

Expiration and Revitalization of Covenants under the Florida Marketable Record Title Act (MRTA)

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Under the Florida Marketable Record Title Act, Covenants and Restrictions governing Florida homeowners associations expire after a period of thirty years unless the associations take steps to preserve those Covenants and Restrictions prior to that thirty-year drop-dead date. If you serve on a Board of Directors for a community that has been around for some time, it would be advisable to review the recording date on your Covenants and Restrictions. If that date is more than 30 years ago, you must revitalize your governing documents.

Your Documents Have Expired. Now What?

The Revitalization Process

First, an “organizing committee” of three homeowners in the Association must be formed to initiate the revitalization process of your covenants. (The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.)

The organizing committee, or the Association attorney as their delegate, must prepare the Declaration to be re-recorded. The Articles, By-Laws, and a legal description of all affected parcels and the owner of record for each parcel will be recorded along with the Declaration.

The members’ proportionate voting interests and their proportionate share of assessments, and the amendment provisions of the revived governing documents, may not be amended during this process, and generally speaking, any amendments to the Declaration at this time may not be more restrictive than the Declaration before its expiration. A qualified community association attorney should review the Declaration to verify that it complies with the other requirements for a declaration of covenants and other governing documents as specified in Chapter 720. Often, the Declaration will be simply re-recorded as it currently reads (incorporating any prior amendments), but review at this stage is important to verify that the documents comply with current Florida law before proceeding.

Next, the Association must either obtain the written approval of a majority of the members, or get a majority vote at a membership meeting. An Association should work with a qualified community association attorney to ensure that the meeting is properly

noticed and conducted per § 720.306, as required. If revitalization is done by vote is done at a meeting, a court reporter or a Florida attorney also must certify the notice and the meeting minutes. When revitalization is done through vote at a membership meeting, it is recommended that proxies be used in advance of the meeting, with the organizing committee or its delegates going door to door if necessary, to ensure that there will be a sufficient quorum and majority vote.

Whether the Association is seeking approval in writing or by vote, a complete copy of the proposed revised declaration of covenants, the articles of incorporation, the bylaws, and a graphic description of the property to be affected must be mailed or hand delivered to the owners at least 14 days before their consent is sought.

Within 60 days of membership approval, the committee (again, or the Association attorney as their delegate) must send to the Florida Department of Economic Opportunity the proposed revived governing documents and certain supporting materials, such as a verified copy of the previous declaration of covenants and other previous governing documents, including any amendments.

Within 60 days of receiving the above revival package from the Association, the Department of Economic Opportunity will determine if the revitalization meets the requirements of Florida law and notify the organizing committee accordingly.

Within 30 days of receiving approval from the Department of Economic Opportunity, the revived governing documents must be recorded with the County Clerk of Court along with the approval letter from the Department and a legal description of each parcel.

Once the documents have been recorded, a copy must be provided to the owner(s) of each affected parcel.

Our office will be pleased to help your Association through the entire revitalization process. We will review your Declaration for its compliance with Florida law, prepare the necessary documents, and assist you every step of the way to ensure that your governing documents are given new life. Failure to properly revitalize your governing documents can have disastrous consequences for your Association, including the inability to enforce architectural control standards as well as the inability to collect and lien assessments in order to perform its obligations to the community, such as the maintenance, repair and replacement Association property. If your governing documents have expired, please contact our office as soon as possible and we will be happy to assist you.