed engineer or architect, possessing a current  
90 and active Florida license, experienced in designing,  
91 supervising or inspecting work of the nature of the  
92 work covered by the open or expired permit at issue  
93 and having at least three years' experience in  
94 performing field inspections as to such work, to  
95 inspect the construction work subject to the open or  
96 expired building permit, direct any repairs necessary  
97 to comply with all requirements of the permit at  
98 issue, then confirm compliance therewith by submitting  
99 an affidavit bearing the seal of the engineer or  
100 architect to the issuing building department. The  
101 affidavit shall be substantially in the following  
102 form:

103 I, (specify name), possess a current and active  
104 (specify architectural or engineering) license within  
105 the State of Florida and am experienced in designing,  
106 supervising, or inspecting work of the nature covered  
107 by the open or expired permit at the real property  
108 located at (specify address). I have at least three

109 years' experience in performing field inspections as  
110 to such work. I have inspected the construction work  
111 subject to the open or expired building permit number  
112 (specify number) and I confirm that the construction  
113 work complies with all known requirements of the  
114 permit at issue.

115  
116 Signed:

117  
118 (affix licensing seal)  
119

120 If any of the permitted work includes construction  
121 outside the engineer's or architect's area of  
122 expertise, the owner, engineer or architect may hire  
123 engineers or architects licensed in the scope of the  
124 permitted work, who may direct any necessary repairs  
125 to comply with all requirements of the permit at  
126 issue, then the engineer or architect hired by the  
127 property owner, engineer or architect shall confirm  
128 compliance by submitting to the issuing building  
129 department a signed and sealed affidavit attesting to  
130 same. The building department issuing the permit  
131 shall accept the affidavit or affidavits referenced in  
132 this subsection, as satisfaction of all requirements  
133 of the permit at issue and shall thereafter close the  
134 building permit, unless it conducts its own final  
135 inspections within seven business days of receipt of  
136 the affidavit or affidavits. If the building  
137 department conducts their own final inspection and  
138 discovers conditions constituting code or permit  
139 violations within the scope of work covered by the  
140 permit, then said conditions shall be repaired to the  
141 building department's satisfaction as a condition to  
142 closing the permit. All work required to properly  
143 close an open or expired permit under this section  
144 shall be performed in accordance with the building

145 code in effect on the date of filing of the  
146 application for the open or expired permit.

147 (c) The procedures in subsections 1(a) and (b)  
148 above shall apply regardless of whether the building  
149 permit is still open or has expired. In lieu of the  
150 procedures in subsections 1(a) and (b), the owner may  
151 use the original contractor to close the permit.

152 (2) A failure to properly close a building  
153 permit within five years after expiration of the date  
154 of recordation of the notice of commencement or last  
155 amendment thereto or, if no notice of commencement was  
156 recorded, then within seven years after the building  
157 permit was issued, shall not authorize the permitting  
158 authority to deny issuance of permits to, issue  
159 notices of violation to, or fine, penalize, sanction,  
160 or assess fees against a subsequent arms-length  
161 purchaser of the subject property for value. The  
162 permitting authority shall continue to have all rights  
163 and remedies against the property owner and contractor  
164 identified on the permit. The Florida Building  
165 Commission shall adopt rules and amend the applicable  
166 Florida Building Code to enact procedures designed to  
167 encourage property owners and contractors to close  
168 permits properly.

169 (3) Individual trade permits or other permit  
170 types as determined by the Building Official may be  
171 closed out when no apparent safety hazard exists, and  
172 for which no code violations have been previously  
173 documented, after six years from issuance of the  
174 permit. This provision shall not apply to permits for  
175 building projects still under construction with  
176 legally granted permit extensions. Local boards or  
177 governmental jurisdictions may adopt stricter  
178 standards to govern the closeout of building permits,  
179 provided that such stricter standards may be applied  
180 only prospectively and may not apply retroactively to



181 previously issued permits, regardless of whether the  
182 permits remain open or have expired, and provided that  
183 such stricter standards may not change the procedures  
184 referenced in subsections 1(a) and (b) above and may  
185 not supersede this statute.

186 (4) As an alternative to the procedures  
187 referenced in sections 1(a) and 1(b) above on real  
188 property consisting of single or multiple family  
189 dwellings up to and including four units, with the  
190 approval of the Building Official, the owner of a home  
191 for sale may assume the role of an owner/builder in  
192 order to resolve an open permit for a substantially  
193 completed project when the project is abandoned or  
194 otherwise not completed by the licensed contractor who  
195 obtained the permit, which shall not require the owner  
196 to continue to reside in the home for one year.

197 (5) A Building Official is authorized to refuse  
198 to accept new permit applications from any contractor  
199 who holds expired or inactive permits in excess of a  
200 specific publicized threshold, set in advance by  
201 written policy or ordinance in a local jurisdiction.  
202 A contractor shall be allowed to hold an unlimited  
203 number of active permits.

204 (6) Provisions authorizing permits to be  
205 administratively closed by the Building Official shall  
206 not be applicable to permits subject to regulation by  
207 external agencies not specifically enforcing the  
208 Florida Codes except where the Building Official has  
209 regulatory authority over other areas related to the  
210 permit, such as zoning or other land development code  
211 provisions. Such agencies and regulations not subject  
212 to these provisions include, but are not limited to,  
213 local zoning and land use regulations, local storm  
214 water management regulations, local platting and  
215 subdivision requirements, Department of Health  
216 regulations, Department of Business and Professional

217 Regulation requirements, local utility standards, and  
218 provisions of the National Flood Insurance Program and  
219 Community Rating System.

220 (7) When issuing any building permit, the  
221 building department shall provide to the property  
222 owner a mandatory written notice, which may be  
223 electronically provided if the permit package is  
224 electronically provided, in the following form:

225 IMPORTANT NOTICE REGARDING COMPLYING WITH THE  
226 INSPECTION AND APPROVAL PROCESS FOR ALL PERMITS

227 "You are receiving a building permit authorizing  
228 the construction referenced in the application that  
229 was submitted to this building department by you or on  
230 your behalf. The permit is issued with conditions,  
231 including required building inspections and assurances  
232 that the construction complies with the design  
233 submitted with the permit application and any other  
234 conditions referenced in the permit. It is critical  
235 that you ensure that all necessary building  
236 inspections are passed before the expiration of any  
237 notice of commencement or amendment thereto, as these  
238 inspections are important to ensure construction has  
239 been performed in a safe and proper manner. If you  
240 have any questions regarding these procedures, please  
241 call the building department. Your failure to comply  
242 may also result in unsafe conditions arising from your  
243 construction."

244 (8) The applicable governmental entity may  
245 charge only one search fee for searching for and  
246 identifying open or unexpired building permits for any  
247 units or subunits assigned by any municipality or  
248 county to a particular tax parcel identification  
249 number, in an amount commensurate with research and  
250 time costs incurred by the jurisdiction.

251 (9) As to all permits issued after the effective  
252 date of this section, the building department shall  
253 send a written notice to the current property owner at  
254 a point from one year to three years after issuance of  
255 any permit that has not been properly closed out  
256 within that time advising the property owner of the  
257 need to properly close out the permit upon completion  
258 of the work covered by same. Failure to send written  
259 notice shall not relieve the contractor or property  
260 owner from taking the necessary actions to legally  
261 close out a permit.

262 (10) Nothing in this Act shall prevent local  
263 government jurisdictions from enforcing any provision  
264 of a local land development code or other local  
265 ordinances to the extent not inconsistent with this  
266 section or prevent local governmental jurisdictions  
267 from enacting provisions that further enhance the  
268 process of closing out open or expired permits.

269 Section 2. Section 489.129(1)(o), Florida  
270 Statutes, is amended to read:

271 489.129 Disciplinary proceedings.—

272 (1) The board may take any of the following  
273 actions against any certificateholder or registrant:  
274 place on probation or reprimand the licensee, revoke,  
275 suspend, or deny the issuance or renewal of the  
276 certificate or registration, require financial  
277 restitution to a consumer for financial harm directly  
278 related to a violation of a provision of this part,  
279 impose an administrative fine not to exceed \$10,000  
280 per violation, require continuing education, or assess  
281 costs associated with investigation and prosecution,  
282 if the contractor, financially responsible officer, or  
283 business organization for which the contractor is a  
284 primary qualifying agent, a financially responsible  
285 officer, or a secondary qualifying agent responsible

286 under s. 489.1195 is found guilty of any of the  
287 following acts:

288 (o) Proceeding on any job without obtaining  
289 applicable local building department permits and  
290 inspections or failing to properly close out any  
291 permits or satisfy any applicable permit requirements.

292  
293 Section 3. This act shall take effect July 1,  
294 2017.

295  
296  
297  
298 ~~ACTIVE: 9489893\_1~~  
299 ~~ACTIVE: 9689304\_1~~

# **WHITE PAPER**

## **OPEN AND EXPIRED PERMITS**

### **I. SUMMARY**

This legislation provides a procedure by which property owners may close dormant open or expired building permits in instances when the contractor who obtained the permit is no longer around to close it by calling for a final inspection. Unfortunately, this is an all too frequent occurrence. It has frustrated countless sellers in the sale of real property, after a simple municipal search reveals the existence of a long open or expired building permit. In particular, this bill will provide a mechanism for sellers and purchasers of real property, on which a building permit was previously obtained, but not properly closed, to close the permits as part of the purchase and sale transaction for the property. The bill does not have a fiscal impact on state funds.

### **II. CURRENT SITUATION**

Most homeowners hire contractors to perform home improvements. In most cases, the contractors obtain the proper building permits as required by law. The work is performed, the homeowner is satisfied. Unfortunately, often times, the job seems complete to the homeowner; however, they may not realize that a final inspection was never performed and thus the building permit was never properly closed.

These open or expired permits are usually undetected in the local municipalities' building department records. The property owner likely paid the contractor for the completed work, but has no mechanism to know that the permit was properly closed. It is anything but simple for a property owner to discover this information at or immediately after the contractor leaves the job. The work seems property completed from a visual standpoint. The contractor may tell the homeowner that the job is complete.

In many other situations, the construction work was not actually completed for any number of reasons and the failure to call for a final inspection left the incomplete nature of the work undetected by the building department. Regardless of whether the work has been completed or not, the problem becomes exacerbated when the owner sells the property to an innocent third party purchaser. The purchaser usually searches for open permits and, when they are detected, a decision must be made about whether to buy the property knowing a final inspection was not obtained, and hence that there may or may not be unremedied construction defects. This is not a title defect for which insurance is available, so the purchasers must either abandon their goal of buying the property based upon an unknown situation or proceed with the purchase, again not knowing whether the construction was properly performed, especially in the large number of cases where the construction work has been covered up and can no longer be inspected a part of the purchase transaction. By this time, the contractor is usually no longer available to provide information or remedial work, creating anxiety and uncertainty over the extent or existence of the risk of construction defects.

Unfortunately, if the permit was not properly closed with the local municipality, it may be many years before the property owners' are advised by their buyers' attorney/title company (or lenders' attorney/title company in a refinance) that the contractors failed to properly close the permits by calling for a final inspection and submitting the appropriate paperwork to the building department. Thereafter, these homeowners face incredible stress and pressure to get the dormant permits closed to allow for a sale or refinance to occur. They must hire an expeditor or another contractor to attempt to close a long dormant permit. Many in the trade do not want to take this on, given the stale nature of the permit, and fear of what each municipality may require under its particular building department requirements.

Further complicating this problem is that the most common purchase contract in the State is the FAR/BAR contract. For the past several years, the contract does not require a seller to close these permits; a situation that now promotes passing the problem on to the buyer, or frustrating the sale of the property entirely. This situation arises due to no fault of the homeowner who hired a licensed contractor, paid the contractor and assumed that the contractor performed all activities necessary to comply with their licensure. Although the Florida Construction Licensing Code in Chapter 489 contemplates licensed contractors obtaining all required inspections, that statute is not well enforced and this situation is pervasive.

### **III. EFFECT OF PROPOSED CHANGES**

#### **A. A Proposed New Statute Section 553.7905**

Any building permit that has not been properly closed by passing all necessary final inspections and complying with other permit requirements within one year from the expiration of the notice of commencement or last amendment thereto, or in the absence of a notice of commencement within one year from the last inspection conducted under the permit, or if no inspections have been performed on a project without a notice of commencement, within two years from the date of issuance of the permit, may be closed by or on behalf of the current property owner, even if the current owner is not the same owner who originally applied for the permit, by complying with one of the following procedures:

1. The property owner may hire a Florida licensed contractor to reopen the permit if it is expired, perform any necessary work to fulfill all requirements of the permit, and call for the necessary inspections and properly close the permit. The contractor will not be liable for any defects in the work performed by the prior contractor who failed to close the permit, but will be liable for any defects in its own work. All work required to properly close the permit shall be performed in accordance with the building code in effect on the date of issuance of the open or expired permit.

2. As an alternative procedure to the one listed above, the property owner may hire a licensed engineer or architect to inspect the work, direct any repairs necessary to comply with permit requirements, then confirm compliance by submitting an affidavit to the building department. The building department may conduct its own final inspections within five business days of receiving the affidavit or the statute provides that the building department shall be deemed to have accepted the affidavit as satisfaction of all permit requirements and shall thereafter close the permit.

A failure to properly close a building permit within five years after expiration of the date of recording of the notice of commencement or last amendment thereto or, if no notice of commencement was recorded, then within seven years after the building permit was issued, shall not, in and of itself, authorize the permitting authority to deny future permits to, or issue notices of violation, fines, penalties, sanctions or fees against, a subsequent bona fide purchaser of the residence for value. The permitting authority will, however, continue to have all rights and remedies against the original property owner and contractor who obtained and failed to close the permit. This provision preserves all legal rights the building department has, but makes clear the bona fide subsequent purchaser will not inherit the responsibility for same merely by purchasing the home.

When issuing any building permit, the building department shall provide to the property owner a mandatory written notice using the same language that is provided in the new statute advising the owner of the importance of properly closing permits.

The building department shall send a written notice to permit holders on one- to four-family residences one year after issuance of any permit that has not been properly closed within that time advising the permit holder of the need to properly close the permit upon completion of the work.

Municipalities, counties and building departments may not charge separate search fees for open or expired permits for separate units or sub-units assigned to a single tax parcel identification number. Only one search fee per tax parcel identification number may be charged, in an amount not to exceed \$150.00.

#### **B. Section 489.129**

Section 489.129 of the Florida Construction Licensing Code, governing disciplinary proceedings against licensed contractors, will be amended to specify that the failure to properly close permits or satisfy any permit requirements shall be grounds for disciplinary proceedings by the Construction Industry Licensing Board against the contractor who obtained the permit, but failed to properly close it. The scope of discipline, if any, will be determined by the Construction Industry Licensing Board and not set out in this proposed legislation.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The proposal does not have a fiscal impact on state or local governments. It does however benefit the local governments by clearing up dormant open or expired permits from their system, eliminating unnecessary recordkeeping and system maintenance of these old permits.

### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

There are no economic costs to the private sector other than costs that would be incurred to properly close the permit, which costs would be required absent this law because the permits have to be closed anyway. The economic benefits to the private sector are enhanced because, with a specific, easy to follow procedure for closing permits, real estate sales transactions that may have not been pursued because of the uncertainty tied to open or expired permits will now move forward. Many other real estate professionals, including, but not limited to: lenders, real

estate agents, title companies would benefit from this legislation as it would provide a clear avenue for transactions to move forward.

## **VI. CONSTITUTIONAL ISSUES**

The legislation does not raise any constitutional issues.

## **VII. OTHER INTERESTED PARTIES**

The Building Officials Association of Florida were consulted regarding this proposal and may be interested in the final legislation. We believe they may generally support this legislation, although they may have further changes to the exact final language.

ACTIVE: BPUUsers/SMEZER:9718512\_1



# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Lee A. Weintraub, Chair, Open/Expired Permits Task Force (Real Property Problems Study Committee) of the Real Property Probate & Trust Law Section (RPPTL Approval Date \_\_\_\_\_, 2017)

**Address** Becker & Poliakoff, P.A., One E. Broward Blvd., Suite 1800, Fort Lauderdale, FL 33301; (954) 985-4147

**Position Type** Open/Expired Permits Task Force (Real Property Problems Study Committee), RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Lee A. Weintraub**, Becker & Poliakoff, P.A., One E. Broward Blvd., Suite 1800, Fort Lauderdale, FL 33301 Telephone: (954) 985-4147  
Email: [lweintraub@bplegal.com](mailto:lweintraub@bplegal.com)

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**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100  
Email: [pdunbar@deanmead.com](mailto:pdunbar@deanmead.com)

**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100  
Email: [medenfield@deanmead.com](mailto:medenfield@deanmead.com)

### Appearances

**Before Legislators** (SAME) \_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

**Meetings with  
Legislators/staff** (SAME) \_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

## PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

### If Applicable,

**List the Following** N/A \_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support  Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

Support the establishment of a procedure by which property owners may close open or expired permits, the protection from liability of bona fide purchasers of property with open or expired permits, and the establishment of procedures to reduce the number of future open or expired permits.

**Reasons For Proposed Advocacy:**

Although open or expired permits are not title defects for which insurance or other protections are available, they may nevertheless create significant liability for purchasers of real property, thereby jeopardizing potential property sales. Where the original construction contractor is no longer available, it is often difficult to properly inspect work and close permits, especially in an expedited time frame sufficient to accommodate property closing schedules. An easy to follow procedure is necessary to permit an owner of property to expeditiously close building permits in a manner that will not jeopardize a potential sale of property. The number of instances in which property sales are lost because of open or expired permits is extremely high, necessitating a process to comply with permits and facilitate property sales.

**PRIOR POSITIONS TAKEN ON THIS ISSUE**

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

**Most Recent Position** None  
(Indicate Bar or Name Section) (Support or Oppose) (Date)

**Others**  
(May attach list if more than one) None  
(Indicate Bar or Name Section) (Support or Oppose) (Date)

**REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS**

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

**Referrals**

In light of the immediacy of the need to advance this proposed legislation, it has not been referred to other Bar sections, committees or attorney organizations]

Building Officials Association of Florida Support  
(Name of Group or Organization) (Support, Oppose or No Position)

Florida Engineering Society No Position  
(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

**Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.**

1 A bill to be entitled

2 An act relating to forcible entry and unlawful detainer;  
3 amending sections 82.01, 82.02, 82.03, 82.04, 82.05,  
4 82.091, 82.101, F.S.; renumbering section 82.045, F.S., to  
5 section 82.08, F.S.; creating section 82.08, F.S.;  
6 repealing section 82.061, F.S., relating to process to  
7 service complaint; repealing section 82.071, F.S., relating  
8 to evidence of damages; and repealing section 82.081, F.S.,  
9 relating to form of verdict; defining the terms "unlawful  
10 entry", "forcible entry" and "unlawful detention";  
11 providing a cause of action for terminating possession due  
12 to unlawful entry or forcible entry or unlawful detention;  
13 limiting the actions and the effect of judgment; providing  
14 for service of process; providing for damages; and  
15 providing an effective date.

16  
17 Be it Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Section 82.01, Florida Statutes, is amended to  
20 read:

21 82.01. Definitions. ~~"Unlawful entry and forcible entry"~~  
22 ~~defined.~~

23 (1) "Unlawful entry" is defined as a person's entry into  
24 and possession of any property except when entry is given by a  
25 person entitled to possession thereof or as authorized by law,  
26 even if the possession is temporary or of a portion of the  
27 property.

