

CHAPTER 97-202

House Bill No. 395

An act relating to preservation of covenants or restrictions; amending s. 712.01, F.S.; revising and adding definitions; amending ss. 712.03, 712.05, and 712.06, F.S.; protecting certain covenants or restrictions from extinguishment; providing for preservation of certain covenants or restrictions under certain circumstances; authorizing certain homeowners' associations to file for preservation of covenants or restrictions on behalf of certain parcel owners; providing a limitation; revising certain notice provisions to conform; providing an exception; providing an effective date.

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

Section 1. Subsection (1) of section 712.01, Florida Statutes, is amended, and subsections (4), (5), and (6) are added to said section, to read:

712.01 Definitions.—As used in this law:

(1) The term “person” as used herein denotes singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes and including any homeowners' association.

(4) The term “homeowner’s association” means a homeowner’s association as defined in s. 617.301(7), or an association of parcel owners which is authorized to enforce use restrictions that are imposed on the parcels.

(5) The term “parcel” means real property which is used for residential purposes that is subject to exclusive ownership and which is subject to any covenant or restriction of a homeowners' association.

(6) The term “covenant or restriction” means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which subjects the parcel to any use restriction which may be enforced by a homeowners' association or which authorizes a homeowners' association to impose a charge or assessment against the parcel or the owner of the parcel.

Section 2. Subsection (2) of section 712.03, Florida Statutes, is amended to read:

712.03 Exceptions to marketability.—Such marketable record title shall not affect or extinguish the following rights:

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

Section 3. Subsection (1) of section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) Any person claiming an interest in land or a homeowners' association desiring to preserve any covenant or restriction or any portion of a covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right or such covenant or restriction or portion of such covenant or restriction for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

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

Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by a majority vote at a meeting of the membership where a quorum is present.

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

712.06 Contents of notice; recording and indexing.—

(1) To be effective, the notice above referred to shall contain:

(a) The name or description of the claimant or the homeowners' association desiring to preserve any covenant or restriction and the name and particular post-office address of the person filing the claim or the homeowners' association.

(b) The name and post-office address of an owner, or the name and post-office address of the person in whose name said property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for the purpose of such notice, shall be deemed to be an owner.

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

(d) A statement of the claim showing the nature, description, and extent of such claim or, in the case of a covenant or restriction, a copy of the

covenant or restriction, except that it shall not be necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim is based upon an instrument of record or a recorded covenant or restriction, such instrument shall be sufficiently described to identify the same, including reference to the book and page in which the same is recorded.

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

(3) The clerk of the circuit court shall, upon such filing, mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(11) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(15). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:
...(Clerk of the circuit court)...
of County, Florida,
By ...(Deputy clerk)...

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.

Section 5. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.