

House Bill No. 861

An act relating to homeowners' associations; amending s. 712.05, F.S.; providing that a recorded notice to preserve a claim of right or covenant or restriction, or a part thereof, may be filed by a homeowners' association upon approval by two-thirds of that association's board of directors; amending s. 712.06, F.S.; providing that content requirements of a recorded notice to preserve a claim of right may be satisfied by a homeowners association's affidavit affirming the delivery of a statement to its members; providing a form of said statement of marketable title action; providing that recorded notice of a claim of right is deemed sufficient description of property if it cites official records describing said property by book and page; amending s. 720.303, F.S.; providing powers for associations controlled by unit owners other than the developer; providing a limitation on the ability to initiate certain litigation; amending s. 720.306, F.S.; prohibiting certain amendments to bylaws of the associations; providing for a limitation on the applicability of certain provisions of the act; providing an effective date.

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

Section 1. 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 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 or her 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 at least two-thirds of the members of the board of directors

of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association not less than 7 days prior to such meeting a majority vote at a meeting of the membership where a quorum is present.

Section 2. Paragraphs (b) and (e) of subsection (1) 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 in s. 712.05 shall contain:

(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 purpose of such notice, shall be deemed to be an owner; provided, however, if a homeowners' association is filing the notice, then the requirements of this paragraph may be satisfied by attaching to and recording with the notice an affidavit executed by the appropriate member of the board of directors of the homeowners' association affirming that the board of directors of the homeowners' association caused a statement in substantially the following form to be mailed or hand delivered to the members of that homeowners' association:

STATEMENT OF MARKETABLE TITLE ACTION

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

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

Section 3. Subsection (1) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting.—

(1) **POWERS AND DUTIES.**—An association which operates a community as defined in s. 720.301, must be operated by an association that is a

Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community. The officers and directors of an association have a fiduciary relationship to the members who are served by the association. The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained. This subsection does not limit any statutory or common-law right of any individual member or class of members to bring any action without participation by the association. A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates.

Section 4. Subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(a) Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests. Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association.

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel

shares in the common expenses of the association affect vested rights unless the record parcel owner of the affected parcel and all record owners of liens on the affected parcels join in the execution of the amendment. For purposes of this section, a change in quorum requirements is not an alteration of voting interests.

Section 5. The amendments to s. 720.306, Florida Statutes, provided in this act shall not apply to or affect any vested rights recognized by any court order or judgment in any action commenced prior to July 1, 2003, and any such vested rights so recognized may not be subsequently altered without the consent of the affected parcel owner or owners.

Section 6. This act shall take effect July 1, 2003.

Approved by the Governor June 2, 2003.

Filed in Office Secretary of State June 2, 2003.