28 (2) "Forcible entry" is defined as a person's entry into  
29 and possession of any property with force, not in a peaceable,  
30 easy and open manner, even when entry is authorized by a person  
31 entitled to possession thereof and even if the possession is  
32 temporary or of a portion of the property.

33           (3) "Unlawful detention" is defined as a person holding  
34 possession of property without the consent of a person entitled  
35 to possession or after consent is withdrawn, even if the  
36 possession is temporary or of a portion of the property.

37           (4) "Record title holder" is defined as a person holding  
38 title to property evidenced by an instrument or instruments  
39 recorded in the public records of the county where the property  
40 is located.

41           (5) "Property" is defined as land, tenements, and  
42 hereditaments, including any building or structure thereon, or  
43 any part thereof, existing, built, erected, or placed on land or  
44 other property, permanently or temporary, and the appurtenant  
45 facilities, grounds, areas and property held out for the use of  
46 persons in possession generally. ~~No person shall enter into any~~  
47 lands or tenements except when entry is given by law, nor shall  
48 any person, when entry is given by law, enter with strong hand  
49 or with multitude of people, but only in a peaceable, easy and  
50 open manner.

51           Section 2. Section 82.02, Florida Statutes, is amended to  
52 read:

53           82.02 Applicability. ~~"Unlawful entry and unlawful detention"~~  
54 ~~defined.~~

55           (1) This Chapter shall not apply with regard to possession  
56 under a residential tenancy governed by Chapter 83 Florida  
57 statutes.

58           (2) This Chapter shall not apply with regard to possession  
59 under Chapters 513 and 723.

60           ~~(1) No person who enters without consent in a peaceable,~~  
61 ~~easy and open manner into any lands or tenements shall hold them~~  
62 ~~afterwards against the consent of the party entitled to~~  
63 ~~possession.~~

64 ~~—— (2) This section shall not apply with regard to residential~~  
65 ~~tenancies.~~

66 Section 3. Section 82.03, Florida Statutes, is amended to  
67 read:

68 82.03 Remedies. ~~Remedy for unlawful entry and forcible~~  
69 ~~entry.~~

70 (1) By an action under this Chapter, a party entitled to  
71 possession of property, including constructive possession by a  
72 record title holder, may terminate the possession of all or of  
73 any portion of said property, by any person holding possession  
74 by "Unlawful entry" or "Forcible entry" or "Unlawful detention".

75 (2) A plaintiff is not required to give a defendant any  
76 pre-suit notice as a condition precedent to maintaining an  
77 action under this Chapter.

78 (3) The actions for possession and damages may be  
79 bifurcated. If the plaintiff recovers possession, the plaintiff  
80 shall recover from the defendant or defendants damages of double  
81 the reasonable rental value of the property for the time from  
82 the beginning of the "Unlawful entry" or "Forcible entry" or  
83 "Unlawful detention" until possession is delivered, if the trier  
84 of fact finds that the detention is willful and knowingly  
85 wrongful. Plaintiff may recover other damages to the property or  
86 for waste.

87 (4) All actions under this Chapter shall be conducted  
88 according to the summary procedure provided in s. 51.011, and  
89 the court shall advance the cause on the calendar. ~~If any person~~  
90 ~~enters or has entered into lands or tenements when entry is not~~  
91 ~~given by law, or if any person enters or has entered into any~~  
92 ~~lands or tenements with strong hand or with multitude of people,~~  
93 ~~even when entry is given by law, the party turned out or~~  
94 ~~deprived of possession by the unlawful or forcible entry, by~~  
95 ~~whatever right or title the party held possession, or whatever~~

96 ~~estate the party held or claimed in the lands or tenements of~~  
97 ~~which he or she was so dispossessed, is entitled to the summary~~  
98 ~~procedure under s. 51.011 within 3 years thereafter.~~

99 Section 4. Section 82.04, Florida Statutes, is amended to  
100 read:

101 82.04 Questions involved in this proceeding. ~~Remedy for~~  
102 ~~unlawful detention.~~

103 In actions under this Chapter, the court shall determine the  
104 right of possession and damages and no question of title of the  
105 property shall be determined, other than as necessary to  
106 determine the right of possession or the record title holder.

107 ~~(1) If any person enters or has entered in a peaceable manner~~  
108 ~~into any lands or tenements when the entry is lawful and after~~  
109 ~~the expiration of the person's right continues to hold them~~  
110 ~~against the consent of the party entitled to possession, the~~  
111 ~~party so entitled to possession is entitled to the summary~~  
112 ~~procedure under s. 51.011, at any time within 3 years after the~~  
113 ~~possession has been withheld from the party against his or her~~  
114 ~~consent.~~

115 ~~(2) This section shall not apply with regard to residential~~  
116 ~~tenancies.~~

117 Section 5. Section 82.045, Florida Statutes, is renumbered  
118 to Section 82.08, and amended to read:

119 82.08 ~~82.045~~ Remedy for unlawful detention by a transient  
120 occupant of residential property.

121 (1) As used in this section, the term "transient occupant"  
122 means a person whose residency in a property dwelling intended  
123 for residential use has occurred for a brief length of time, is  
124 not pursuant to a lease, and whose occupancy was intended as  
125 transient in nature.

126 (a) Factors that establish that a person is a transient  
127 occupant include, but are not limited to:

- 128           1.    The person does not have an ownership interest,  
129 financial interest, or leasehold interest in the property  
130 entitling him or her to occupancy of the property.
- 131           2.    The person does not have any property utility  
132 subscriptions.
- 133           3.    The person does not use the property address as an  
134 address of record with any governmental agency, including, but  
135 not limited to, the Department of Highway Safety and Motor  
136 Vehicles or the supervisor of elections.
- 137           4.    The person does not receive mail at the property.
- 138           5.    The person pays minimal or no rent for his or her stay  
139 at the property.
- 140           6.    The person does not have a designated space of his or  
141 her own, such as a room, at the property.
- 142           7.    The person has minimal, if any, personal belongings at  
143 the property.
- 144           8.    The person has an apparent permanent residence  
145 elsewhere.
- 146           (b) Minor contributions made for the purchase of household  
147 goods, or minor contributions towards other household expenses,  
148 do not establish residency.
- 149           (2) A transient occupant unlawfully detains a residential  
150 property if the transient occupant remains in occupancy of the  
151 residential property after the party entitled to possession of  
152 the property has directed the transient occupant to leave.
- 153           (3) Any law enforcement officer may, upon receipt of a  
154 sworn affidavit of the party entitled to possession that a  
155 person who is a transient occupant is unlawfully detaining  
156 residential property, direct a transient occupant to surrender  
157 possession of residential property. The sworn affidavit must set  
158 forth the facts, including the applicable factors listed in

159 paragraph (1)(a), which establish that a transient occupant is  
160 unlawfully detaining residential property.

161 (a) A person who fails to comply with the direction of the  
162 law enforcement officer to surrender possession or occupancy  
163 violates s. 810.08. In any prosecution of a violation of s.  
164 810.08 related to this section, whether the defendant was  
165 properly classified as a transient occupant is not an element of  
166 the offense, the state is not required to prove that the  
167 defendant was in fact a transient occupant, and the defendant's  
168 status as a permanent resident is not an affirmative defense.

169 (b) A person wrongfully removed pursuant to this  
170 subsection has a cause of action for wrongful removal against  
171 the person who requested the removal, and may recover injunctive  
172 relief and compensatory damages. However, a wrongfully removed  
173 person does not have a cause of action against the law  
174 enforcement officer or the agency employing the law enforcement  
175 officer absent a showing of bad faith by the law enforcement  
176 officer.

177 (4) A party entitled to possession of a property has a  
178 cause of action for unlawful detainer against a transient  
179 occupant pursuant to s. 82.03~~4~~. The party entitled to possession  
180 is not required to notify the transient occupant before filing  
181 the action. If the court finds that the defendant is not a  
182 transient occupant but is instead a tenant of  
183 residential property ~~dwelling~~ governed by part II of chapter 83,  
184 the court may not dismiss the action without first allowing the  
185 plaintiff to give the transient occupant the notice required by  
186 that part and to thereafter amend the complaint to pursue  
187 eviction under that part.

188 Section 6. Section 82.05, Florida Statutes, is amended to  
189 read:



190           82.05 Process, Service. ~~Questions involved in this~~  
191 ~~proceeding.~~

192           (1) After at least two attempts to obtain service as  
193 provided by law, if the defendant cannot be found in the county  
194 in which the action is pending and either the defendant has no  
195 usual place of abode in the county or there is no person 15  
196 years of age or older residing at the defendant's usual place of  
197 abode in the county, the sheriff shall serve the summons by  
198 attaching it to some part of the property involved in the  
199 proceeding. The minimum time delay between the two attempts to  
200 obtain service shall be 6 hours.

201           (2) If a plaintiff causes, or anticipates causing, a  
202 defendant to be served with a summons and complaint solely by  
203 attaching them to some conspicuous part of the property involved  
204 in the proceeding, the plaintiff shall provide the clerk of the  
205 court with two additional copies of the complaint and two  
206 prestamped envelopes addressed to the defendant. One envelope  
207 shall be addressed to the residence of the defendant, if known.  
208 The second envelope shall be addressed to the last known  
209 business address of the defendant, if known. The clerk of the  
210 court shall immediately mail the copies of the summons and  
211 complaint by first-class mail, note the fact of mailing in the  
212 docket, and file a certificate in the court file of the fact and  
213 date of mailing. Service shall be effective on the date of  
214 posting or mailing, whichever occurs later; and at least 5 days  
215 from the date of service must have elapsed before a judgment for  
216 final removal of the defendant may be entered. ~~No question of~~  
217 ~~title, but only right of possession and damages, is involved in~~  
218 ~~the action.~~

219           Section 7. Section 82.091, Florida Statutes, is amended to  
220 read:

221           82.091 Judgment and execution.—If the court shall enter  
222 judgment for verdict is in favor of plaintiff, the court shall  
223 enter judgment that plaintiff shall recover possession of the  
224 property to which plaintiff is entitled described in the  
225 complaint with his or her, and plaintiff's damages and costs,  
226 and the court shall award a writ of possession forthwith to be  
227 executed without delay and execution for plaintiff's damages and  
228 costs. If the judgment verdict is for defendant, the court shall  
229 enter judgment against plaintiff dismissing the complaint and  
230 order that defendant recover costs.

231           Section 8. Section 82.101, Florida Statutes, is amended to  
232 read:

233           82.101 Effect of judgment.—No judgment rendered either for  
234 plaintiff or defendant bars any action of trespass for injury to  
235 the property or ejectment or quiet title action between the same  
236 parties respecting the same property. No judgment verdict is  
237 conclusive as to ~~of~~ the facts therein ~~found~~ in any future  
238 action for ~~of~~ trespass or ejectment or quiet title. A judgment  
239 rendered either for plaintiff or defendant under this Chapter  
240 may be superseded, in whole or in part, by a subsequent judgment  
241 in an action for trespass for injury to the property or  
242 ejectment or quiet title action involving the same parties  
243 respecting the same property.

244           Section 9. Section 82.061, Florida Statutes, is repealed.

245           Section 10. Section 82.071, Florida Statutes, is repealed.

246           Section 11. Section 82.081, Florida Statutes, is repealed.

247           Section 12. This act shall take effect upon becoming a  
248 law.

**REAL PROPERTY, PROBATE & TRUST LAW SECTION  
OF THE FLORIDA BAR (RPPTL)**

**White Paper**

**Proposal To Amend Chapter 82, Fla. Stat.  
Forcible Entry and Unlawful Detainer**

**I. SUMMARY**

This proposal is intended to:

1. provide a cause of action for unlawful detainer where a person obtains possession of property with the consent of the person entitled to possession but that consent is later withdrawn,
2. clarify the forcible entry and unlawful detainer statutes by providing definitions,
3. eliminate any ambiguity as to whether pre-suit notice is a condition precedent to an action for forcible entry or unlawful detainer,
4. clarify that an action for unlawful detainer may be used where the property is residential but the relationship between the plaintiff and defendant is not that of landlord and tenant, which is subject to the provisions of Chapter 83, Part II, Florida Statutes,
5. remove the procedural jury verdict forms contained within the statute; and,
6. modernize much of the archaic language used in the current law which derives from old English statutes that makes it difficult to apply to current practice.

**II. CURRENT SITUATION**

The current Forcible Entry and Unlawful Detainer statute is generally intended to provide a procedure to expeditiously recover possession of property under certain circumstances. As written, it has generated confusion and uncertainty amongst practitioners, the courts and the general public. An absence of significant case law has contributed to the lack of guidance to the legal community. Chapter 82 contains numerous provisions the committee sought to address, including:

1. Under current § 82.01 and § 82.02, unlawful entry, forcible entry and unlawful detention are defined, but § 82.03 only provides remedies for unlawful entry and forcible entry. Although the title to § 82.04 is “[r]emedy for unlawful detention,” no explicit remedy for unlawful detention is given.
2. Current Chapter 82 does not contain a definition of the word “property” but uses a variety of similar meaning words that may be taken out of context or be ambiguous, nor does it contain a definition of “record title holder”.

3. The statute does not explicitly state whether pre-suit notice is a requirement prior to commencing an action under Chapter 82.
4. The current statute contains a procedural jury verdict form for forcible or unlawful entry and for unlawful detainer.

### **III. EFFECT OF PROPOSED CHANGES**

1. Chapter 82, Florida Statutes, has been limited in its use because as written, it does not expressly provide a cause of action to recover possession where a person has possession of property through the consent of the owner or person entitled to possession, but the owner revokes that consent (“unlawful detention”). Under a modern day scenario, two common factual situations where unlawful detainer would be applicable are: (1) where a property is purchased with a person already occupying the property, such as a “squatter,” or (2) a person entitled to possession invites a family member or other person to reside at the property, and the person who granted that possession subsequently revokes their consent. The affect of the proposed changes would be to provide a cause of action to remove the person and recover possession.
2. Pre-suit notice is generally a condition precedent to filing an action for possession under the residential and commercial eviction statutes. The current unlawful detainer statute contains no pre-suit notice requirement, but neither does it explicitly state that pre-suit notice is not a condition precedent to bringing an action. The proposed change to the statute would clarify that no pre-suit notice is required prior to filing an action under Chapter 82.
3. Revising the definitions of “unlawful entry”, “forcible entry” and “unlawful detention” and including definitions of “property” and “record title holder” provide clarity and uniformity that is absent from the current statute.
4. The removal of the procedural jury verdict forms from the statute brings the statute in line with modern day civil practice.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The proposal does not have a fiscal impact on state and local governments.

**V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The proposal does not have a direct economic impact on the private sector.

**VI. CONSTITUTIONAL ISSUES**

The proposal raises no constitutional issues.

**VII. OTHER INTERESTED PARTIES**

No other parties of interest are identified.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Arthur J. Menor, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval)  
Date \_\_\_\_\_, 2017

**Address** Shutts & Bowen LLP, City Place Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.

**Position Type** Real Property Problems Study Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Arthur J. Menor**, Shutts & Bowen LLP, City Place Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.  
**W. Cary Wright**, Carlton Fields Jordan Burt, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607, Telephone: (813) 223-7000  
**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100 Email: pdunbar@deanmead.com  
**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100 Email: medenfield@deanmead.com (List name, address and phone number)

### Appearances

**Before Legislators** (SAME) \_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

### Meetings with

**Legislators/staff** (SAME) \_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

## PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

### If Applicable,

**List The Following** N/A \_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support \_\_\_\_\_ Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

"Supports proposed legislation to provide a cause of action for unlawful detainer, clarify the applicability of actions for forcible entry and unlawful detainer, clarify that no pre-suit notice is required in such actions, remove procedural jury verdict forms, and modernize archaic language."

### Reasons For Proposed Advocacy:

Currently there is no remedy for unlawful detainer though it is defined in Chapter 82. In addition, the existing statute contains some ambiguous provisions and outdated language which should be clarified for the benefit of practitioners, the judiciary and the public.



1                   A bill to be entitled  
2           An act relating to ejectment; amending s. 66.021, F.S.;  
3           revising procedure for ejectment; providing for exclusive  
4           jurisdiction of circuit courts; providing an effective  
5           date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9           Section 1. Section 66.021, Florida Statutes, is amended to  
10 read:

11           66.021 Ejectment Procedure.

12           (1) RIGHT OF ACTION.—A person with a superior right to  
13 possession of real property may maintain an action in ejectment  
14 to recover possession of the property.

15           (2) JURISDICTION.—Circuit courts shall have exclusive  
16 jurisdiction for an ejectment action.

17           (3) NOTICE.—A plaintiff shall not be required to provide any  
18 pre-suit notice or demand to a defendant as a condition to  
19 maintaining an action under this part.

20           (4)(1) LANDLORD NOT A DEFENDANT. When it appears before  
21 trial that a defendant in ejectment is in possession as a tenant  
22 and that his or her landlord is not a party, the landlord shall  
23 be made a party before further proceeding unless otherwise  
24 ordered by the court.

25           (5)(2) DEFENSE MAY BE LIMITED. A defendant in an action of  
26 ejectment may limit his or her defense to a part of the property  
27 mentioned in the complaint, describing such part with reasonable  
28 certainty.



29            ~~(6)(3)~~ WRIT OF POSSESSION; EXECUTION TO BE JOINT OR SEVERAL.  
30    When plaintiff recovers in ejectment, he or she may have one writ  
31    for possession, damages and costs or, if the plaintiff elects,  
32    have separate writs for possession and damages.

33            ~~(7)(4)~~ CHAIN OF TITLE.    ~~The Plaintiff with his or her~~  
34    complaint and the defendant with his or her answer  
35    shall include ~~serve~~ a statement setting forth chronologically the  
36    chain of title on which the party ~~he or she~~ will rely at  
37    trial and attach copies of each instrument identified in the  
38    statement. ~~The If any part of the chain of title is recorded,~~  
39    statement shall set forth the names of the grantors and the  
40    grantees, the dates for each instrument, and if the instrument is  
41    recorded, the statement shall set forth the book and page of the  
42    record or instrument number of the record ~~thereof; if an~~  
43    ~~unrecorded~~  
44    ~~instrument is relied on, a copy shall be attached. The court may~~  
45    ~~require the original to be submitted to the opposite party for~~  
46    ~~inspection.~~ If the party relies on a claim or right without color  
47    of title, the statement shall specify how and when the claim  
48    originated and the facts on which the claim is based. If  
49    defendant and plaintiff claim under a common source, the  
50    statement need not deraign title before the common source.

51            ~~(8)(5)~~ TESTING SUFFICIENCY.    If either party seeks ~~wants~~ to  
52    test the legal sufficiency of any instrument or court proceeding

53 in the chain of title of the opposite party, the party shall do  
54 so before trial by motion setting up his or her objections with a  
55 copy of the instrument or court proceedings attached. The motion  
56 shall be disposed of before trial. If either party determines  
57 that he or she will be unable to maintain his or her claim by  
58 reason of the order, that party may so state in the record and  
59 final judgment shall be entered for the opposite party.

60 (9) OPERATION.—This section is cumulative to other existing  
61 remedies and shall not be construed to limit other remedies  
62 available under Florida law.

