

Northeast Florida Chapter Community Association Institute

# THE COMMUNITY CONNECTION

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# An HOA's Best "If Used By" Date

## Understanding Your HOA's Covenants and Restrictions Expiration Date, and Acting to Preserve or Revitalize Them

Community Association Managers and Board Members should beware of the inevitable expiration date of homeowner association governing documents. Depending on the time of development of the community, the HOA may be operating without an enforceable Declaration of Covenants, Conditions, and Restrictions (CC&Rs).

In 1964, the Florida legislature enacted the Marketable Record Title Act (MRTA) with the goal of simplifying a property's chain of title and streamlining marketable title. MRTA recognizes the marketable title - free and clear of all claims - of any person with legal capacity to own land who has held title, alone or jointly with a predecessor in title, for 30 years or more. In essence, MRTA shortens the chain of title to a 30-year period. Any claims and restrictions outside the 30-year period may be extinguished.

While MRTA may be beneficial for some, it poses a major threat to HOAs seeking to enforce its governing documents. Specifically, the 30-year title period also serves as an expiration date for an HOA's CC&Rs. While the time period generally is calculated as to each parcel (reviewing when the parcel was originally transferred

to a non-developer owner), the most conservative approach is to calculate 30 years from the date of recording the CC&Rs.

The good news is that an HOA does not have to wait until the documents expire to take action. Sections 712.05 and 712.06 of the Florida Statutes provide an association with the option to be proactive and preserve its covenants. This requires holding a duly noticed meeting of the Board of Directors with a Statement of Marketable Title Action; obtaining approval from 2/3 of the Board of Directors to proceed; and preparing and recording a Notice of Preservation of Covenants and Restrictions in the official records of the associ-

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ation's county. Membership approval is not required to preserve the governing documents.

On the other hand, for associations that have already met and passed their "expiration date," Sections 720.404 and 720.405 of the Florida Statutes provides a procedure for revitalizing (reinstating) the CC&Rs. Revitalization of CC&Rs is a more involved process, and includes obtaining written approval from a majority of the affected parcel





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owners to reinstate the covenants as they existed prior to expiration (no changes can generally be made during this process). The association must thereafter obtain approval from the Florida Department of Economic Opportunity. Finally, the names of the owners and the legal description of the properties subject to the revitalized covenants must be included as part of the submission to the State for revitalization.

Interestingly, MRTA typically does not affect condominium associations. This is because a deed conveying condominium property typically references the official records book and page of the declaration of the condominium. On the other hand, a deed conveying property located within an HOA does not typically include the book and page of the recorded CC&Rs; thus, they are at risk of being extinguished from the chain of title after thirty years.

If you manage or reside in a homeowners' association in Florida, review your governing documents to determine your community's "expiration date". As of July 2018, homeowner associations are required to consider at least annually whether pres-

ervation of the governing documents is required. As always, discussion with the association's legal counsel is imperative in making sure that the statutory procedures are met for either preservation or revitalization of the community's governing documents.



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