IN THE
SUPREME COURT OF FLORIDA

CASE NO. 79,981

DCA CASE NO. 91-2203

CIRCUIT COURT CASE NO. 91-12671-CA-28

SUNSHINE VISTAS HOMEOWNERS' ASSOCIATION,
a Florida not-for-profit corporation,

Petitioner/Appellant,

vs.

LOUIS CARUANA, et al.,

Respondents/Appellees.

PETITIONER'S BRIEF ON THE MERITS

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INTRODUCTION AND OVERVIEW

This is a response by the appellant below, petitioner Sunshine Vistas Homeowners' Association, to the certification of a question of great public importance by the Third District Court of Appeal. To the extent, however, that the legal issues raised by the question certified to this Court are directly related to the underlying facts of this case, it will be necessary to respond to the certified question by addressing the legal issues in the context of the underlying litigation.

The issue on appeal - whether a plat restriction may be enforced against certain property where the deeds in that property's chain of title contain both a specific reference to the plat in their legal description and the recital that they are subject to restrictions "of record" - appears to be an issue of first impression in Florida as well as all other jurisdictions which possess marketable title statutes. Although the district court below was correct in endorsing the circuit court's broad construction of the Florida Marketable Record Title Act (the "Act")'s preclusive effect on use restrictions, it failed to recognize the legal significance of the use restrictions being contained in a plat rather than a deed. This distinction is crucial in that both Florida caselaw and the plain language of the Florida Marketable Record Title Act compel that the plat restrictions are deemed to be interests which are specifically referenced by the legal descriptions' direct citation of the plat and which are inherent in the property owner's chain of title. The plat restrictions at issue, and plat restrictions similar to the ones at issue, are thus not extinguished by the Act.

Finally, the decision by the district court below is inconsistent with equally compelling interests of a statutory nature. Specifically, the enforcement of plat restrictions by private or public parties, which is seriously jeopardized by the decision below, promotes the public rights created by such plat restrictions without compromising the underlying rationale of the Act or violating its explicit terms. Accordingly, this Court must accept jurisdiction in this matter, answer in the negative the question certified by the district court below, and direct that the circuit court proceed with petitioner's complaint for declaratory relief pursuant to the correct interpretation of the law stated herein.

STATEMENT OF THE CASE AND FACTS[1/]

Petitioner Sunshine Vistas Homeowners' Association, a Florida not-for-profit corporation consisting of homeowners within the Sunshine Vistas section of the City of Miami ("Sunshine Vistas" or "petitioner"), filed a complaint in the Circuit Court of Dade County against Louis Caruana ("Caruana") and Townsend Construction Corporation ("Townsend") (collectively "respondents") seeking declaratory relief regarding the applicability of plat restrictions to Caruana and Townsend's construction of a house on a lot in the Sunshine Vistas subdivision. [R. 2-12]. Caruana and/or Townsend

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[1/]As noted above, it is impossible to address the question certified to this Court by the district court below without a review of the relevant facts and procedural history of this case.

are the fee simple owners of Lot 17 of Block 5 within a platted subdivision known as Sunshine Vistas, as defined by the plat filed on April 23, 1925, in Plat Book 16, at Page 29, of the Public Records of Dade County, Florida ("Sunshine Vistas Plat" or "plat"). The Sunshine Vistas Plat was subsequently amended on August 13, 1940, by a document titled Restriction On Certain Lots in Sunshine Vistas, filed on August 15, 1940, in Deed Book 2087, at Page 291, of the Public Records of Dade County, Florida. Sunshine Vistas alleged in its complaint that Caruana and Townsend's construction of the house on Lot 17 violated setback restrictions set forth on the face of the plat and amended plat. Id.

Caruana and Townsend filed a motion to dismiss the complaint, alleging that Sunshine Vistas lacked standing to bring the complaint, that the complaint failed to allege facts which supported the claim that the plat restrictions remained in effect, and that the complaint failed to allege facts which would support a claim for attorneys' fees. [R. 13-14]. After hearing the argument of counsel, the circuit court denied the respondents' motion to dismiss the complaint.

The respondents' answer to the complaint denied that the structure on the lot was in violation of the setback restrictions contained in the plat. As affirmative defenses, the respondents contended that petitioner Sunshine Vistas lacked the legal standing to bring the suit, that the setback restrictions were extinguished under the Florida Marketable Record Title Act, Fla. Stat. §712.01

et. seq., that the right to enforce the setback restrictions had been waived by the property owners in the neighborhood, and that changes in the character of the Sunshine Vistas neighborhood rendered the plat restrictions unenforceable. [R. 35-38].

Subsequent to the filing of their answer, Caruana and Townsend filed a motion for summary judgment on the sole ground that the plat restrictions were unenforceable under the Florida Marketable Record Title Act. Caruana and Townsend alleged that, under the Act, "use restrictions created prior to Townsend's root of title are extinguished, unless, after the date of the root of title, some muniments in Townsend's chain of title specifically identifies the restrictions." Accordingly, Caruana and Townsend concluded that "[s]ince the Plat Restrictions and Amended Restrictions were created prior to Townsend's root of title, and there is no specific reference subsequent thereto, these restrictions are no longer enforceable." [R. 42-65].