63 Section 2. This act shall take effect upon becoming a law.

**REAL PROPERTY, PROBATE & TRUST LAW SECTION  
OF THE FLORIDA BAR (RPPTL)  
White Paper**

**Proposal to Amend § 66.021, Fla. Stat.**

**I. SUMMARY**

This proposal is intended to:

- (1) provide a statutory definition for ejectment actions;
- (2) include in the ejectment statute a statement reflecting that circuit courts have exclusive jurisdiction over those actions;
- (3) eliminate any ambiguity as to whether pre-suit notice is a condition precedent to an ejectment action; and
- (4) update language in the statute.

**II. CURRENT SITUATION**

Under current § 66.021, Fla. Stat. the situation is as follows:

- (1) The statute provides no definition for ejectment actions;
- (2) The statute does not explicitly state whether a plaintiff in an ejectment action has a pre-suit obligation to provide notice to a defendant;
- (3) The Florida Statutes provide circuit courts with exclusive jurisdiction for ejectment actions in § 26.012(f), Fla. Stat. but this jurisdictional provision is not referenced in the ejectment statute;
- (4) Legal practitioners and lay people may encounter confusion as to the difference between ejectment actions and other possessory actions under Chapters 82 and 83 of the Florida Statutes. One example is *Pro-Art Dental Lab, Inc. v. V-strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2007). There, a commercial tenant filed an ejectment action in county court. The Florida Supreme Court held that the proper result would be dismissal of the action, or removal, because county courts lack jurisdiction over ejectment actions. The Court suggested that the landlord's confusion may have occurred because possessory actions under Florida law can be "somewhat overlapping" and "may certainly be similar in some respects." *Id.* at 1250-1251. The *Pro-Art* case is a cautionary tale in that the landlord endured three rounds of appellate review before having to re-file the action in circuit court.

**III. EFFECT OF PROPOSED CHANGES**

1. **The proposal amends the statute to add a definition for ejectment actions: “A person with a superior right to possession of real property may maintain an action in ejectment to recover possession of the property.”**

This change provides a statutory definition for ejectment actions. The statute never previously defined this type of action, and litigants have relied upon case law and secondary sources to fill this gap. The definition provided by the proposal intends to make ejectment a comprehensive cause of action which can overlap with alternate possessory actions.

2. **The proposal includes a statement that circuit courts have exclusive jurisdiction over these actions.**

This change is superfluous to existing law, since § 26.012(f), Fla. Stat. already contains this jurisdictional provision. The inclusion of this language into § 66.021, Fla. Stat. intends to reduce the possibility that litigants incorrectly file an ejectment action in county rather than circuit court.

3. **The proposal clarifies that ejectment actions have no pre-suit notice requirement.**

The current ejectment statute does not impose a pre-suit notice requirement, but Chapter 83, Florida Statutes, does require a plaintiff to provide a specific form of pre-suit notice to defendants in other possessory actions. No cases from Florida’s District Courts of Appeal have found that a plaintiff in an ejectment action must provide a defendant a pre-suit notice similar to those found in possessory actions under Chapter 83, Florida Statutes. The proposal clarifies that a plaintiff’s right to possession in an ejectment action is not dependent upon any pre-suit notice. This clarification intends to eliminate the possibility of a dismissal of an ejectment action under a finding that the plaintiff failed to comply with conditions precedent. Conditions precedent for ejectment actions have never been explicitly adopted into the statute or previous case law.

4. **The proposal rewords the statutory requirement that the parties demonstrate a chain of title in their pleadings.**

The changes to the statutory pleading requirements demonstrating a chain of title intend to simplify the statute’s current language.

#### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The proposal does not have a fiscal impact on state and local governments.

#### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The proposal does not have a direct economic impact on the private sector.

**VI. CONSTITUTIONAL ISSUES**

There are no known constitutional issues.

**VII. OTHER INTERESTED PARTIES**

No other parties of interest are identified.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Arthur J. Menor, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval)  
Date \_\_\_\_\_, 2017

**Address** Shutts & Bowen LLP, City Place Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.

**Position Type** Real Property Problems Study Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Arthur J. Menor**, Shutts & Bowen LLP, City Place Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.  
**W. Cary Wright**, Carlton Fields Jordan Burt, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607, Telephone: (813) 223-7000  
**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100 Email: pdunbar@deanmead.com  
**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100 Email: medenfield@deanmead.com  
(List name, address and phone number)

### Appearances

**Before Legislators** (SAME) \_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

### Meetings with

**Legislators/staff** (SAME) \_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

## PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

### If Applicable,

**List The Following** N/A \_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support \_\_\_\_\_ Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

“Supports proposed legislation to provide a statutory definition for Ejectment actions, provide for jurisdiction in the circuit courts for such actions, eliminate any ambiguity over whether pre-suit notice is required in such actions, and update the language in the existing Ejectment statute.”

### Reasons For Proposed Advocacy:

The proposed legislation clarifies the ejectment statute to assist legal practitioners, lay people and the judiciary in understanding when this possessory action may be utilized.



1                                   A bill to be entitled  
2           An act relating to extent of liens; amending s.  
3           713.10, F.S.; clarifying existing law; revising  
4           language that provides that the interest of a lessor  
5           is not subject to a lessee's improvements if the  
6           lessee is leasing a mobile home lot; amending s.  
7           713.13, F.S.; clarifying existing law; providing that  
8           the notice of commencement can be for a term longer or  
9           shorter than one year; providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13           Section 1. Section 713.10(2)(b)3, Florida Statutes, is  
14           deleted in its entirety.

15  
16           Section 2. Section 713.10, Florida Statutes, is revised to  
17           add a new subsection (4):

18  
19           (4) The interest of the lessor is not subject to liens for  
20           improvements made by the lessee when the lessee is a mobile home  
21           owner who is leasing a mobile home lot in a mobile home park  
22           from the lessor.

23  
24           Section 3. Section 713.13(1)(c), Florida Statutes, is  
25           revised to read:

26  
27           (c) If the contract between the owner and a contractor  
28           named in the notice of commencement expresses a period of time  
29           for completion of the improvement, the notice of commencement  
30           must state that it is effective for at least that period of  
31           time. The expiration date stated in the notice of commencement  
32           may be more or less than one year. If no period of time is



33 stated, then the expiration date of the notice of commencement  
34 will be one year from the date of recording. The preceding  
35 sentence clarifies existing law and applies to all notices of  
36 commencement in this state, regardless of when recorded. Any  
37 payments made by the owner after the expiration of the notice of  
38 commencement are considered improper payments.

39

40 Section 4. Section 713.13(6), Florida Statutes is revised  
41 to read:

42

43 (6) A notice of commencement is not effectual in law or  
44 equity against a conveyance, transfer, or mortgage of or lien on  
45 the real property described in the notice, or against creditors  
46 or subsequent purchasers for a valuable consideration, after the  
47 expiration date of the notice of commencement. If no expiration  
48 date is stated in the notice of commencement, as it may be  
49 amended, the expiration date is one year after the date of the  
50 original recording of the notice of commencement. A notice of  
51 commencement may not be amended after its expiration.

52

53 Section 5. This act shall take effect July 1, 2017.

**WHITE PAPER**  
**PROPOSED REVISION OF SECTIONS 713.10 AND 713.13,**  
**FLORIDA STATUTES**

**Prepared by the Real Property, Probate & Trust Law Section of the Florida Bar**  
**Real Property Problems Study Committee**

**I. SUMMARY**

Section 713.10(2)(b), Florida Statutes, sets forth three separate circumstances for which the interest of the lessor is not subject to liens for improvements made by the lessee. However, the current statute omits the word “or” preceding clause 3 of subsection 713.10(2)(b), which causes the subsection to be ambiguous and subject to various interpretations. To remedy this ambiguity, that portion of the statute was deleted and a new subsection 713.10(4) was included.

Section 713.13, Florida Statutes provides that before a contractor begins construction or repair to any improvement on real property located in Florida, a notice of commencement must be recorded. It also sets forth the many procedures and requirements that must be followed by the contractor and the property owner in connection with the notice of commencement. In the statute's current form, a possible ambiguity exists regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording. In situations where the construction or repair work will clearly last for less than a year, the parties frequently do not specify an expiration date, and thus the default expiration date of one year from recording is deemed to apply. Further, even if the parties specify an expiration date of less than a year, a title company may not rely on that date in addressing the notice of commencement as an exception or requirement in the title commitment. Problems may, and often do, arise where the construction or repair is only for a period much shorter than one year, but the parties fail to terminate the notice of commencement upon the completion of the work. Failure to properly terminate a notice of commencement causes extra, unanticipated, and unnecessary work on behalf of parties involved in a later real estate transactions when the notice of commencement must be properly terminated in accordance with Florida law. Ultimately, the parties to the transaction must locate and obtain a contractor's final payment affidavit and final lien waivers from any lienors giving notice or with a direct contract with respect to a notice of commencement recorded well before the contemplated transaction. This proposed revision to an existing statute is intended to achieve greater clarity regarding the duration of notices of commencement, which may encourage contractors and owners to specifically determine and state the time period that both parties expect the construction to last and avoid the time and expense necessary to terminate an unexpired notice of commencement in order to close a sale or loan transaction. The bill does not have a fiscal impact on state funds.

## II. SECTION-BY-SECTION ANALYSIS

### A. Section 713.10(2)(b)

#### Current Situation:

Section 713.10(2)(b) currently provides:

*(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:*

*1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or*

*2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:*

- a. The name of the lessor.*
- b. The legal description of the parcel of land to which the notice applies.*
- c. The specific language contained in the various leases prohibiting such liability.*
- d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.*

*3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.*

#### Effect of Proposed Changes:

By deleting 713.10(2)(b)(3) entirely and adding a new subsection 713.10(4) which states:

*“The interest of the lessor is not subject to liens for improvements made by the lessee when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor,”* clarifies that the foregoing is a separate and additional circumstance in which the interest of the lessor is not subject to liens for improvements made by the lessee.

## **B. Section 713.13(1)(c)**

### Current Situation:

In its current form, Statute 713.13 does not explicitly provide that the period for a notice of commencement may be for shorter than one (1) year. 713.13(1)(c) provides:

*“If the contract between the owner and a contractor named in the notice of commencement expresses a period of time for completion for the construction of the improvement greater than 1 year, the notice of commencement must state that it is effective for a period of 1 year plus any additional period of time. Any payments made by the owner after the expiration of the notice of commencement are considered improper payments.”*

Because this section only references situations where a notice of commencement may be for longer than one year, the language of this provision has been subject to different interpretations regarding whether the term of a notice of commencement must be for at least one year. In order to clarify that a notice of commencement may be for shorter than one year, this proposal seeks to replace the current statute with the following:

*“If the contract between the owner and a contractor named in the notice of commencement expresses a period of time for completion of the improvement, the notice of commencement must state that it is effective for at least that period of time. The expiration date stated in the notice of commencement may be more or less than one year but if no period of time is stated then the expiration date of the notice of commencement will be one year from the date of recording. The preceding sentence clarifies existing law and applies to all notices of commencement in this state, regardless of when recorded. Any payments made by the owner after the expiration of the notice of commencement are considered improper payments.”*

### Effect of Proposed Changes:

This revised section will clarify that a notice of commencement may have an expiration date that is less than one year from recording. This clarification may encourage parties to a notice of commencement to select an expiration date that is less

than one year from the date of recording, where previous uncertainty regarding the term may have caused the expiration date to be left blank, resulting in a one year term, a much longer period than is necessary to properly protect each party's interests.

### **C. Section 713.13(1)(d) [item 9 in the statutory form]**

#### Current Situation:

Item 9 of the statutory form provided in 713.13(1)(d) states:

*“9. Expiration date of notice of commencement (the expiration date will be 1 year from the date of recording unless a different date is specified)”*

This proposal seeks to slightly amend this item on the statutory form to state:

*“9. Expiration date of notice of commencement (the expiration date will be 1 year from the date of recording unless a longer or shorter time period is specified)”*

#### Effect of Proposed Changes:

Replacing “different date” with “longer or shorter time period” on the statutory form will clarify and clearly provide for parties completing a notice of commencement that the expiration date may be less than one year from the date of recording. Using this revised language on the notice of commencement form may encourage parties to select a shorter expiration date, when the parties may otherwise forget or not realize that a shorter expiration date can be selected if it was not specifically enumerated on the form. If parties to a notice of commencement select an expiration date which is earlier than one year from the date of recording, this will reduce the possibility of a notice of commencement remaining open longer than necessary and avoid the time and expense necessary to terminate the open notice of commencement in order to close a sale or loan transaction.

### **D. Section 713.13(6)**

#### Current Situation:

Section 713.13(6) currently provides:

*“Unless otherwise provided in the notice of commencement or a new or amended notice of commencement, a notice of commencement is not effectual in law or equity against a conveyance, transfer, or mortgage of or lien on the real property described in the notice, or against creditors or subsequent*

*purchasers for a valuable consideration, after 1 year after the date of recording the notice of commencement.”*

The proposed changes to 713.13(6) clarifies that the original recorded notice of commencement shall expire on its expiration date and if no expiration date is stated, then the notice of commencement shall expire after one year from the date it was originally recorded. The proposed changes further clarify that a notice of commencement may not be amended after its expiration. :

*“A notice of commencement is not effectual in law or equity against a conveyance, transfer, or mortgage of or lien on the real property described in the notice, or against creditors or subsequent purchasers for a valuable consideration, after the expiration date of the notice of commencement. If no expiration date is stated in the notice of commencement, as it may be amended, the expiration date is one year after the date of the original recording of the notice of commencement. A notice of commencement may not be amended after its expiration.”*

#### Effect of Proposed Changes:

As stated throughout this proposal, these changes are intended to encourage parties to construction contracts to be completed in less than one year or to select an expiration date for the notice of commencement that is less than one year from the date of recording, which may reduce the possibility of an open notice of commencement and the time and expense necessary to terminate it in order to close a sale or loan transaction.

### **III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

There is no expected fiscal impact on state or local governments.

### **IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

Revising the portion of the law regarding liens for improvements made by lessees of mobile home lots eliminates the potential for ambiguity and varying interpretations of the law. Further, clarifying that a notice of commencement may be for less than one year may encourage parties to choose an expiration date that is less than a year from the date of recording. If a notice of commencement is not properly terminated, but has an expiration date which is earlier than the default term of one year, the earlier expiration date reduces the probability of it becoming an open and stale notice of commencement which might delay the issuance of title insurance. As a result, this will help expedite and streamline real estate purchase and sale transactions. During the period between when a title commitment is first issued by a title insurance company and the date the transaction is expected to close, a stale notice of commencement can unnecessarily absorb limited time and resources, and in some situations it can delay closing. When a notice of commencement is no longer applicable, and obtaining a release or affidavit from a

contractor is difficult or even impossible, these proposed clarifications to the statute could save prospective buyers and sellers, law firms, title companies and agents from expending unnecessary efforts to achieve the formality of closing out stale and no longer relevant notice of commencements. These proposed revisions to the statute may result in more efficient transactions which save time and money for all parties involved, with no additional risk.

**V. CONSTITUTIONAL ISSUES**

No constitutional issues are expected to arise as a result of this proposal.

**VI. OTHER INTERESTED PARTIES**

Other interested parties include the construction law committee, real property litigation committee, title insurance companies, title agents and lobbying groups.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Arthur J. Menor, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date \_\_\_\_\_, 2017)

**Address** Shutts & Bowen LLP, CityPlace Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.

**Position Type** Real Property Problems Study Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Arthur J. Menor**, Shutts & Bowen LLP, CityPlace Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, FL 33401 Telephone (561) 650-8510.  
**W. Cary Wright**, Carlton Fields Jordan Burt, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607, Telephone: (813) 223-7000  
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(List name, address and phone number)

### Appearances

**Before Legislators** (SAME)  
(List name and phone # of those having face to face contact with Legislators)

### Meetings with

**Legislators/staff** (SAME)  
(List name and phone # of those having face to face contact with Legislators)

## PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

### If Applicable,

**List The Following** N/A  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support \_\_\_\_\_ Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

"Supports proposed legislation to: (1) clarify that the interest of a lessor is not subject to improvements made by the lessee of a mobile home lot in s. 713.10, Florida Statutes; and (2) eliminate ambiguity regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording, including an amendment to s. 713.13, Florida Statutes."

### Reasons For Proposed Advocacy:

The proposed revisions to s. 713.10, Florida Statutes, eliminates confusing language and clarifies that the interest of a landlord is not subject to liens for improvements made by a lessee of a mobile home lot. The proposed revisions to s. 713.13, Florida Statutes, further clarifies the duration of notices of commencement, which may encourage contractors and owners to specifically determine and state the time period that both parties expect the construction to last. Where construction or repair work is for a period much shorter than one





1 A bill to be entitled

2 An act relating to (a) the provision for liens upon real  
3 or personal property where no lis pendens has been  
4 recorded, has expired, been withdrawn or otherwise  
5 discharged; (b) the clarification of existing law to  
6 provide that a recorded lis pendens which has not  
7 expired, been withdrawn or otherwise discharged, remains  
8 in effect through the issuance of any instrument  
9 transferring title pursuant to a judicial sale; (c)  
10 amending sections 48.23(1)(b)2. and 48.23(1)(d); and,  
11 (d) providing for an effective date.

12 WHEREAS, on August 24, 2016, the Fourth District  
13 Court of Appeal rendered a decision limiting the duration  
14 of the effectiveness of the lis pendens statute to the  
15 entry of a final judgment of foreclosure. *Ober v. Town*  
16 *of Lauderdale-by-the-Sea*, 2016 WL 4468134 (Fla. 4th DCA  
17 2016).

18 WHEREAS, on January 25, 2017, the Fourth District  
19 Court of Appeal granted rehearing and held that an  
20 effective lis pendens discharges subordinate liens  
21 placed on real property between the entry of a final  
22 judgment of foreclosure and a judicial sale, pursuant to

23 the lis pendens statute. *Ober v. Town of Lauderdale-by-*  
24 *the-Sea*, 2017 WL 361127 (Fla. 4th DCA Jan. 25, 2017).

25 WHEREAS, the Fourth District Court of Appeal  
26 recently granted the Town of Lauderdale-by-the-Sea's  
27 motion for certification of a question of great public  
28 importance to the Florida Supreme Court. *Ober v. Town of*  
29 *Lauderdale-by-the-Sea*, 2017 WL 1076939 (Fla. 4th DCA  
30 Mar. 22, 2017), thereby confirming the need for  
31 legislative clarification.

32 WHEREAS, the Florida Legislature finds that, as a  
33 matter of public policy, the *Ober* case made evident the  
34 need to clarify the intent of the Legislature as to the  
35 duration of the effectiveness of a notice of lis pendens  
36 for proceedings that involve a judicial sale pursuant to  
37 Florida Statutes Section 48.23(1)(d).

38 NOW THEREFORE, Be It Enacted by the Legislature of  
39 the State of Florida:

40 **48.23 Lis pendens.**

41 Section 48.23(1)(d) is amended to read as follows:

42 (d) Except for the interest of persons in possession or  
43 easements of use, the recording of such notice of lis pendens,  
44 provided that during the pendency of the proceeding it has not

45 expired pursuant to subsection (2) or been withdrawn or discharged,  
46 constitutes a bar to the enforcement against the property described  
47 in the notice of all interests and liens, including, but not  
48 limited to, federal tax liens and levies, unrecorded at the time  
49 of recording the notice unless the holder of any such unrecorded  
50 interest or lien intervenes in such proceedings within 30 days  
51 after the recording of the notice. If the holder of any such  
52 unrecorded interest or lien does not intervene in the proceedings  
53 and if such proceedings are prosecuted to a judicial sale of the  
54 property described in the notice, the property shall be forever  
55 discharged from all such unrecorded interests and liens. Unless it  
56 expires, is withdrawn, or it is otherwise discharged, a recorded  
57 notice of lis pendens of such proceedings that are prosecuted to  
58 a judicial sale remains in effect through the recording of any  
59 instrument transferring title of the property described in the  
60 notice. The preceding sentence is intended to clarify existing  
61 law. If the notice of lis pendens expires or is withdrawn or  
62 discharged, the expiration, withdrawal, or discharge of the notice  
63 does not affect the validity of any unrecorded interest or lien.

