

Legislative Review Wrap-Up

May 27, 2018

By: Joseph E. Adams

This week we conclude our annual review of 2018 legislation affecting Florida community associations, with a review of the amendments to Chapter 712 of the Florida Statutes, the Marketable Record Title Act, or MRTA, which become effective on October 1, 2018.

MRTA is primarily intended to facilitate real estate transactions, by eliminating “stale claims” against real property. However, the courts have found that covenants and restrictions of a homeowners’ association can be extinguished by MRTA. The general yardstick for MRTA extinguishment is thirty (30) years from the “root of title.” Though usually not the exact extinguishment date for most parcels, the most prudent yardstick for determining potential MRTA extinguishment is 30 years from the recordation of the original covenants and restrictions.

MRTA includes a process that allows residential homeowners’ associations to preserve the covenants and restrictions to prevent extinguishment. There is also a process in the Florida Homeowners’ Association Act, Chapter 720 of the Florida Statutes, which allows a community to “revitalize” covenants and restrictions that have been extinguished by MRTA.

One of the most significant changes regarding MRTA is actually found in the Homeowners’ Association Act. The new law requires that at the first board meeting after the annual members’ meeting, excluding the organizational meeting, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under MRTA.

Therefore, pursuant to the new statute, the board of every homeowners association, must annually consider the impact of MRTA even if the 30 year deadline is not imminent, or even if a preservation notice has already been filed.

Updates to Definitions in Chapter 712

- Creates a new definition for “community covenant or restriction” to mean

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 that may be enforced by a property owners' association; or
- Authorizes a property owners' association to impose a charge or assessment against the parcel or the parcel owner.
- Changes the term "homeowners' association" to "property owners' association" and defines the term to include a homeowners' association as defined in Section 720.301, a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels.
- Amends the definition of "parcel" to mean any real property that is subject to any covenant or restriction of a property owners' association (and no longer requires that the property be used for residential purposes).

Filing Notice to Preserve

- A property owners' association may preserve and protect a community covenant or restriction from extinguishment by the operation of MRTA by recording, at any time during the 30-year period immediately following the effective date of the root of title:
 - A written notice in accordance with Section 712.06 of MRTA; or
 - A summary notice in substantial form and content as required under Section 720.3032(2) of MRTA; or an amendment to a community covenant or restriction that is indexed under the legal name of the property owners' association and references the legal name of the property owners' association and references the recording information of the covenant or restriction to be preserved.
- The new law also includes a form which satisfies the notice obligation and constitutes a summary notice sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under MRTA.

Revitalization of Covenants and Restrictions by Parcel Owners Not Subject To A Homeowners' Association

- Creates a process for communities not governed by a homeowners' association to revitalize covenants and restrictions to revive covenants or restrictions, with certain exceptions.

Joe Adams is an attorney with [Becker & Poliakoff, P.A.](#), Fort Myers. Send questions to Joe Adams by e-mail to jadams@beckerlawyers.com. Past editions may be viewed at floridacondohoalawblog.com.