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Steps to Ensure Homeowner Association Restrictions Are Not Extinguished by the Marketable Record Title to Property Act

Florida Homeowner Associations (HOA) risk becoming unenforceable if specific steps are not taken in accordance with the Marketable Record Title to Property Act (MRTA). Under Chapter 712 of Florida Statutes, an HOA's restrictions will expire approximately 30 years from the date the documents were recorded in the public records of the county where the property is located unless they are preserved. For HOAs that fail to act, assessments will not be collectable and rules and regulations will be voided. MRTA does not apply to Florida condominiums.

MRTA's purpose is to free "stale" restraints on property that are no longer intended to burden particular parcels or are no longer relevant. The law streamlines the transfer of property and assists title agencies by providing a 30 year cutoff for title commitments and policies. If an HOA fails to preserve their documents within the 30 year period, recorded covenants must undergo a more complicated revitalization process. The importance of preservation cannot be understated, as revitalization is more costly, requires a vote of all the homeowners, and requires approval of the documents by the Florida Department of Financial Affairs in Tallahassee.

To ensure HOA restrictions are not extinguished, Sections 712.05 and 712.06, Florida Statutes, detail the process to preserve the restrictions for an additional 30 years. Prior to the expiration of the 30 year deadline from the date the first deed was recorded, the HOA must either **1)** file a written notice in accordance with Section 712.06; **2)** file a summary notice in substantially the same form and content as found in Section 720.3032(2); or **3)** file an amendment to the restrictions that is indexed under the legal name of the HOA and references the recording information of the restrictions to be preserved.

The preservation methods described above were updated in 2018 in an effort to simplify the MRTA preservation process. In addition to the 2018 updates to MRTA, Section 720.303(2)(2), Florida Statute, now requires that at the first Board of Directors meeting following an HOA's annual meeting, "consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishments under the Marketable Record Title Act, chapter 712, and authorize and direct the appropriate officer to file" the notice of preservation. While the statute does not define what "considering"

preservation actually entails, Boards should bring up the subject annually and reflect the discussion, however brief, in the minutes of the meeting.

Although the MRTA preservation process has been updated for greater ease, it is critical HOAs consult with their legal counsel to ensure proper compliance with MRTA's requirements. Please contact our office if you believe your HOA's restrictions risk terminating as a result of MRTA. In the event the 30 year period has already lapsed, our office can assist your HOA with the revitalization process as well.



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