64 Section 3. This proposal is intended to clarify existing  
65 law.

66 Section 4. This act shall take effect on becoming law.

# REAL PROPERTY, PROBATE & TRUST LAW SECTION OF THE FLORIDA BAR

## White Paper

### Proposal to Amend §48.23, Fla. Stat. (Lis Pendens)

#### I. SUMMARY

This proposal to amend §48.23, Florida Statute, is intended to clarify §48.23(1)(d) to preserve the widely understood interpretation of the lis pendens statute that, in proceedings involving a judicial sale, a valid recorded notice lis pendens remains in effect through the recording of an instrument transferring title pursuant to the judicial sale (in order to provide the purchaser with title free and clear of intervening subordinate interests or liens).

#### II. SECTION BY SECTION ANALYSIS

##### Effectiveness of Notice of Lis Pendens

###### Current Situation

Consistent with the unique nature and purpose of a foreclosure action, a notice of lis pendens serves a dual purpose: to "protect future purchasers or encumbrancers of the property from becoming "embroiled" in the dispute, and to protect the plaintiff from 'intervening liens that could impair any property rights claimed ... "' *Fischer v. Fischer*, 873 So. 2d 534, 536 (Fla. 4th DCA 2004) (citations omitted).

Accordingly, the long established and accepted understanding of the lis pendens statute is that, except as otherwise provided by law (e.g. Chapters 718 and 720, Fla. Stats.), its protection from intervening interests and liens remains in effect until the judicial sale of the property, and the subsequent issuance of the instrument transferring title (typically the certificate of title) are final, thereby providing the purchaser of property at a judicial sale with a title that is free and clear of interests and liens created between the recording of the lis pendens and the instrument transferring title pursuant to the judicial sale in the action.

This understanding is consistent with the language of § 48.23(1)( d), Fla. Stat., which provides in part, as follows:

... [T]he recording of such notice of lis pendens ..., constitutes a bar to the enforcement against the property described in the notice of all interests and liens, ... unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and ***if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens.*** ... (*emphasis added*).

This provision of the lis pendens statute is the foundation for the following language found in Form 1.996(a) of the Florida Rules of Civil Procedure: "On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed."

Thousands of foreclosures are entered every year. The foreclosed real property is then sold at judicial sale and returned to productive use. Buyers, lenders and title insurers have acted on the understanding that any subordinate interest or lien joined in the action or created between the recording of the lis pendens and the instrument transferring title (typically a certificate of title) was foreclosed and barred from enforcement against the real property.

However, on August 24, 2016, the Fourth District Court of Appeal made a radical departure from common practice and held that the notice of lis pendens terminates when the time for appeal of the final judgment of foreclosure has passed. Thus, code enforcement liens, recorded after the final judgment of foreclosure and prior to the judicial sale were not discharged by the operation of the notice of lis pendens and remained an encumbrance on the real property foreclosed. *Ober v. Town of Lauderdale-by-the-Sea*, 2016 WL 4468134 (Fla. 4th DCA Aug. 24, 2016), *withdrawn*, *Ober v. Town of Lauderdale-by-the-Sea*, 2017 WL 361127 (Fla. 4th DCA Jan. 25, 2017).

The *Ober* court characterizes the contrary provisions of Form 1.996(a) as a "misstatement of the law" which should be modified to bring it into conformity with the statute and the prevailing practices in the courts. *Ober* at \*2. In fact, the statute (as quoted above) and the prevailing practice is contrary to the interpretation of the *Ober* court.

On January 25, 2017, the Fourth District Court of Appeal granted rehearing and held that liens placed on property between the entry of a final judgment of foreclosure and a judicial sale are discharged by Section 48.23(1)(d), Florida Statutes. *Ober v. Town of Lauderdale-by-the-Sea*, 2017 WL 361127 (Fla. 4th DCA Jan. 25, 2017).

The Court concluded that a proper reading of section 48.23(1)(d) when the proceeding is prosecuted to a judicial sale, the sale discharges all liens, whether recorded before the final judgment or after the final judgment. This conclusion is consistent with Form 1.996(a) of the Florida Rules of Civil Procedure which provides a form for foreclosure judgments which states, in pertinent part, the following:

On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property [...]

This ruling confirms that the effect of the lis pendens statute is a bar to enforcement against the property of all interest or liens, recorded or unrecorded, from the time of recording of the notice of lis pendens through the transfer of title, as a result of a judicial sale.

On February 7, 2017, the Town of Lauderdale-by-the-Sea filed a Motion for Certification of a question of great public importance to the Florida Supreme Court. On March 22, 2017, the District Court of Appeal granted the Town's motion and certified the following question to the Florida Supreme Court:

Whether, pursuant to section 48.23(1)(d), Florida Statutes, the filing of a notice of lis pendens at the commencement of a bank's foreclosure action prevents a local government from exercising authority granted to it by Chapter 162, Florida Statutes, to enforce code violations existing on the foreclosed property after final foreclosure judgment, where the local government's interest or lien on the property arises after final judgment and did not exist within 30 days after the recording of the notice of lis pendens.

In light of the *Ober* case, clarification of the legislative intent as to the duration of a notice of lis pendens for proceedings involving a judicial sale is paramount. Confirming the current application of the lis pendens statute to effectively bar enforcement of intervening interests and liens, recorded or unrecorded, through the instrument transferring title pursuant to a judicially ordered sale, will avoid potential impairment of numerous real estate titles previously foreclosed throughout the state. Unless the decision in *Ober* (on rehearing) is codified, title will have to be examined to determine whether it is encumbered by interests or liens recorded after the time for appeal of the final judgment of foreclosure had passed and prior to the issuance of the instrument transferring title. Litigation will then ensue to determine the validity of those interests or liens. There will also be a delay in returning foreclosed properties to the market and a burden on the overall economic recovery of the State of Florida, creating a greater burden on property owners, lenders, as well as counties, municipalities and homeowners' associations.

#### Effect of the Proposed Change

The proposed legislation will clarify the existing law to provide that the notice of lis pendens filed and recorded in a proceeding prosecuted to a judicial sale, remains in effect, not only until the time for appeal of the final judgment has passed (typically 30 days) but until the issuance of the instrument transferring title is recorded. This will codify the widely understood meaning of the current statute.

The Florida Legislature, by acting quickly to clarify the statute, the proposed legislation can be applied by the courts to litigation which may be pending at the time the legislation becomes law.

In *Madison at SoHo II Condo. Ass'n Inc. v. Devo Acquisition Ent., LLC.*, 198 So.3d 1111 (Fla. 2d DCA 2016) the court notes:

Florida courts have 'the right and the duty' to consider the legislature's recently enacted statute clarifying its intent in a prior version of a statute, which was passed soon after a controversy arose in the interpretation of that original, pre-amended statute. *Id.* at 1116 (citations omitted).

When the Florida legislature clarifies a statute, the amended statute can be used as a tool of statutory construction to guide the interpretation of the pre-amended version of the statute. *Id.* Thus, the proposed legislation will avoid further litigation as to encumbrances which were recorded in the gap between the entry of the final judgment and the recording of the instrument transferring title pursuant to a judicial sale. The potential cost of discharging encumbrances which were understood to have been previously discharged by the prosecution of the foreclosure through a judicial sale will also be avoided.

It is recognized that an argument may be made that the current statutory language limits the effectiveness of the notice of lis pendens only through the issuance of the certificate of sale. The current understanding and practice is to the contrary; that the protection of the notice of lis pendens for proceedings that require a judicial sale extends until the issuance of the instrument transferring title is recorded.

### **III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The proposal does not have any fiscal impact on state government. In 2013, the Florida Supreme Court held that code enforcement liens are not entitled to super-priority status and, therefore, such liens are subject to

be eliminated by a foreclosure action. *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924 (Fla. 2013). The proposed clarification to §48.23(1)(d)1. is in concert with the *City of Palm Bay* holding and the current prevalent practice of barring the enforcement of liens recorded after the notice of lis pendens and prior to recording the instrument transferring title.

#### **IV. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The proposal will reconfirm for both potential purchasers at judicial sales and those that purchase directly from the foreclosing lender that the title received is clear of encumbrances recorded in the gap period. By eliminating the risk of liens recorded in the gap between the final judgment and recording of the instrument transferring title, the otherwise anticipated litigation will be avoided, saving lenders, purchasers and title insurers the expense of litigation. This will further preserve the marketability and value of foreclosed real properties, and the overall recovery of the Florida real estate market.

#### **V. CONSTITUTIONAL ISSUES**

The clarification of the lis pendens statute is a tool of statutory construction that can be used to guide the interpretation of the pre-amended version of the statute. It is not the retroactive application of an amended statute to existing litigation. Thus, it does not create constitutional concerns. *Madison at SoHo II Condo. Ass'n, Inc.*, 198 So.3d at 1116-17.

#### **VI. OTHER INTERESTED PARTIES**

This proposal has been approved by the RPPTL Real Property Litigation Committee. Support is anticipated from the RPPTL Real Property Finance & Lending; Real Property Problems Study, and Condominium & Planned Developments Committees.

The Ober case has captured the interest of several organizations. Concerned with the negative impact of the original Ober decision, the following organizations filed an Amicus Curiae Brief:

- The Florida Land Title Association ("FLTA")
- The Business Law Section of The Florida Bar ("BLS")
- The Florida Bankers Association ("FBA")
- The Real Property, Probate & Trust Law Section of The Florida Bar ("RPPTL")
- The American Legal and Financial Network ("ALFN")

In support of the original Ober decision, the following local governments and organizations filed an Amicus Curiae Brief or an intent to do so:

- City of Coral Gables
- City of St. Petersburg
- City of Tampa
- City of Miami
- Florida Association of County Attorneys
- The City, County and Local Government Section of The Florida Bar ("CCLG")
- Additional local governments and organizations may request to file Amicus Curiae Briefs in this matter at any time.



# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Susan Spurgeon, Co-Chair, Real Property Litigation Committee of the Real Property Probate & Trust Law Section  
(RPPTL Approval Date \_\_\_\_\_, 2017)

**Address** Pennington, P.A., 2701 Rocky Point Dr., Suite 900, Tampa, FL 33607  
Telephone: (813) 639-9599

**Position Type** Real Property Litigation Committee, RPPTL Section, The Florida Bar  
(Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Susan Spurgeon**, Pennington, P.A., 2701 Rocky Point Dr., Suite 900, Tampa, FL 33607 Telephone: (813) 639-9599  
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**W. Cary Wright**, Carlton Fields Jordan Burt, P.A., 4221 WQ. Boy Scout Blvd., Suite 1000, Tampa, Florida 33607 Telephone: (813) 223-7000  
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**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100 Email: pdunbar@deanmead.com

**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100  
Email: medenfield@deanmead.com

### Appearances

**Before Legislators** (SAME)  
\_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

**Meetings with  
Legislators/staff** (SAME)  
\_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

## PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

### If Applicable,

**List the Following** N/A  
\_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support X Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

Support legislation which will clarify § 48.23(1)(d) to preserve the widely understood interpretation of the lis pendens statute that, in proceedings involving a judicial sale, a valid recorded notice lis pendens remains in effect through the recording of an instrument transferring title pursuant to the judicial sale..

**Reasons For Proposed Advocacy:**

The Legislation will clarify and codify that a notice of lis pendens remains in effect through the recording of the instrument which transfers title pursuant to a judicial sale, eliminating uncertainty as to the duration of a lis pendens in foreclosure cases and other actions culminating in judicial sales.

**PRIOR POSITIONS TAKEN ON THIS ISSUE**

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

**Most Recent Position** None  
(Indicate Bar or Name Section) (Support or Oppose) (Date)

**Others**

(May attach list if more than one)

None  
(Indicate Bar or Name Section) (Support or Oppose) (Date)

**REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS**

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

**Referrals**

In light of the immediacy of the need to advance this proposed legislation, it has not been referred to other Bar sections, committees or attorney organizations  
(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

**Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.**

## CLERK'S PROPOSED TAX DEED LEGISLATION

1 A bill to be entitled

2 An act related to revising the clerk's procedure for  
3 conducting tax deed sales and the disposition of tax  
4 excess funds; amending s. 197.502, F.S.; adding costs  
5 to redeem certificates; revising the tax collectors'  
6 obligation to provide clerks with information  
7 on persons required to receive notice; providing for  
8 updates on notice information provided to clerks;  
9 requiring clerks to record notices in the official  
10 records prior to tax deed sales; amending s. 197.582 F.S.;  
11 revising the notice requirements for distribution  
12 of excess funds; providing a form for notice; requiring  
13 persons receiving notice to file a claim; providing the  
14 form for a claim; providing for termination of rights for  
15 failure to file a claim; providing for filing objections  
16 to claims; requiring clerks to pay claims or file  
17 interpleader actions or treat the funds as unclaimed  
18 monies; requiring state and local government lienholders  
19 to file claims; authorizing tax deed recipients  
20 to pay government liens directly; providing for the  
21 disposition of unclaimed tax deed excess funds through  
22 s. 116.21, Florida Statutes-, NOW, THEREFORE,

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

25 Section 1.Subsection (1) of section 197.502, Florida  
26 Statutes is amended to read:

27 197.502(1) Application for obtaining tax deed by holder  
28 of tax sale certificate; fees. -

29 (1) The holder of a tax certificate, at any time after 2  
30 years have elapsed since April 1 of the year of issuance of the  
31 tax certificate and before the cancellation of the certificate,  
32 may file the certificate and an application for a tax deed with

33 the tax collector of the county where the property described in  
34 the certificate is located. The tax collector may charge a tax  
35 deed application fee of \$75 and for reimbursement of the costs  
36 for providing online tax deed application services.

37 If the tax collector charges a combined fee in excess of \$75,  
38 applicants shall have the option of using the ~~electronic~~  
39 online tax deed application process or may file  
40 applications without using such service.

41 Section 2. Subsection (2) of section 197.502, Florida  
42 Statutes is amended to read:

43 (2) A certificateholder, other than the county, who makes  
44 application for a tax deed shall pay the tax collector at the  
45 time of application all amounts required for redemption or  
46 purchase of all other outstanding tax certificates, plus interest,  
47 any omitted taxes, plus interest, any delinquent taxes, plus  
48 interest, costs required to bring the property to sale as  
49 provided in ss. 197.532 and 197.542, including property information  
50 searches, information from locator services, and mailing costs,  
51 and current taxes, if due, covering the property. In addition,  
52 the certificateholder shall pay the costs of resale, if  
53 applicable, and failure to pay such costs within 30 days after  
54 notice from the clerk shall result in the clerk's entering the  
55 land on a list entitled "lands available for taxes."

56 Section 3. Subsection (5) of 197.502, Florida Statutes  
57 is amended to read:

58 (5)(a) For purposes of determining who must be noticed and  
59 provided the information required in subsection (4), the  
60 tax collector ~~may~~ must contract with a title company  
61 ~~or an abstract company to provide the minimum information required~~  
62 ~~in subsection (4), consistent with rules adopted by the department~~  
63 a property information report as defined in s. 627.7843(1), as  
64 well as a locator service that provides last-known

65 addresses of all persons or entities required to be notified. If  
66 additional information is required, the tax collector must  
67 make a written request to the title company and ~~abstract company~~  
68 locator service, stating the additional requirements. The tax  
69 collector may select any title ~~or abstract~~ company and any locator  
70 service, regardless of its location, as long as the fee is  
71 reasonable, the ~~minimum~~ required information is submitted, and the  
72 title ~~or abstract~~ company and locator service are ~~is~~ authorized to  
73 do business in this state. The tax collector may advertise and  
74 accept bids for the title ~~or abstract~~ company and locator service  
75 if he or she considers it appropriate to do so. For the purpose  
76 of this section, a "title company" includes a title insurer, as  
77 defined in s. 627.7711(3), Florida Statutes, as well as licensed  
78 title insurance agencies and attorneys authorized as agents for  
79 a Florida licensed title insurer. For the purpose of this  
80 subsection, a "locator service" means a commercially available  
81 online databank locator service which has the ability to  
82 query multiple government and commercial databases to identify  
83 last-known addresses for individuals or entities, or an  
84 equivalent service provider.

85 1. The property information ~~ownership and encumbrance~~  
86 report must include the letterhead of the person, firm, or  
87 company that makes the search, and the signature of the  
88 individual who makes the search or of an officer of  
89 the firm. The tax collector is not liable for payment to the  
90 firm unless these requirements are met. The report may be  
91 submitted to the tax collector in an electronic format.

92 2. The tax collector may not accept or pay for  
93 any ~~title search or abstract~~ property information report if  
94 financial responsibility is not assumed for the search.  
95 However, reasonable restrictions as to the liability or  
96 responsibility of the title ~~or abstract~~ company are acceptable.

97 Notwithstanding s. 627.7843(3), the tax collector may contract  
98 for higher maximum liability limits.

99 3. In order to establish uniform prices for ~~ownership and~~  
100 ~~encumbrance~~ property information reports within the county,  
101 the tax collector must ensure that the contract for ~~ownership~~  
102 ~~and encumbrance~~ property information reports include all requests  
103 for ~~title searches or abstracts~~ property information reports  
104 for a given period of time.

105 4. The tax collector shall provide the clerk an updated  
106 property information report no earlier than 30 days prior to  
107 date of the notices required pursuant to s. 197.522(1).

108 (b) Any fee paid for a ~~title search or abstract~~ property  
109 information report must be collected at the time of application  
110 under subsection (1), and the amount of the fee must be added  
111 to the opening bid.

112 (c) ~~The clerk shall advertise and administer the sale~~  
113 Upon receipt of the tax deed application file from the tax  
114 collector, the clerk shall record a Notice of Tax Deed  
115 Application in the Official Records which is notice  
116 of the pendency of a tax deed application with respect to  
117 the property. Any person acquiring an interest in the subject  
118 property after the recording of the Notice of Tax Deed  
119 Application is deemed to be on notice of the pending  
120 tax deed sale and no additional notice is required. The  
121 payment of the taxes, through redemption or sale, shall  
122 automatically release any recorded Notice of Tax Deed  
123 Application. The contents of the Notice shall be the  
124 same as the contents of the Notice of Publication required by  
125 s. 197.512. The cost of recording must be collected at the  
126 time of application under subsection (1), and must be added  
127 to the opening bid.

128 (d) The Clerk must advertise the sale in conformance with

129 s. 197.512 and the clerk must administer the sale in conformance  
130 with s. 197.542 and receive such fees for the issuance  
131 of the deed and sale of the property as provided in s. 28.24.

132 (e) Notice of the application of the tax deed in accordance  
133 with s. 197.512 and s. 197.522 sent to the addresses shown  
134 on the statement described in subsection (4) shall  
135 conclusively be deemed sufficient to provide adequate  
136 notice of the tax deed application and the sale at public  
137 auction.

138 Section 4. Subsection (6) of section 197.502, Florida  
139 Statutes is amended to read:

140 (6) The opening bid:

141 (a) On county-held certificates on nonhomestead  
142 property shall be the sum of the value of all outstanding  
143 certificates against the property, plus omitted  
144 years' taxes, delinquent taxes, current taxes, if  
145 due, interest, and all costs and fees paid by the county.

146 (b) On an individual certificate must include, in  
147 addition to the amount of money paid to the tax collector by  
148 the certificateholder at the time of application, the amount  
149 required to redeem the applicant's tax certificate and all other  
150 costs ~~and~~, fees paid by the applicant, and any additional  
151 fees or costs incurred by the clerk, plus all tax certificates  
152 that were sold subsequent to the filing of the tax deed  
153 application, current taxes, if due, and omitted taxes, if any.

154 Effective Date: Applies to tax deed sales taking place on  
155 or after July 1, 2018.

156 Section 5. Subsections (2) and (3) of section 197.582,  
157 Florida Statutes are amended to read:

158 (2) If the property is purchased for an amount in excess  
159 of the statutory bid of the certificateholder, the excess must  
160 be paid over and disbursed by the clerk. ~~If the property~~

161 ~~purchased is homestead property and the statutory bid includes~~  
162 ~~an amount equal to at least one half of the assessed value of~~  
163 ~~the homestead, according to the procedure in subsections (3),~~  
164 ~~(5) and 6 below. If the opening bid included the homestead~~  
165 ~~assessment pursuant to s. 197.502(6)(c), that amount must be~~  
166 ~~treated as excess and distributed in the same manner. The clerk~~  
167 ~~shall distribute the excess to the governmental units for the~~  
168 ~~payment of any lien of record held by a governmental unit against~~  
169 ~~the property, including any tax certificates not incorporated in~~  
170 ~~the tax deed application, and omitted taxes, if any. If the~~  
171 ~~excess is not sufficient to pay all of such liens in full, the~~  
172 ~~excess shall be paid to each governmental unit pro rata.~~  
173 ~~If, after all liens of governmental units are paid in full,~~  
174 ~~there remains a balance of undistributed funds, the balance~~  
175 ~~shall be retained by the clerk for the benefit of persons~~  
176 ~~described in s. 197.522(1)(a), except those persons~~  
177 ~~described in s. 197.502(4)(h), as their interests may appear.~~  
178 ~~The clerk must mail notices to such persons certified mail~~  
179 ~~return receipt requested, notifying them of the funds held~~  
180 ~~for their benefit. ~~Such~~ If any notice constitutes compliance~~  
181 ~~with the requirements of s. 717.117(4). Any service charges,~~  
182 ~~at the rate prescribed in s. 28.24(10), and costs of mailing~~  
183 ~~notices shall be paid out of the excess balance held by~~  
184 ~~mail is returned as undelivered, the clerk. ~~Excess proceeds~~~~  
185 ~~~~shall be held and disbursed in the same manner as unclaimed~~~~  
186 ~~~~redemption moneys in s. 197.473. For purposes of identifying~~~~  
187 ~~~~unclaimed property pursuant to s. 717.113, excess proceeds~~~~  
188 ~~~~shall be presumed payable or distributable on the date the~~~~  
189 ~~~~must also publish a notice is sent. If excess proceeds are~~~~  
190 ~~~~not sufficient to cover the service charges and mailing costs,~~~~  
191 ~~~~the clerk shall receive the total amount of excess proceeds~~~~  
192 ~~~~of surplus funds once each week for two consecutive weeks~~~~



193 in a newspaper selected as a ~~service charge~~ provided in  
194 s. 197.402.  
195 Notice of Surplus Funds  
196 CLERK OF COURT  
197 \_\_\_\_\_ COUNTY, FLORIDA  
198 NOTICE OF TAX DEED SALE SURPLUS FUNDS  
199 Tax Deed # \_\_\_\_\_  
200 Certificate # \_\_\_\_\_  
201 Property Description: \_\_\_\_\_  
202 Pursuant to Chapter 197, Florida Statutes, the above property was  
203 sold at public sale on \_\_\_\_\_, and a surplus of \$ \_\_\_\_\_  
204 (subject to change) will be held by this office for a period of  
205 90 days from the first publication date of this notice for the  
206 benefit of persons having an interest in this property as described  
207 in FS 197.502(4), as their interests may appear (except for those  
208 persons described in s. 197.502(4)(h)).  
209 These funds will be used to satisfy in full, to the extent  
210 possible, each claimant with a senior mortgage or lien in the  
211 property before distribution of any funds to any junior mortgage  
212 or lien claimant or to the former property owners. To be  
213 considered for distribution of any funds, you must file a notarized  
214 statement of claim with this office, detailing the particulars of  
215 your lien, and the amounts currently due, within 90 days of the  
216 first publication date of this notice. Claims not filed within  
217 the 90-day deadline are barred.  
218 A copy of this notice must be attached to your statement of claim.  
219 After examination of the statements of claim filed, this office  
220 will notify you if you are entitled to any payment.  
221 Dated \_\_\_\_\_.  
222 Clerk of Court  
223  
224 The mailed notice shall include a form for making a claim under

225 subsection (3) below. Any service charges, at the rate  
226 prescribed in s. 28.24(10), costs of mailing, and publication  
227 must be paid out of the excess balance held by the clerk. If the  
228 clerk or comptroller certifies that excess proceeds are not  
229 sufficient to cover the service charges, mailing costs, and  
230 publication costs, if any, the clerk shall receive the total  
231 amount of excess proceeds as a service charge.

232 ~~(3) If unresolved claims against the property exist on the~~  
233 ~~date the property is purchased, the clerk shall ensure that the~~  
234 ~~excess funds are paid according to the priorities of the claims.~~  
235 ~~If a lien appears to be entitled to priority and the lienholder~~  
236 ~~has not made a claim against the excess funds, payment may not~~  
237 ~~be made on any lien that is junior in priority. If potentially~~  
238 ~~conflicting claims to the funds exist, the clerk may initiate~~  
239 ~~an interpleader action against the lienholders involved, and~~  
240 ~~the court shall determine the proper distribution of the~~  
241 ~~interpleaded funds. The clerk may move the court for an award of~~  
242 ~~reasonable fees and costs from the interpleaded funds. Persons~~  
243 receiving notice shall have 90 days from the date of the  
244 mailing or the date of first publication of notice, whichever  
245 is later, to file a written claim with the clerk for excess  
246 proceeds. At a minimum, in order to be considered a proper claim,  
247 the claim must (a) be made in writing, (b) be in the form of a  
248 sworn statement or a written declaration under s. 92.525,  
249 (c) identify the basis of the person making the claim,  
250 (d) reference the recorded document in the county official records  
251 as authority for the claim, and (e) include the amount of the  
252 claim, the amount of any interest, and the amount of costs and/or  
253 attorney fees that comprise the claim amount. A claim in  
254 substantially the following form shall be deemed sufficient:

255  
256 CLAIM TO SURPLUS PROCEEDS OF A TAX DEED SALE  
257 Complete and return to \_\_\_\_\_

258 By mail: \_\_\_\_\_  
259 By email: \_\_\_\_\_  
260 Note: The Clerk must pay all valid liens before distributing to  
261 to a titleholder  
262 Claimant's name \_\_\_\_\_  
263 Contact name, if applicable \_\_\_\_\_  
264 Address \_\_\_\_\_  
265 Phone no. \_\_\_\_\_ Email Address \_\_\_\_\_  
266 Tax deed no. \_\_\_\_\_ Date of sale (if known) \_\_\_\_\_  
267 \_\_\_I am not making a claim and waive any claim I might have to  
268 the surplus funds on this tax deed sale.  
269 \_\_\_I claim surplus proceeds resulting from the above tax deed  
270 sale. I am a \_\_\_Lienholder \_\_\_Titleholder.  
271 1. LIENHOLDER INFORMATION (Complete if claim is based on a  
272 lien against the sold property)  
273 A. Type of Lien: \_\_\_Mortgage; \_\_\_Court Judgment; \_\_\_Other-  
274 Describe in detail: \_\_\_\_\_  
275 If your lien is recorded in the County's Official Records,  
276 list the following, if known:  
277 Recording date \_\_\_\_\_; Instrument # \_\_\_\_\_; Book # \_\_\_\_\_ Page # \_\_\_\_\_  
278 B. Original Amount of Lien \$ \_\_\_\_\_  
279 C. Amounts due: (1) Principal Remaining due \$ \_\_\_\_\_ (2) Interest  
280 due \$ \_\_\_\_\_ (3) Fees and costs due, including late  
281 fees \$ \_\_\_\_\_ (describe costs in detail, include additional sheet  
282 if needed), and (4) attorney fees \$ \_\_\_\_\_ (include agreement  
283 to show entitlement to attorney's fees)  
284 D. Total Amount Claimed \$ \_\_\_\_\_  
285 2. TITLEHOLDER INFORMATION (Complete if claim is based on title  
286 formerly held on sold property)  
287 A. Nature of title: \_\_\_Deed; \_\_\_Court Judgment; \_\_\_Other-  
288 Describe in detail: \_\_\_\_\_  
289 If your former title is recorded in the county's Official Records,

290 List the following, if known: Recording date \_\_\_\_\_;  
291 Instrument # \_\_\_\_\_; Book # \_\_\_\_\_ Page # \_\_\_\_\_  
292 B. Amount of surplus tax deed sale proceeds claimed \$ \_\_\_\_\_  
293 C. Does titleholder claim the subject property was homestead?  
294 \_\_\_\_\_ Yes \_\_\_\_\_ No  
295 3. I hereby swear or affirm that all of the above information  
296 is true and correct.  
297 Date: \_\_\_\_\_  
298 Signature: \_\_\_\_\_  
299 STATE OF FLORIDA  
300 COUNTY \_\_\_\_\_  
301 Sworn to or affirmed and signed before me on \_\_\_\_\_ by \_\_\_\_\_  
302 \_\_\_\_\_  
303 NOTARY PUBLIC or DEPUTY CLERK  
304 \_\_\_\_\_  
305 [Print, type, or stamp commissioned name of notary]  
306 \_\_\_\_\_ Personally known  
307 \_\_\_\_\_ Produced identification; Type of identification produced \_\_\_\_\_  
308 \_\_\_\_\_  
309 (4) Claims and objections to claims may be mailed using the  
310 U.S. Postal Service, or delivered using either a commercial  
311 delivery service or in person. The postmark on a mailed claim is  
312 the filing date of the claim. For claims that are submitted  
313 using a commercial delivery service or delivered in person, the  
314 date of delivery is the filing date.  
315 (5) Claims not filed with the clerk or comptroller on or  
316 before close of business on the 90th day after the date of the  
317 mailed notice or first publication of notice as required by  
318 s. 197.582(2), whichever is later, are barred. Any person failing  
319 to ~~make~~ file a proper and timely claim is barred from receiving any  
320 disbursement of the excess funds. Within 30 days after the 90th  
321 day, the clerk or comptroller must determine the priority of

322 all proper claims timely ~~received~~ filed and the amount to be paid  
323 on such claims, and must send written notice to each person who  
324 ~~made~~-filed a timely, proper claim, identifying the priority of  
325 claims and the amount to be paid on each claim. Any person who  
326 objects must notify the clerk or comptroller of their objection  
327 in writing within 30 days and include the basis for the  
328 objection. The objection must be made by sworn statement  
329 or written declaration under s. 92.525 and must state  
330 the facts that support the objection and the legal basis  
331 for the objection. If no objections are ~~received~~-timely filed  
332 with ~~by~~ the clerk or comptroller within the 30 days, the clerk  
333 or comptroller must disburse the excess funds according  
334 to the notice of priority of claims within 30 days thereafter.  
335 If an objection is ~~received~~-timely filed with ~~by~~ the clerk or  
336 comptroller, the clerk or comptroller must provide a copy of  
337 the objection to all persons making a claim. The cost of all  
338 mailing under this section must be paid out of the excess  
339 balance held by the clerk or comptroller.

340 (6) Within 90 days after the last timely filed objection  
341 is filed, the clerk or comptroller may either file an  
342 interpleader action in circuit court to determine proper  
343 disbursement or pay the excess funds according to the clerk's  
344 determination of the priority of proper claims after  
345 reviewing all objections. If the clerk or comptroller  
346 fails to file an interpleader action or disburse the funds  
347 within the 90 days, any person who was provided proper notice and  
348 who filed an objection may thereafter file a declaratory action to  
349 determine rights to the excess funds. Except as provided in  
350 subsection (3) above, the failure of any person described in  
351 s. 197.502(4) to file a claim for excess funds within the 90  
352 days shall constitute a waiver of all interest in the excess  
353 funds and all claims thereto are forever barred.

354 (7) Holders of governmental liens of record, other than  
355 Federal governmental units, must file a request for disbursement  
356 of surplus funds within 90 days of the mailing of the notice  
357 of surplus funds except for ad valorem taxes. The clerk or  
358 comptroller must disburse payments to governmental units for  
359 the payment of any lien of record held by a governmental unit  
360 against the property, including any tax certificates not  
361 incorporated in the tax deed application and omitted taxes,  
362 if any, prior to any other disbursements from the surplus funds.  
363 Should the governmental unit, other than Federal governmental  
364 units, fail to file a timely claim, the failure shall constitute a  
365 waiver of all interests in the excess funds and as a waiver of any  
366 claim against the property to the extent that excess funds could  
367 have partially or completely satisfied the lien and the tax deed  
368 recipient shall have no liability for the payoff of any portion of  
369 the governmental lien that could have been paid from the surplus  
370 funds.

371 (8) The tax deed recipient may directly pay any and all  
372 liens to governmental units that could have been requested from  
373 surplus funds and, upon filing a timely claim under subsection (3)  
374 with proof of payment, the tax deed recipient shall be entitled to  
375 receive from the surplus funds payment for any and all amounts  
376 paid to governmental units in the same priority as the original  
377 lienholder.

378 (9) If the clerk receives no claims for the excess funds  
379 within the 90 day claim period, as required under s. 197.582(5),  
380 there is a conclusive presumption that the legal titleholder  
381 of record described in s. 197.502(4)(a) is entitled to the  
382 excess funds, which shall become "unclaimed monies" under  
383 s. 116.21, Florida Statutes. The clerk must process the unclaimed  
384 monies in the manner provided for in s. 116.21, Florida Statutes.

385  
386 History.-s. 8, ch. 17457, 1935; CGL 1936 Supp. 999(143); s. 31,

387 | ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; ss. 22,  
388 | 34, ch. 73-332; s. 4, ch. 77-354; s. 3, ch. 79-334; s. 6, ch.  
389 | 81-284; s. 6, ch. 82-205; s. 196, ch. 85-342; s. 1030, ch 95-147;  
390 | s. 10, ch. 96-397; s. 2, ch. 2003-284; s. 90, ch. 2003-402; s. 51,  
391 | ch. 2011-151; s. 8, ch. 2014-211.  
392 | Note.-Former ss. 194.22, 197.535, 197.291.  
393 | Effective for tax deed sales taking place on or after July 1, 2018.

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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; conforming provisions to changes made by the  
17          act; amending s. 712.06, F.S.; exempting a specified  
18          summary notice from certain notice content  
19          requirements; revising the contents required to be  
20          specified by certain notices; conforming provisions to  
21          changes made by the act; amending s. 712.11, F.S.;  
22          conforming provisions to changes made by the act;  
23          creating s. 712.12, F.S.; defining terms; authorizing  
24          the parcel owners of a community not subject to a  
25          homeowners' association to use specified procedures to  
26          revive certain covenants or restrictions, subject to  
27          certain exceptions and requirements; authorizing a  
28          parcel owner to commence an action by a specified date  
29          under certain circumstances for a judicial



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30 determination that the covenants or restrictions did  
31 not govern that parcel as of a specified date and that  
32 any revitalization of such covenants or restrictions  
33 as to that parcel would unconstitutionally deprive the  
34 parcel owner of rights or property; providing  
35 applicability; amending s. 720.303, F.S.; requiring a  
36 board to take up certain provisions relating to notice  
37 filings at the first board meeting; creating s.  
38 720.3032, F.S.; providing recording requirements for  
39 an association; providing a document form for  
40 recording by an association to preserve certain  
41 covenants or restrictions; providing that failure to  
42 file one or more notices does not affect the validity  
43 or enforceability of a covenant or restriction or  
44 alter the time before extinguishment under certain  
45 circumstances; requiring a copy of the filed notice to  
46 be sent to all members; requiring the original signed  
47 notice to be recorded with the clerk of the circuit  
48 court or other recorder; amending ss. 702.09 and  
49 702.10, F.S.; conforming provisions to changes made by  
50 the act; amending s. 712.095, F.S.; conforming a  
51 cross-reference; amending ss. 720.403, 720.404,  
52 720.405, and 720.407, F.S.; conforming provisions to  
53 changes made by the act; providing an effective date.

54

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

56

57 Section 1. Section 712.001, Florida Statutes, is created to  
58 read:

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59           712.001 Short title.—This chapter may be cited as the  
60 “Marketable Record Title Act.”

61           Section 2. Section 712.01, Florida Statutes, is reordered  
62 and amended to read:

63           712.01 Definitions.—As used in this chapter, the term law:

64           (1) “Community covenant or restriction” means any agreement  
65 or limitation contained in a document recorded in the public  
66 records of the county in which a parcel is located which:

67           (a) Subjects the parcel to any use restriction that may be  
68 enforced by a property owners’ association; or

69           (b) Authorizes a property owners’ association to impose a  
70 charge or assessment against the parcel or the parcel owner.

71           (4)~~(1)~~ The term “Person” includes the ~~as used herein~~  
72 ~~denotes~~ singular or plural, natural or corporate, private or  
73 governmental, including the state and any political subdivision  
74 or agency thereof as the context for the use thereof requires or  
75 denotes and including any property owners’ ~~homeowners’~~  
76 association.

77           (6)~~(2)~~ “Root of title” means any title transaction  
78 purporting to create or transfer the estate claimed by any  
79 person and which is the last title transaction to have been  
80 recorded at least 30 years before ~~prior to~~ the time when  
81 marketability is being determined. The effective date of the  
82 root of title is the date on which it was recorded.

83           (7)~~(3)~~ “Title transaction” means any recorded instrument or  
84 court proceeding that ~~which~~ affects title to any estate or  
85 interest in land and that ~~which~~ describes the land sufficiently  
86 to identify its location and boundaries.

87           (5)~~(4)~~ “Property owners’ association” ~~The term “homeowners’~~

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88 ~~association~~" means a homeowners' association as defined in s.  
89 720.301, a corporation or other entity responsible for the  
90 operation of property in which the voting membership is made up  
91 of the owners of the property or their agents, or a combination  
92 thereof, and in which membership is a mandatory condition of  
93 property ownership, or an association of parcel owners which is  
94 authorized to enforce a community covenant or restriction ~~use~~  
95 ~~restrictions~~ that is ~~are~~ imposed on the parcels.

96 ~~(3)(5)~~ The term "Parcel" means real property that ~~which~~ is  
97 used for residential purposes and that is subject to exclusive  
98 ownership and ~~which is subject~~ to any covenant or restriction of  
99 a property owners' homeowners' association.

100 ~~(2)(6)~~ The term "Covenant or restriction" means any  
101 agreement or limitation contained in a document recorded in the  
102 public records of the county in which a parcel is located which  
103 subjects the parcel to any use or other restriction or  
104 obligation ~~which may be enforced by a homeowners' association or~~  
105 ~~which authorizes a homeowners' association to impose a charge or~~  
106 ~~assessment against the parcel or the owner of the parcel or~~  
107 ~~which may be enforced by the Florida Department of Environmental~~  
108 ~~Protection pursuant to chapter 376 or chapter 403.~~

109 Section 3. Section 712.05, Florida Statutes, is amended to  
110 read:

111 712.05 Effect of filing notice.-

112 (1) A person claiming an interest in land or other right  
113 subject to extinguishment under this chapter ~~a homeowners'~~  
114 ~~association desiring to preserve a covenant or restriction~~ may  
115 preserve and protect such interest or right ~~the same~~ from  
116 extinguishment by the operation of this chapter ~~act~~ by filing

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117 for record, at any time during the 30-year period immediately  
118 following the effective date of the root of title, a written  
119 notice in accordance with s. 712.06 ~~this chapter~~.

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

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

126 (b) A summary notice in substantial form and content as  
127 required under s. 720.3032(2). Failure of a summary notice to be  
128 indexed to the current owners of the affected property does not  
129 affect the validity of the notice or vitiate the effect of the  
130 filing of such notice.

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

141 (a) Under a disability;

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

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

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146  
147 ~~Such notice may be filed by a homeowners' association only if~~  
148 ~~the preservation of such covenant or restriction or portion of~~  
149 ~~such covenant or restriction is approved by at least two thirds~~  
150 ~~of the members of the board of directors of an incorporated~~  
151 ~~homeowners' association at a meeting for which a notice, stating~~  
152 ~~the meeting's time and place and containing the statement of~~  
153 ~~marketable title action described in s. 712.06(1)(b), was mailed~~  
154 ~~or hand delivered to members of the homeowners' association at~~  
155 ~~least 7 days before such meeting. The property owners'~~  
156 ~~homeowners' association or clerk of the circuit court is not~~  
157 ~~required to provide additional notice pursuant to s. 712.06(3).~~  
158 The preceding sentence is intended to clarify existing law.

159 ~~(4)(2)~~ It is ~~shall~~ not be necessary for the owner of the  
160 marketable record title, as described in s. 712.02 herein  
161 ~~defined~~, to file a notice to protect his or her marketable  
162 record title.

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

165 712.06 Contents of notice; recording and indexing.—

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

169 (a) The name or description and mailing address of the  
170 claimant or the property owners' ~~homeowners'~~ association  
171 desiring to preserve any covenant or restriction ~~and the name~~  
172 ~~and particular post office address of the person filing the~~  
173 ~~claim or the homeowners' association.~~

174 (b) The name and mailing ~~post office~~ address of an owner,

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175 or the name and mailing ~~post office~~ address of the person in  
176 whose name the ~~said~~ property is assessed on the last completed  
177 tax assessment roll of the county at the time of filing, who,  
178 for purpose of such notice, shall be deemed to be an owner;  
179 ~~provided,~~ however, if a property owners' ~~homeowners'~~ association  
180 is filing the notice, ~~then~~ the requirements of this paragraph  
181 may be satisfied by attaching to and recording with the notice  
182 an affidavit executed by the appropriate member of the board of  
183 directors of the property owners' ~~homeowners'~~ association  
184 affirming that the board of directors of the property owners'  
185 ~~homeowners'~~ association caused a statement in substantially the  
186 following form to be mailed or hand delivered to the members of  
187 that property owners' ~~homeowners'~~ association:

188  
189 STATEMENT OF MARKETABLE TITLE ACTION  
190

191 The [name of property owners' ~~homeowners'~~ association] (the  
192 "Association") has taken action to ensure that the [name of  
193 declaration, covenant, or restriction], recorded in Official  
194 Records Book ....., Page ....., of the public records of ....  
195 County, Florida, as may be amended from time to time, currently  
196 burdening the property of each and every member of the  
197 Association, retains its status ~~as the source of marketable~~  
198 ~~title~~ with regard to the affected real property ~~the transfer of~~  
199 ~~a member's residence~~. To this end, the Association shall cause  
200 the notice required by chapter 712, Florida Statutes, to be  
201 recorded in the public records of .... County, Florida. Copies  
202 of this notice and its attachments are available through the  
203 Association pursuant to the Association's governing documents

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204 regarding official records of the Association.

205

206 (c) A full and complete description of all land affected by  
207 such notice, which description shall be set forth in particular  
208 terms and not by general reference, but if said claim is founded  
209 upon a recorded instrument or a covenant or a restriction, ~~then~~  
210 the description in such notice may be the same as that contained  
211 in such recorded instrument or covenant or restriction, provided  
212 the same shall be sufficient to identify the property.

213 (d) A statement of the claim showing the nature,  
214 description, and extent of such claim or other right subject to  
215 extinguishment under this chapter or, in the case of a covenant  
216 or restriction, a copy of the covenant or restriction, except  
217 that it is ~~shall~~ not ~~be~~ necessary to show the amount of any  
218 claim for money or the terms of payment.

219 (e) If such claim or other right subject to extinguishment  
220 under this chapter is based upon an instrument of record or a  
221 recorded covenant or restriction, such instrument of record or  
222 recorded covenant or restriction shall be deemed sufficiently  
223 described to identify the same if the notice includes a  
224 reference to the book and page in which the same is recorded.

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

227 (3) The person providing the notice referred to in s.  
228 712.05, other than a notice for preservation of a community  
229 covenant or restriction, shall:

230 (a) Cause the clerk of the circuit court to mail by  
231 registered or certified mail to the purported owner of said  
232 property, as stated in such notice, a copy thereof and shall

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233 enter on the original, before recording the same, a certificate  
234 showing such mailing. For preparing the certificate, the  
235 claimant shall pay to the clerk the service charge as prescribed  
236 in s. 28.24(8) and the necessary costs of mailing, in addition  
237 to the recording charges as prescribed in s. 28.24(12). If the  
238 notice names purported owners having more than one address, the  
239 person filing the same shall furnish a true copy for each of the  
240 several addresses stated, and the clerk shall send one such copy  
241 to the purported owners named at each respective address. Such  
242 certificate shall be sufficient if the same reads substantially  
243 as follows:

244  
245 I hereby certify that I did on this ....., mail by  
246 registered (or certified) mail a copy of the foregoing notice to  
247 each of the following at the address stated:

248  
249 ...(Clerk of the circuit court)...  
250 of .... County, Florida,  
251 By...(Deputy clerk)...

252  
253 The clerk of the circuit court is not required to mail to the  
254 purported owner of such property any such notice that pertains  
255 solely to the preserving of any covenant or restriction or any  
256 portion of a covenant or restriction; or

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



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262 Section 5. Section 712.11, Florida Statutes, is amended to  
263 read:

264 712.11 Covenant revitalization.—A property owners'  
265 ~~homeowners'~~ association not otherwise subject to chapter 720 may  
266 use the procedures set forth in ss. 720.403–720.407 to revive  
267 covenants that have lapsed under the terms of this chapter.

268 Section 6. Section 712.12, Florida Statutes, is created to  
269 read:

270 712.12 Covenant or restriction revitalization by parcel  
271 owners not subject to a homeowners' association.—

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

273 (a) "Community" means the real property that is subject to  
274 a covenant or restriction that is recorded in the county where  
275 the property is located.

276 (b) "Covenant or restriction" means any agreement or  
277 limitation imposed by a private party and not required by a  
278 governmental agency as a condition of a development permit, as  
279 defined in s. 163.3164, which is contained in a document  
280 recorded in the public records of the county in which a parcel  
281 is located and which subjects the parcel to any use restriction  
282 that may be enforced by a parcel owner.

283 (c) "Parcel" means real property that is used for  
284 residential purposes and that is subject to exclusive ownership  
285 and any covenant or restriction that may be enforced by a parcel  
286 owner.

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

289 (2) The parcel owners of a community not subject to a  
290 homeowners' association may use the procedures set forth in ss.

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291 720.403-720.407 to revive covenants or restrictions that have  
292 lapsed under the terms of this chapter, except:

293 (a) A reference to a homeowners' association or articles of  
294 incorporation or bylaws of a homeowners' association under ss.  
295 720.403-720.407 is not required to revive the covenants or  
296 restrictions.

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

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

302 (d) The indexing requirements under s. 720.407(3) may be  
303 satisfied by indexing the community name in the covenants or  
304 restrictions as the grantee and the parcel owners as the  
305 grantors.

306 (3) With respect to any parcel that has ceased to be  
307 governed by covenants or restrictions as of October 1, 2018, the  
308 parcel owner may commence an action by October 1, 2019, for a  
309 judicial determination that the covenants or restrictions did  
310 not govern that parcel as of October 1, 2018, and that any  
311 revitalization of such covenants or restrictions as to that  
312 parcel would unconstitutionally deprive the parcel owner of  
313 rights or property.

314 (4) Revived covenants or restrictions that are implemented  
315 pursuant to this section do not apply to or affect the rights of  
316 the parcel owner which are recognized by any court order or  
317 judgment in any action commenced by October 1, 2019, and any  
318 such rights so recognized may not be subsequently altered by  
319 revived covenants or restrictions implemented under this section

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320 without the consent of the affected parcel owner.

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

323 720.303 Association powers and duties; meetings of board;  
324 official records; budgets; financial reporting; association  
325 funds; recalls.—

326 (2) BOARD MEETINGS.—

327 (e) At the first board meeting, excluding the  
328 organizational meeting, which follows the annual meeting of the  
329 members, the board shall consider the desirability of filing  
330 notices to preserve the covenants or restrictions affecting the  
331 community or association from extinguishment under the  
332 Marketable Record Title Act, chapter 712, and to authorize and  
333 direct the appropriate officer to file notice in accordance with  
334 s. 720.3032.

335 Section 8. Section 720.3032, Florida Statutes, is created  
336 to read:

337 720.3032 Notice of association information; preservation  
338 from Marketable Record Title Act.—

339 (1) Not less than once every 5 years, each association  
340 shall record in the official records of each county in which the  
341 community is located a notice specifying:

342 (a) The legal name of the association.

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

344 (c) The names of the affected subdivision plats and  
345 condominiums or, if not applicable, the common name of the  
346 community.

347 (d) The name, address, and telephone number for the current  
348 community association management company or community

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349 association manager, if any.

350 (e) Indication as to whether the association desires to  
351 preserve the covenants or restrictions affecting the community  
352 or association from extinguishment under the Marketable Record  
353 Title Act, chapter 712.

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

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

360 (h) The signature of a duly authorized officer of the  
361 association, acknowledged in the same manner as deeds are  
362 acknowledged for record.

363 (2) Recording a document in substantially the following  
364 form satisfies the notice obligation and constitutes a summary  
365 notice as specified in s. 712.05(2)(b) sufficient to preserve  
366 and protect the referenced covenants and restrictions from  
367 extinguishment under the Marketable Record Title Act, chapter  
368 712.

369  
370 Notice of ...(name of association)... under s. 720.3032, Florida  
371 Statutes, and notice to preserve and protect covenants and  
372 restrictions from extinguishment under the Marketable Record  
373 Title Act, chapter 712, Florida Statutes.

374  
375 Instructions to recorder: Please index both the legal name  
376 of the association and the names shown in item 3.

377 1. Legal name of association: ....

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

379 3. Names of the subdivision plats, or, if none, common name  
380 of community: ....

381 4. Name, address, and telephone number for management  
382 company, if any: .....

383 5. This notice does .... does not .... constitute a notice  
384 to preserve and protect covenants or restrictions from  
385 extinguishment under the Marketable Record Title Act.

386 6. The following covenants or restrictions affecting the  
387 community which the association desires to be preserved from  
388 extinguishment:

389 ...(Name of instrument)...

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

391 ...(List of instruments)...

392 ...(List of recording information)...

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

396 This notice is filed on behalf of ...(Name of  
397 association) ... as of ...(Date)....

398 ...(Name of association)...

400 By: ....

401 ...(Name of individual officer)...

402 ...(Title of officer)...

403 ...(Notary acknowledgment)...

405 (3) The failure to file one or more notices does not affect  
406 the validity or enforceability of any covenant or restriction

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407 nor in any way alter the remaining time before extinguishment by  
408 the Marketable Record Title Act, chapter 712.

409 (4) A copy of the notice, as filed, must be included as  
410 part of the next notice of meeting or other mailing sent to all  
411 members.

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

415 Section 9. Section 702.09, Florida Statutes, is amended to  
416 read:

417 702.09 Definitions.—For the purposes of ss. 702.07 and  
418 702.08, the words “decree of foreclosure” shall include a  
419 judgment or order rendered or passed in the foreclosure  
420 proceedings in which the decree of foreclosure shall be  
421 rescinded, vacated, and set aside; the word “mortgage” shall  
422 mean any written instrument securing the payment of money or  
423 advances and includes liens to secure payment of assessments  
424 arising under chapters 718 and 719 and liens created pursuant to  
425 the recorded covenants of a property owners’ homeowners’  
426 association as defined in s. 712.01; the word “debt” shall  
427 include promissory notes, bonds, and all other written  
428 obligations given for the payment of money; the words  
429 “foreclosure proceedings” shall embrace every action in the  
430 circuit or county courts of this state wherein it is sought to  
431 foreclose a mortgage and sell the property covered by the same;  
432 and the word “property” shall mean and include both real and  
433 personal property.

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

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436           702.10 Order to show cause; entry of final judgment of  
437 foreclosure; payment during foreclosure.-

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

453           (a) The order shall:

454           1. Set the date and time for a hearing to show cause. The  
455 date for the hearing may not occur sooner than the later of 20  
456 days after service of the order to show cause or 45 days after  
457 service of the initial complaint. When service is obtained by  
458 publication, the date for the hearing may not be set sooner than  
459 30 days after the first publication.

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

462           3. State that the filing of defenses by a motion, a  
463 responsive pleading, an affidavit, or other papers before the  
464 hearing to show cause that raise a genuine issue of material

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465 fact which would preclude the entry of summary judgment or  
466 otherwise constitute a legal defense to foreclosure shall  
467 constitute cause for the court not to enter final judgment.

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

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

483 6. State that, if a defendant fails to appear at the  
484 hearing to show cause or fails to file defenses by a motion or  
485 by a verified or sworn answer or files an answer not contesting  
486 the foreclosure, such defendant may be considered to have waived  
487 the right to a hearing, and in such case, the court may enter a  
488 default against such defendant and, if appropriate, a final  
489 judgment of foreclosure ordering the clerk of the court to  
490 conduct a foreclosure sale.

491 7. State that if the mortgage provides for reasonable  
492 attorney fees and the requested attorney fees do not exceed 3  
493 percent of the principal amount owed at the time of filing the



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494 complaint, it is unnecessary for the court to hold a hearing or  
495 adjudge the requested attorney fees to be reasonable.

496 8. Attach the form of the proposed final judgment of  
497 foreclosure which the movant requests the court to enter at the  
498 hearing on the order to show cause.

499 9. Require the party seeking final judgment to serve a copy  
500 of the order to show cause on the other parties in the following  
501 manner:

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

507 b. If a defendant has not been served pursuant to chapter  
508 48 with the complaint and original process, the order to show  
509 cause, together with the summons and a copy of the complaint,  
510 shall be served on the party in the same manner as provided by  
511 law for original process.

512  
513 Any final judgment of foreclosure entered under this subsection  
514 is for in rem relief only. This subsection does not preclude the  
515 entry of a deficiency judgment where otherwise allowed by law.  
516 The Legislature intends that this alternative procedure may run  
517 simultaneously with other court procedures.

518 (b) The right to be heard at the hearing to show cause is  
519 waived if a defendant, after being served as provided by law  
520 with an order to show cause, engages in conduct that clearly  
521 shows that the defendant has relinquished the right to be heard  
522 on that order. The defendant's failure to file defenses by a

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523 motion or by a sworn or verified answer, affidavits, or other  
524 papers or to appear personally or by way of an attorney at the  
525 hearing duly scheduled on the order to show cause presumptively  
526 constitutes conduct that clearly shows that the defendant has  
527 relinquished the right to be heard. If a defendant files  
528 defenses by a motion, a verified answer, affidavits, or other  
529 papers or presents evidence at or before the hearing which raise  
530 a genuine issue of material fact which would preclude entry of  
531 summary judgment or otherwise constitute a legal defense to  
532 foreclosure, such action constitutes cause and precludes the  
533 entry of a final judgment at the hearing to show cause.

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

543 (d) If the court finds that all defendants have waived the  
544 right to be heard as provided in paragraph (b), the court shall  
545 promptly enter a final judgment of foreclosure without the need  
546 for further hearing if the plaintiff has shown entitlement to a  
547 final judgment and upon the filing with the court of the  
548 original note, satisfaction of the conditions for establishment  
549 of a lost note, or upon a showing to the court that the  
550 obligation to be foreclosed is not evidenced by a promissory  
551 note or other negotiable instrument. If the court finds that a

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552 defendant has not waived the right to be heard on the order to  
553 show cause, the court shall determine whether there is cause not  
554 to enter a final judgment of foreclosure. If the court finds  
555 that the defendant has not shown cause, the court shall promptly  
556 enter a judgment of foreclosure. If the time allotted for the  
557 hearing is insufficient, the court may announce at the hearing a  
558 date and time for the continued hearing. Only the parties who  
559 appear, individually or through an attorney, at the initial  
560 hearing must be notified of the date and time of the continued  
561 hearing.

562 Section 11. Section 712.095, Florida Statutes, is amended  
563 to read:

564 712.095 Notice required by July 1, 1983.—Any person whose  
565 interest in land is derived from an instrument or court  
566 proceeding recorded subsequent to the root of title, which  
567 instrument or proceeding did not contain a description of the  
568 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose  
569 interest had not been extinguished prior to July 1, 1981, shall  
570 have until July 1, 1983, to file a notice in accordance with s.  
571 712.06 to preserve the interest.

572 Section 12. Section 720.403, Florida Statutes, is amended  
573 to read:

574 720.403 Preservation of ~~residential~~ communities; revival of  
575 declaration of covenants.—

576 (1) Consistent with required and optional elements of local  
577 comprehensive plans and other applicable provisions of the  
578 Community Planning Act, property owners ~~homeowners~~ are  
579 encouraged to preserve existing residential and other  
580 communities, promote available and affordable housing, protect

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581 structural and aesthetic elements of their ~~residential~~  
582 community, and, as applicable, maintain roads and streets,  
583 easements, water and sewer systems, utilities, drainage  
584 improvements, conservation and open areas, recreational  
585 amenities, and other infrastructure and common areas that serve  
586 and support the ~~residential~~ community by the revival of a  
587 previous declaration of covenants and other governing documents  
588 that may have ceased to govern some or all parcels in the  
589 community.

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

601 (3) Part III of this chapter is intended to provide  
602 mechanisms for the revitalization of covenants or restrictions  
603 for all types of communities and property associations and is  
604 not limited to residential communities.

605 Section 13. Section 720.404, Florida Statutes, is amended  
606 to read:

607 720.404 Eligible ~~residential~~ communities; requirements for  
608 revival of declaration.—Parcel owners in a community are  
609 eligible to seek approval from the Department of Economic

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610 Opportunity to revive a declaration of covenants under this act  
611 if all of the following requirements are met:

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

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

617 (3) The revived declaration may not contain covenants that  
618 are more restrictive on the parcel owners than the covenants  
619 contained in the previous declaration, except that the  
620 declaration may:

621 (a) Have an effective term of longer duration than the term  
622 of the previous declaration;

623 (b) Omit restrictions contained in the previous  
624 declaration;

625 (c) Govern fewer than all of the parcels governed by the  
626 previous declaration;

627 (d) Provide for amendments to the declaration and other  
628 governing documents; and

629 (e) Contain provisions required by this chapter for new  
630 declarations that were not contained in the previous  
631 declaration.

632 Section 14. Subsections (1), (3), (5), and (6) of section  
633 720.405, Florida Statutes, are amended to read:

634 720.405 Organizing committee; parcel owner approval.-

635 (1) The proposal to revive a declaration of covenants and  
636 an a homeowners' association for a community under the terms of  
637 this act shall be initiated by an organizing committee  
638 consisting of not less than three parcel owners located in the

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639 community that is proposed to be governed by the revived  
640 declaration. The name, address, and telephone number of each  
641 member of the organizing committee must be included in any  
642 notice or other document provided by the committee to parcel  
643 owners to be affected by the proposed revived declaration.

644 (3) The organizing committee shall prepare the full text of  
645 the proposed articles of incorporation and bylaws of the revived  
646 ~~homeowners'~~ association to be submitted to the parcel owners for  
647 approval, unless the association is then an existing  
648 corporation, in which case the organizing committee shall  
649 prepare the existing articles of incorporation and bylaws to be  
650 submitted to the parcel owners.

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

660 (6) A majority of the affected parcel owners must agree in  
661 writing to the revived declaration of covenants and governing  
662 documents of the ~~homeowners'~~ association or approve the revived  
663 declaration and governing documents by a vote at a meeting of  
664 the affected parcel owners noticed and conducted in the manner  
665 prescribed by s. 720.306. Proof of notice of the meeting to all  
666 affected owners of the meeting and the minutes of the meeting  
667 recording the votes of the property owners shall be certified by

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668 a court reporter or an attorney licensed to practice in the  
669 state.

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

672 720.407 Recording; notice of recording; applicability and  
673 effective date.—

674 (3) The recorded documents shall include the full text of  
675 the approved declaration of covenants, the articles of  
676 incorporation and bylaws of the ~~homeowners'~~ association, the  
677 letter of approval by the department, and the legal description  
678 of each affected parcel of property. For purposes of chapter  
679 712, the association is deemed to be and shall be indexed as the  
680 grantee in a title transaction and the parcel owners named in  
681 the revived declaration are deemed to be and shall be indexed as  
682 the grantors in the title transaction.

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

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A bill to be entitled

**Comment [AF1]:** Didn't fix bill title until you decide what to accept

An act relating to covenants and restrictions;  
creating s. 712.001, F.S.; providing a short title;  
amending s. 712.01, F.S.; defining and redefining  
terms; amending s. 712.05, F.S.; revising the notice  
filing requirements for a person claiming an interest  
in land and other rights; authorizing a property  
owners' association to preserve and protect certain  
covenants or restrictions from extinguishment, subject  
to specified requirements; providing that a failure in  
indexing does not affect the validity of the notice;  
extending the length of time certain covenants or  
restrictions are preserved; deleting a provision  
requiring a two-thirds vote by members of an  
incorporated homeowners' association to file certain  
notices; conforming provisions to changes made by the  
act; amending s. 712.06, F.S.; exempting a specified  
summary notice from certain notice content  
requirements; revising the contents required to be  
specified by certain notices; conforming provisions to  
changes made by the act; amending s. 712.11, F.S.;  
conforming provisions to changes made by the act;  
creating s. 712.12, F.S.; defining terms; authorizing  
the parcel owners of a community not subject to a  
homeowners' association to use specified procedures to  
revive certain covenants or restrictions, subject to  
certain exceptions and requirements; authorizing a  
parcel owner to commence an action by a specified date  
under certain circumstances for a judicial



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30 determination that the covenants or restrictions did  
31 not govern that parcel as of a specified date and that  
32 any revitalization of such covenants or restrictions  
33 as to that parcel would unconstitutionally deprive the  
34 parcel owner of rights or property; providing  
35 applicability; amending s. 720.303, F.S.; requiring a  
36 board to take up certain provisions relating to notice  
37 filings at the first board meeting; creating s.  
38 720.3032, F.S.; providing recording requirements for  
39 an association; providing a document form for  
40 recording by an association to preserve certain  
41 covenants or restrictions; providing that failure to  
42 file one or more notices does not affect the validity  
43 or enforceability of a covenant or restriction or  
44 alter the time before extinguishment under certain  
45 circumstances; requiring a copy of the filed notice to  
46 be sent to all members; requiring the original signed  
47 notice to be recorded with the clerk of the circuit  
48 court or other recorder; amending ss. 702.09 and  
49 702.10, F.S.; conforming provisions to changes made by  
50 the act; amending s. 712.095, F.S.; conforming a  
51 cross-reference; amending ss. 720.403, 720.404,  
52 720.405, and 720.407, F.S.; conforming provisions to  
53 changes made by the act; providing an effective date.

54  
55 Be It Enacted by the Legislature of the State of Florida:

56  
57 Section 1. Section 712.001, Florida Statutes, is created to  
58 read:

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59 712.001 Short title.—This chapter may be cited as the  
60 “Marketable Record Title Act.”

61 Section 2. Section 712.01, Florida Statutes, is reordered  
62 and amended to read:

63 712.01 Definitions.—As used in this chapter, the term ~~law~~:

64 (1) “Community covenant or restriction” means any  
65 agreement or limitation contained in a document recorded in the  
66 public records of the county in which a parcel is located which:

67 (a) Subjects the parcel to any use restriction that may be  
68 enforced by a property owners’ association; or

69 (b) Authorizes a property owners’ association to impose a  
70 charge or assessment against the parcel or the parcel owner.

71 (4) ~~(1)~~ The term “Person” includes the as used herein  
72 denotes singular or plural, natural or corporate, private or  
73 governmental, including the state and any political subdivision  
74 or agency thereof as the context for the use thereof requires or  
75 denotes and including any property owners’ ~~homeowners’~~  
76 association.

77 (6) ~~(2)~~ “Root of title” means any title transaction  
78 purporting to create or transfer the estate claimed by any  
79 person ~~and~~ which is the last title transaction to have been  
80 recorded at least 30 years before ~~prior to~~ the time when  
81 marketability is being determined. The effective date of the  
82 root of title is the date on which it was recorded.

83 (7) ~~(3)~~ “Title transaction” means any recorded instrument or  
84 court proceeding that ~~which~~ affects title to any estate or  
85 interest in land and that ~~which~~ describes the land sufficiently  
86 to identify its location and boundaries.

87 (5) ~~(4)~~ “Property owners’ association” ~~The term “homeowners’~~

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88 ~~association~~ means a homeowners' association as defined in s.  
 89 720.301 (9), a corporation or other entity responsible for the  
 90 operation of property in which the voting membership is made up  
 91 of the owners of the property or their agents, or a combination  
 92 thereof, and in which membership is a mandatory condition of  
 93 property ownership, or an association of parcel owners which is  
 94 authorized to enforce a community covenant or restriction ~~use~~  
 95 ~~restrictions~~ that is ~~are~~ imposed on the parcels.

96 ~~(3)(5)~~ The term "Parcel" means any real property ~~which is~~  
 97 ~~used for residential purposes that is subject to exclusive~~  
 98 ~~ownership and which is subject to any covenant or restriction.~~  
 99 ~~of a property owners' homeowners' association.~~

100 ~~(2)(6)~~ The term "Covenant or restriction" means any  
 101 agreement or limitation contained in a document recorded in the  
 102 public records of the county in which a parcel is located which  
 103 subjects the parcel to any use or other restriction or  
 104 ~~obligation which may be enforced by a homeowners' association or~~  
 105 ~~which authorizes a homeowners' association to impose a charge or~~  
 106 ~~assessment against the parcel or the owner of the parcel or~~  
 107 ~~which may be enforced by the Florida Department of Environmental~~  
 108 ~~Protection pursuant to chapter 376 or chapter 403.~~

109 Section 3. Section 712.04, Florida Statutes, is  
 110 amended to read:

111 712.04 Interests extinguished by marketable record  
 112 title.- Subject to s. 712.03, a marketable record title is  
 113 free and clear of all estates, interests, claims,  
 114 covenants, restrictions, or charges, the existence of which  
 115 depends upon any act, title transaction, event, zoning  
 116 requirement, building or development permit, or omission

**Comment [AF2]:** We recognize that there are political considerations in addressing the Calusa case. If the politics are such that it can be addressed, we suggest this language will accomplish the goal. If you change to "Simple Markup" you can see the actual changes to the current statute.

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117 that occurred before the effective date of the root of  
 118 title. Except as provided in s. 712.03, all such estates,  
 119 interests, claims, or charges, however denominated, whether  
 120 they are or appear to be held or asserted by a person sui  
 121 juris or under a disability, whether such person is within  
 122 or without the state, natural or corporate, or private or  
 123 governmental, are declared to be null and void. However,  
 124 this chapter does not affect any right, title, or interest  
 125 of the United States, Florida, or any of its officers,  
 126 boards, commissions, or other agencies reserved in the  
 127 patent or deed by which the United States, Florida, or any  
 128 of its agencies parted with title. The foregoing shall not  
 129 be construed to alter or invalidate a zoning ordinance,  
 130 land development regulation, building code or other law or  
 131 regulation to the extent such operate independently of  
 132 matters recorded in the official records.

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133  
 134 This section is intended to clarify existing law, is  
 135 remedial in nature and applies to all restrictions and  
 136 covenants whether imposed or accepted before, on or after  
 137 the effective date of this section.

138 Section ~~34~~. Section 712.05, Florida Statutes, is amended to  
 139 read:

140 712.05 Effect of filing notice.—

141 (1) A person claiming an interest in land or other right  
 142 subject to extinguishment under this chapter ~~a homeowners'~~  
 143 ~~association desiring to preserve a covenant or restriction~~ may  
 144 preserve and protect such interest or right ~~the same~~ from  
 145 extinguishment by the operation of this chapter ~~act~~ by filing

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146 for record, at any time during the 30-year period immediately  
147 following the effective date of the root of title, a written  
148 notice in accordance with s. 712.06 ~~this chapter~~.

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

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

155 (b) A summary notice in substantially the form and content  
156 as required under s. 720.3032(2).

157 (c) An amendment to a community covenant or restriction  
158 which is indexed under the legal name of the property owners'  
159 association and references the specific recording information of  
160 the community covenant or restriction to be preserved.

161  
162 Failure of a summary notice or amendment to a community covenant  
163 or restriction to be indexed to the current owners of the  
164 affected property does not affect the validity of the notice or  
165 vitate the effect of the filing of such notice.

166 (3) A ~~Such~~ notice under subsection (1) or subsection (2)  
167 preserves an interest in land or other ~~such claim of~~ right  
168 subject to extinguishment under this chapter, or a ~~such~~ covenant  
169 or restriction or portion of such covenant or restriction, for  
170 not less than ~~up to~~ 30 years after filing the notice unless the  
171 notice is filed again as required in this chapter. A person's  
172 disability or lack of knowledge of any kind may not delay the  
173 commencement of or suspend the running of the 30-year period.  
174 Such notice may be filed for record by the claimant or by any

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175 other person acting on behalf of a claimant who is:

176 (a) Under a disability;

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

178 (c) One of a class, but whose identity cannot be

179 established or is uncertain at the time of filing such notice of  
180 claim for record.

181

182 ~~Such notice may be filed by a homeowners' association only if~~  
183 ~~the preservation of such covenant or restriction or portion of~~  
184 ~~such covenant or restriction is approved by at least two thirds~~  
185 ~~of the members of the board of directors of an incorporated~~  
186 ~~homeowners' association at a meeting for which a notice, stating~~  
187 ~~the meeting's time and place and containing the statement of~~  
188 ~~marketable title action described in s. 712.06(1)(b), was mailed~~  
189 ~~or hand delivered to members of the homeowners' association at~~  
190 ~~least 7 days before such meeting. The property owners'~~  
191 ~~homeowners' association or clerk of the circuit court is not~~  
192 required to provide additional notice pursuant to s. 712.06(3)  
193 of a notice filed under (2). The preceding sentence is intended  
194 to clarify existing law.

Comment [AF3]: NEW after our call

195 ~~(4)(2)~~ It is ~~shall~~ not be necessary for the owner of the  
196 marketable record title, as described in s. 712.02 herein  
197 ~~defined~~, to file a notice to protect his or her marketable  
198 record title.

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

201 712.06 Contents of notice; recording and indexing.—

202 (1) To be effective, the notice referred to in s. 712.05,  
203 other than the summary notice referred to in s. 712.05(2)(b) and

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204 | the amendment referred to in s 712.05(2)(c), must ~~shall~~ contain:

205 | (a) The name or description and mailing address of the  
206 | claimant or the property owners' ~~homeowners'~~ association  
207 | desiring to preserve any covenant or restriction ~~and the name~~  
208 | ~~and particular post office address of the person filing the~~  
209 | ~~claim or the homeowners' association.~~

210 | (b) The name and mailing ~~post office~~ address of an owner,  
211 | or the name and mailing ~~post office~~ address of the person in  
212 | whose name the ~~said~~ property is assessed on the last completed  
213 | tax assessment roll of the county at the time of filing, who,  
214 | for purpose of such notice, shall be deemed to be an owner<sup>f</sup>.  
215 | ~~provided,~~

216 | (c) ~~however, if~~ a property owners' ~~homeowners'~~ association  
217 | is filing the notice, ~~then~~ the requirements of this paragraph  
218 | may be satisfied by attaching to and recording with the notice  
219 | an affidavit executed by the appropriate member of the board of  
220 | directors of the property owners' ~~homeowners'~~ association  
221 | affirming that the board of directors of the property owners'  
222 | ~~homeowners'~~ association caused a statement in substantially the  
223 | following form to be mailed or hand delivered to the members of  
224 | that property owners' ~~homeowners'~~ association:

225 |  
226 | STATEMENT OF MARKETABLE TITLE ACTION  
227 |

228 | The [name of ~~claimant or~~ property owners' ~~homeowners'~~  
229 | association] (the "Association") has taken action to ensure that  
230 | the [name of declaration, covenant, or restriction], recorded in  
231 | Official Records Book . . . ., Page . . . ., of the public records of  
232 | . . . . County, Florida, as may be amended from time to time,

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233 currently burdening the property of each and every member of the  
 234 Association, retains its status as the source of marketable  
 235 title with regard to the affected real property ~~the transfer of~~  
 236 ~~a member's residence~~. To this end, the Association shall cause  
 237 the notice required by chapter 712, Florida Statutes, to be  
 238 recorded in the public records of .... County, Florida. Copies  
 239 of this notice and its attachments are available through the  
 240 Association pursuant to the Association's governing documents  
 241 regarding official records of the Association.

**Comment [j4]:** I like this change.  
 This works with those pesky  
 private restrictions too.

242  
 243 ~~(ed)~~ A full and complete description of all land affected  
 244 by such notice, which description shall be set forth in  
 245 particular terms and not by general reference, but if said claim  
 246 is founded upon a recorded instrument or a covenant or a  
 247 restriction, ~~then~~ the description in such notice may be the same  
 248 as that contained in such recorded instrument or covenant or  
 249 restriction, provided the same shall be sufficient to identify  
 250 the property.

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251 ~~(de)~~ A statement of the claim showing the nature,  
 252 description, and extent of such claim or other right subject to  
 253 extinguishment under this chapter or, in the case of a covenant  
 254 or restriction, either (i) a copy of the covenant or  
 255 restriction, or (ii) a reference to the book and page or  
 256 instrument number in which the same is recorded. ~~except that it~~  
 257 ~~is shall~~ not be necessary to show the amount of any claim for  
 258 money or the terms of payment.

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259 ~~(e) If such claim is based upon an instrument of record or~~  
 260 ~~a recorded covenant or restriction, such instrument of record or~~  
 261 ~~recorded covenant or restriction shall be deemed sufficiently~~



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262 ~~described to identify the same if the notice includes a~~  
263 ~~reference to the book and page in which the same is recorded.~~

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

266 (3) The person providing the notice referred to in s.  
267 712.05, other than a notice for preservation of a community  
268 covenant or restriction, shall:

269 (a) Cause the clerk of the circuit court to mail by  
270 registered or certified mail to the purported owner of said  
271 property, as stated in such notice, a copy thereof and shall  
272 enter on the original, before recording the same, a certificate  
273 showing such mailing. For preparing the certificate, the  
274 claimant shall pay to the clerk the service charge as prescribed  
275 in s. 28.24(8) and the necessary costs of mailing, in addition  
276 to the recording charges as prescribed in s. 28.24(12). If the  
277 notice names purported owners having more than one address, the  
278 person filing the same shall furnish a true copy for each of the  
279 several addresses stated, and the clerk shall send one such copy  
280 to the purported owners named at each respective address. Such  
281 certificate shall be sufficient if the same reads substantially  
282 as follows:

283  
284 I hereby certify that I did on this ....., mail by  
285 registered (or certified) mail a copy of the foregoing notice to  
286 each of the following at the address stated:

287  
288 ... (Clerk of the circuit court) ...  
289 of .... County, Florida,  
290 By... (Deputy clerk) ...

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

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

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

712.11 Covenant revitalization.—Any claimant or property owners' ~~homeowners'~~ association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403–720.407 to revive covenants that have lapsed under the terms of this chapter.

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

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

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

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

~~(b) "Covenant or restriction" means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as~~

**Comment [AF5]:** Don't generally like to define the same term differently for different sections of a chapter.  
**Comment [J6]:** Agreed, it can make things a bit messy!

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320 ~~defined in s. 163.3164, which is contained in a document~~  
321 ~~recorded in the public records of the county in which a parcel~~  
322 ~~is located and which subjects the parcel to any use restriction~~  
323 ~~that may be enforced by a parcel owner.~~

324 ~~(c) "Parcel" means real property that is used for~~  
325 ~~residential purposes and that is subject to exclusive ownership~~  
326 ~~and any covenant or restriction that may be enforced by a parcel~~  
327 ~~owner.~~

328 ~~(2)~~ The parcel owners of properties subject to covenants or  
329 restrictions but not a community not subject to a homeowners'  
330 property owners' association may use the procedures set forth in  
331 ss. 720.403-720.407 to revive covenants or restrictions that  
332 have lapsed under the terms of this chapter, except:

333 (a) A reference to a homeowners' property owners'  
334 association or articles of incorporation or bylaws of a  
335 homeowners' property owners' association under ss. 720.403-  
336 720.407 is not required to revive the covenants or restrictions.

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

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

342 (d) The indexing requirements under s. 720.407(3) may be  
343 satisfied by indexing the community name in the covenants or  
344 restrictions as the grantee and each of the affected ~~the~~ parcel  
345 owners as the grantors.

346 (3) Parcel owners potentially affected by revitalization  
347 under this section shall have the rights accorded under s.  
348 720.407(5).

**Comment [AF7]:** Is there a reason to limit revitalization here to residential properties?

**Comment [AF8]:** The same potential constitutional taking claim also applies to allowing revitalization to apply to commercial and mixed use POAs under part III of 720, so current 720.407(5) was rephrased to eliminate the ambiguity of referring to the original act, and this was replaced with a cross reference.

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349 ~~With respect to any parcel that has ceased to be governed~~  
350 ~~by covenants or restrictions as of October 1, 2018, the parcel~~  
351 ~~owner may commence an action by October 1, 2019, for a judicial~~  
352 ~~determination that the covenants or restrictions did not govern~~  
353 ~~that parcel as of October 1, 2018, and that any revitalization~~  
354 ~~of such covenants or restrictions as to that parcel would~~  
355 ~~unconstitutionally deprive the parcel owner of rights or~~  
356 ~~property.~~

357 ~~(4) Revived covenants or restrictions that are implemented~~  
358 ~~pursuant to this section do not apply to or affect the rights of~~  
359 ~~the parcel owner which are recognized by any court order or~~  
360 ~~judgment in any action commenced by October 1, 2019, and any~~  
361 ~~such rights so recognized may not be subsequently altered by~~  
362 ~~revived covenants or restrictions implemented under this section~~  
363 ~~without the consent of the affected parcel owner.~~

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

366 720.303 Association powers and duties; meetings of board;  
367 official records; budgets; financial reporting; association  
368 funds; recalls.-

369 (2) BOARD MEETINGS.-

370 (e) At the first board meeting, excluding the  
371 organizational meeting, which follows the annual meeting of the  
372 members, the board shall consider the desirability of filing  
373 notices to preserve the covenants or restrictions affecting the  
374 community or association from extinguishment under the  
375 Marketable Record Title Act, chapter 712, and to authorize and  
376 direct the appropriate officer to file notice in accordance with  
377 s. 720.3032.

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378 Section 8. Section 720.3032, Florida Statutes, is created  
379 to read:

380 720.3032 Notice of preservation from Marketable Record  
381 Title Act.—

382 (1) ~~Not less than once every 5 years, each~~ Any claimant or  
383 property owners' association desiring to preserve covenants from  
384 potential termination after 30 years by the operation of the  
385 Marketable Record Title Act, chapter 712, may ~~shall~~ record in  
386 the official records of each county in which the community is  
387 located a notice specifying:

- 388 (a) The legal name of the association.
- 389 (b) The mailing and physical addresses of the association.
- 390 (c) The names of the affected subdivision plats and  
391 condominiums or, if not applicable, the common name of the  
392 community.
- 393 (d) The name, address, and telephone number for the current  
394 community association management company or community  
395 association manager, if any.
- 396 (e) Indication that the association desires to preserve the  
397 covenants or restrictions affecting the community or association  
398 from extinguishment under the Marketable Record Title Act,  
399 chapter 712.
- 400 (f) A listing by name and recording information of those  
401 covenants or restrictions affecting the community which the  
402 association desires to be preserved from extinguishment.
- 403 (g) The legal description of the community affected by the  
404 covenants or restrictions, which may be satisfied by a reference  
405 to a recorded plat.
- 406 (h) The signature of a duly authorized officer of the

**Comment [j9]:** But is it always an association that could or would seek to preserve covenants and restrictions? What about those good ol' fashioned, pesky private restrictions in deeds about the property not being used for the sale of liquor, gambling, or as a house of ill repute? Are we foreclosing the ability of these to be preserved? Shouldn't this read like 712.06(1)(a) and recite "claimant or property owners' association?"

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407 association, acknowledged in the same manner as deeds are  
408 acknowledged for record.

409 (2) Recording a document in substantially the following  
410 form satisfies the notice obligation and constitutes a summary  
411 notice as specified in s. 712.05(2)(b) sufficient to preserve  
412 and protect the referenced covenants and restrictions from  
413 extinguishment under the Marketable Record Title Act, chapter  
414 712.

415  
416 Notice of ...(name of association)... under s. 720.3032, Florida  
417 Statutes, and notice to preserve and protect covenants and  
418 restrictions from extinguishment under the Marketable Record  
419 Title Act, chapter 712, Florida Statutes.

420  
421 Instructions to recorder: Please index both the legal name  
422 of the association and the names shown in item 3.

- 423 1. Legal name of association: ....
- 424 2. Mailing and physical addresses of association: .... ....
- 425 3. Names of the subdivision plats, or, if none, common name  
426 of community: ....

427 4. Name, address, and telephone number for management  
428 company, if any: .....

429 5. This notice constitutes a notice to preserve and protect  
430 covenants or restrictions from extinguishment under the  
431 Marketable Record Title Act.

432 6. The following covenants or restrictions affecting the  
433 community which the association desires to be preserved from  
434 extinguishment:

435 ...(Name of instrument)...

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

437 ...(List of instruments)...

438 ...(List of recording information)...

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

442 This notice is filed on behalf of ...(Name of  
443 association)... as of ...(Date)....

444 ...(Name of association)...

445

446 By: ....

447 ...(Name of individual officer)...

448 ...(Title of officer)...

449 ...(Notary acknowledgment)...

450

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

455 (43) A copy of the notice, as filed, must be included as  
456 part of the next notice of meeting or other mailing sent to all  
457 members.

458 (54) The original signed notice must be recorded in the  
459 official records of the clerk of the circuit court or other  
460 recorder for the county.

461 Section 9. Section 702.09, Florida Statutes, is amended to  
462 read:

463 702.09 Definitions.—For the purposes of ss. 702.07 and  
464 702.08, the words "decree of foreclosure" shall include a

**Comment [AF10]:** This appears to be in the wrong place in the bill

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465 judgment or order rendered or passed in the foreclosure  
466 proceedings in which the decree of foreclosure shall be  
467 rescinded, vacated, and set aside; the word "mortgage" shall  
468 mean any written instrument securing the payment of money or  
469 advances and includes liens to secure payment of assessments  
470 arising under chapters 718 and 719 and liens created pursuant to  
471 the recorded covenants of a property owners' ~~homeowners'~~  
472 association as defined in s. 712.01; the word "debt" shall  
473 include promissory notes, bonds, and all other written  
474 obligations given for the payment of money; the words  
475 "foreclosure proceedings" shall embrace every action in the  
476 circuit or county courts of this state wherein it is sought to  
477 foreclose a mortgage and sell the property covered by the same;  
478 and the word "property" shall mean and include both real and  
479 personal property.

480 **Section 10.** Subsection (1) of section 702.10, Florida  
481 Statutes, is amended to read:

482 702.10 Order to show cause; entry of final judgment of  
483 foreclosure; payment during foreclosure.-

484 (1) A lienholder may request an order to show cause for the  
485 entry of final judgment in a foreclosure action. For purposes of  
486 this section, the term "lienholder" includes the plaintiff and a  
487 defendant to the action who holds a lien encumbering the  
488 property or a defendant who, by virtue of its status as a  
489 condominium association, cooperative association, or property  
490 owners' ~~homeowners'~~ association, may file a lien against the  
491 real property subject to foreclosure. Upon filing, the court  
492 shall immediately review the request and the court file in  
493 chambers and without a hearing. If, upon examination of the

Comment [AF11]: Wrong place also



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494 court file, the court finds that the complaint is verified,  
495 complies with s. 702.015, and alleges a cause of action to  
496 foreclose on real property, the court shall promptly issue an  
497 order directed to the other parties named in the action to show  
498 cause why a final judgment of foreclosure should not be entered.

499 (a) The order shall:

500 1. Set the date and time for a hearing to show cause. The  
501 date for the hearing may not occur sooner than the later of 20  
502 days after service of the order to show cause or 45 days after  
503 service of the initial complaint. When service is obtained by  
504 publication, the date for the hearing may not be set sooner than  
505 30 days after the first publication.

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

508 3. State that the filing of defenses by a motion, a  
509 responsive pleading, an affidavit, or other papers before the  
510 hearing to show cause that raise a genuine issue of material  
511 fact which would preclude the entry of summary judgment or  
512 otherwise constitute a legal defense to foreclosure shall  
513 constitute cause for the court not to enter final judgment.

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

517 5. State that, if a defendant files defenses by a motion, a  
518 verified or sworn answer, affidavits, or other papers or appears  
519 personally or by way of an attorney at the time of the hearing,  
520 the hearing time will be used to hear and consider whether the  
521 defendant's motion, answer, affidavits, other papers, and other  
522 evidence and argument as may be presented by the defendant or

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523 the defendant's attorney raise a genuine issue of material fact  
524 which would preclude the entry of summary judgment or otherwise  
525 constitute a legal defense to foreclosure. The order shall also  
526 state that the court may enter an order of final judgment of  
527 foreclosure at the hearing and order the clerk of the court to  
528 conduct a foreclosure sale.

529 6. State that, if a defendant fails to appear at the  
530 hearing to show cause or fails to file defenses by a motion or  
531 by a verified or sworn answer or files an answer not contesting  
532 the foreclosure, such defendant may be considered to have waived  
533 the right to a hearing, and in such case, the court may enter a  
534 default against such defendant and, if appropriate, a final  
535 judgment of foreclosure ordering the clerk of the court to  
536 conduct a foreclosure sale.

537 7. State that if the mortgage provides for reasonable  
538 attorney fees and the requested attorney fees do not exceed 3  
539 percent of the principal amount owed at the time of filing the  
540 complaint, it is unnecessary for the court to hold a hearing or  
541 adjudge the requested attorney fees to be reasonable.

542 8. Attach the form of the proposed final judgment of  
543 foreclosure which the movant requests the court to enter at the  
544 hearing on the order to show cause.

545 9. Require the party seeking final judgment to serve a copy  
546 of the order to show cause on the other parties in the following  
547 manner:

548 a. If a party has been served pursuant to chapter 48 with  
549 the complaint and original process, or the other party is the  
550 plaintiff in the action, service of the order to show cause on  
551 that party may be made in the manner provided in the Florida

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552 Rules of Civil Procedure.

553       b. If a defendant has not been served pursuant to chapter  
554 48 with the complaint and original process, the order to show  
555 cause, together with the summons and a copy of the complaint,  
556 shall be served on the party in the same manner as provided by  
557 law for original process.

558

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

564       (b) The right to be heard at the hearing to show cause is  
565 waived if a defendant, after being served as provided by law  
566 with an order to show cause, engages in conduct that clearly  
567 shows that the defendant has relinquished the right to be heard  
568 on that order. The defendant's failure to file defenses by a  
569 motion or by a sworn or verified answer, affidavits, or other  
570 papers or to appear personally or by way of an attorney at the  
571 hearing duly scheduled on the order to show cause presumptively  
572 constitutes conduct that clearly shows that the defendant has  
573 relinquished the right to be heard. If a defendant files  
574 defenses by a motion, a verified answer, affidavits, or other  
575 papers or presents evidence at or before the hearing which raise  
576 a genuine issue of material fact which would preclude entry of  
577 summary judgment or otherwise constitute a legal defense to  
578 foreclosure, such action constitutes cause and precludes the  
579 entry of a final judgment at the hearing to show cause.

580       (c) In a mortgage foreclosure proceeding, when a final

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581 judgment of foreclosure has been entered against the mortgagor  
582 and the note or mortgage provides for the award of reasonable  
583 attorney fees, it is unnecessary for the court to hold a hearing  
584 or adjudge the requested attorney fees to be reasonable if the  
585 fees do not exceed 3 percent of the principal amount owed on the  
586 note or mortgage at the time of filing, even if the note or  
587 mortgage does not specify the percentage of the original amount  
588 that would be paid as liquidated damages.

589 (d) If the court finds that all defendants have waived the  
590 right to be heard as provided in paragraph (b), the court shall  
591 promptly enter a final judgment of foreclosure without the need  
592 for further hearing if the plaintiff has shown entitlement to a  
593 final judgment and upon the filing with the court of the  
594 original note, satisfaction of the conditions for establishment  
595 of a lost note, or upon a showing to the court that the  
596 obligation to be foreclosed is not evidenced by a promissory  
597 note or other negotiable instrument. If the court finds that a  
598 defendant has not waived the right to be heard on the order to  
599 show cause, the court shall determine whether there is cause not  
600 to enter a final judgment of foreclosure. If the court finds  
601 that the defendant has not shown cause, the court shall promptly  
602 enter a judgment of foreclosure. If the time allotted for the  
603 hearing is insufficient, the court may announce at the hearing a  
604 date and time for the continued hearing. Only the parties who  
605 appear, individually or through an attorney, at the initial  
606 hearing must be notified of the date and time of the continued  
607 hearing.

608 Section 11. Section 712.095, Florida Statutes, is amended  
609 to read:

**Comment [AF12]:** Also wrong order.  
Any reason this section can't  
be repealed?

**Comment [j13]:** Seems like it  
should be.

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610 712.095 Notice required by July 1, 1983.—Any person whose  
611 interest in land is derived from an instrument or court  
612 proceeding recorded subsequent to the root of title, which  
613 instrument or proceeding did not contain a description of the  
614 land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose  
615 interest had not been extinguished prior to July 1, 1981, shall  
616 have until July 1, 1983, to file a notice in accordance with s.  
617 712.06 to preserve the interest.

618 Section 12. Section 720.403, Florida Statutes, is amended  
619 to read:

620 720.403 Preservation of ~~residential~~ communities; revival of  
621 declaration of covenants and restrictions.—

622 (1) Consistent with required and optional elements of local  
623 comprehensive plans and other applicable provisions of the  
624 Community Planning Act, property owners ~~homeowners~~ are  
625 encouraged to preserve existing ~~residential and other~~  
626 communities, promote available and affordable housing, protect  
627 structural and aesthetic elements of their ~~residential~~  
628 community, and, as applicable, maintain roads and streets,  
629 easements, water and sewer systems, utilities, drainage  
630 improvements, conservation and open areas, recreational  
631 amenities, and other infrastructure and common areas that serve  
632 and support the ~~residential~~ community by the revival of a  
633 previous declaration of covenants and other governing documents  
634 that may have ceased to govern some or all parcels in the  
635 community.

636 (2) In order to preserve a ~~residential~~ community and the  
637 associated infrastructure and common areas for the purposes  
638 described in this section, the parcel owners in a community that

**Comment [j14]:** Shouldn't we include restrictions as well, they are different from covenants and we might like to preserve them s well.

**Comment [j15]:** Do we really need another definition when there is no distinction and we can apply this to commercial uses as well? Seems we would be running into something like the old 702.10 argument that it isn't applicable if we add one subtle distinction. Just my thoughts, I shall step down from my soap box now.

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639 was previously subject to a declaration of covenants that has  
640 ceased to govern one or more parcels in the community may revive  
641 the declaration and the ~~homeowners'~~ association for the  
642 community upon approval by the parcel owners to be governed  
643 thereby as provided in this act, and upon approval of the  
644 declaration and the other governing documents for the  
645 association by the Department of Economic Opportunity in a  
646 manner consistent with this act.

647 (3) Part III of this chapter is intended to provide  
648 mechanisms for the revitalization of covenants or restrictions  
649 for all types of communities and property associations and is  
650 not limited to residential communities.

Comment [j16]: It is included here.

651 Section 13. Section 720.404, Florida Statutes, is amended  
652 to read:

653 720.404 Eligible ~~residential~~ communities; requirements for  
654 revival of declaration.—Parcel owners in a community are  
655 eligible to seek approval from the Department of Economic  
656 Opportunity to revive a declaration of covenants under this act  
657 if all of the following requirements are met:

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

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

663 (3) The revived declaration may not contain covenants that  
664 are more restrictive on the parcel owners than the covenants  
665 contained in the previous declaration, except that the  
666 declaration may:

667 (a) Have an effective term of longer duration than the term

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668 of the previous declaration;

669 (b) Omit restrictions contained in the previous  
670 declaration;

671 (c) Govern fewer than all of the parcels governed by the  
672 previous declaration;

673 (d) Provide for amendments to the declaration and other  
674 governing documents; and

675 (e) Contain provisions required by this chapter for new  
676 declarations that were not contained in the previous  
677 declaration.

678 Section 14. Subsections (1), (3), (5), and (6) of section  
679 720.405, Florida Statutes, are amended to read:

680 720.405 Organizing committee; parcel owner approval.—

681 (1) The proposal to revive a declaration of covenants and  
682 an a homeowners' association for a community under the terms of  
683 this act shall be initiated by an organizing committee  
684 consisting of not less than three parcel owners located in the  
685 community that is proposed to be governed by the revived  
686 declaration. The name, address, and telephone number of each  
687 member of the organizing committee must be included in any  
688 notice or other document provided by the committee to parcel  
689 owners to be affected by the proposed revived declaration.

690 (3) The organizing committee shall prepare the full text of  
691 the proposed articles of incorporation and bylaws of the revived  
692 homeowners' association to be submitted to the parcel owners for  
693 approval, unless the association is then an existing  
694 corporation, in which case the organizing committee shall  
695 prepare the existing articles of incorporation and bylaws to be  
696 submitted to the parcel owners.

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697 (5) A copy of the complete text of the proposed revised  
698 declaration of covenants, the proposed new or existing articles  
699 of incorporation and bylaws of the ~~homeowners'~~ association, and  
700 a graphic depiction of the property to be governed by the  
701 revived declaration shall be presented to all of the affected  
702 parcel owners by mail or hand delivery not less than 14 days  
703 before the time that the consent of the affected parcel owners  
704 to the proposed governing documents is sought by the organizing  
705 committee.

706 (6) A majority of the affected parcel owners must agree in  
707 writing to the revived declaration of covenants and governing  
708 documents of the ~~homeowners'~~ association or approve the revived  
709 declaration and governing documents by a vote at a meeting of  
710 the affected parcel owners noticed and conducted in the manner  
711 prescribed by s. 720.306. Proof of notice of the meeting to all  
712 affected owners of the meeting and the minutes of the meeting  
713 recording the votes of the property owners shall be certified by  
714 a court reporter or an attorney licensed to practice in the  
715 state.

716 Section 15. Subsections (3) and (5) of section 720.407,  
717 Florida Statutes, ~~is~~ are amended to read:

718 720.407 Recording; notice of recording; applicability and  
719 effective date.—

720 (3) The recorded documents shall include the full text of  
721 the approved declaration of covenants, the articles of  
722 incorporation and bylaws of the ~~homeowners'~~ association, the  
723 letter of approval by the department, and the legal description  
724 of each affected parcel of property. For purposes of chapter  
725 712, the association is deemed to be and shall be indexed as the



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726 grantee in a title transaction and the parcel owners named in  
727 the revived declaration are deemed to be and shall be indexed as  
728 the grantors in the title transaction.

729 (5) As of October 1, 2018, Part III was amended to allow  
730 revitalization of covenants and restrictions affecting  
731 additional types of properties. With respect to any parcel, not  
732 previously subject to revitalization under Part III, -that has  
733 ceased to be governed by a previous declaration of covenants as  
734 of October 1, 2018, ~~the effective date of this act,~~ the parcel  
735 owner shall have until October 1, 2019 ~~may commence an action~~  
736 ~~within 1 year after the effective date of this act to file suit~~  
737 for a judicial determination that the previous declaration did  
738 not govern that parcel as of October 1, 2018, ~~the effective date~~  
739 ~~of this act~~ and that any revival of such declaration as to that  
740 parcel would unconstitutionally deprive the parcel owner of  
741 rights or property. A revived declaration that is implemented  
742 pursuant to this ~~act~~ part shall not apply to or affect the  
743 rights of the respective parcel owner recognized by any court  
744 order or judgment in any such action, ~~commenced within 1 year~~  
745 ~~after the effective date of this act,~~ and any such rights so  
746 recognized may not be subsequently altered by a revived  
747 declaration implemented under this act without the consent of  
748 the affected property owner. Failure to institute the action  
749 within such period shall bar any future claim asserting that the  
750 amendments to Part III unconstitutionally deprived the parcel  
751 owner of rights or property.

752  
753 Section 16. This act shall take effect October 1, 2018.

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