In response to Caruana and Townsend's motion for summary judgment, Sunshine Vistas filed a memorandum of law opposing the contention that, as a matter of law, the Florida Marketable Record Title Act extinguished the plat restrictions contained in the Sunshine Vistas Plat, as amended. Sunshine Vistas contended that the plat restrictions were "incorporated by reference into each and every title transfer in the subject property's chain of title" and were thus not barred by the Act. [R. 66-74].

The circuit court judge below, the Honorable Ursula Ungaro-Benages, granted Caruana and Townsend's motion for summary judgment, tacitly rejecting the caselaw and argument presented by petitioner Sunshine Vistas that established that the plat restrictions at issue, as opposed to deed restrictions, were enforceable as to the subject property. [R. 75]. In the order granting the appellees' motion for summary judgment, the circuit court concluded that "none of the muniments of Defendant Townsend Construction Corporation's root of title contains a sufficiently specific reference to the recorded plat to allow the plat restrictions to survive the effect of the Florida Marketable Record Title Act." Id. The circuit court based its conclusion on the consideration that "Ch. 712, Florida Statutes, is to be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions." Id. The circuit court then entered a Final Summary Judgment in support of the respondents. [R. 78-79].

An appeal timely followed pursuant to Fla. R. App. P. 9.030(b)(1)(A). [R. 76-77]. The Third District Court of Appeal confirmed the entry of the final summary judgment entered in favor of the respondents, noting that the setback restrictions contained in the Sunshine Vistas plat were not preserved under the Act. [R. 80-85].[2/] Specifically, the district court found that the

[2/]The opinion of the district court has been published. See Sunshine Vistas Homeowners' Association v. Caruana, 597 So.2d 809 (Fla. 3d DCA 1992).

references contained in the deeds and the chain of title were general references to the subject restrictions and "failed to identify the restrictions by the record title transaction which imposed, transferred or continued the use restrictions, as required by Section 712.03." Sunshine Vistas, 597 So.2d at 811.

Petitioner Sunshine Vistas filed a motion for rehearing en banc, or, alternatively, to certify a question of great public importance on February 12, 1992, and supplemented this motion through a motion to amend to correct scrivener's error on February 26, 1992. The district court denied the motion for rehearing, but granted the motion to certify a question of great public importance. [R. 86-88]. Accordingly, on May 5, 1992, the district court amended its original opinion to certify the following question as one of great public importance:

> WHETHER THE FLORIDA MARKETABLE RECORD TITLE ACT HAS THE EFFECT OF EXTINGUISHING A PLAT RESTRICTION WHICH WAS CREATED PRIOR TO THE ROOT OF TITLE WHERE THE MUNIMENTS OF TITLE IN THE CHAIN OF TITLE DESCRIBED THE PROPERTY BY ITS LEGAL DESCRIPTION WHICH MAKES REFERENCE TO THE PLAT AND THE MUNIMENTS OF TITLE STATE THAT THE CONVEYANCE IS GIVEN SUBJECT TO COVENANTS AND RESTRICTIONS OF RECORD.

On May 28, 1992, petitioner Sunshine Vistas filed with this Court a notice to invoke discretionary jurisdiction based on the district court's opinion granting the motion to certify the question of great public importance. This Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(v).

SUMMARY OF ARGUMENT

The specific language of the Florida Marketable Record Title Act, when coupled with the extensive body of Florida caselaw addressing the incorporation of plat references into title documents, requires that the plat restrictions at issue in this case be enforced and that this Court answer the certified question in the negative. As a result of the specific references to the plat in every title transaction leading up to the deed to Townsend Construction, the plat restrictions have been legally incorporated into every title transaction in the subject property's chain of title and thus fall within the statutory exception for restrictions that are either specifically disclosed by or inherent in the appellees' "muniments" of title. Furthermore, the district court's effective invalidation of all plat restrictions which are not repeated in their entirety on deeds or other conveyance documents undercuts the traditional deference that is extended by courts and the Florida legislature to the legal effect of recorded plats and the enforcement of plat restrictions.

This Court's consideration and resolution of the legal issue certified by the district court below is critical to the residents of the state, many of whom live in subdivisions which were platted at least thirty (30) years ago. This consideration is particularly compelling in that, as noted below, the district court opinion conflicts with title standards and title notes approved by both the Florida Bar and the Attorneys' Title Insurance Fund.

These title notes, in essence, are relied upon by a large number of attorneys, title insurance agents, and abstractors, and have a direct impact on many real estate transactions throughout the state. In light of the existence of this conflict between these long-standing industry standards and the district court decision, resolution of this conflict would certainly put to rest the legal uncertainty that must exist in the state after the rendering of the district court's opinion.

ARGUMENT

THE FLORIDA MARKETABLE RECORD TITLE ACT DOES NOT HAVE THE EFFECT OF EXTINGUISHING A PLAT RESTRICTION WHICH WAS CREATED PRIOR TO THE ROOT OF TITLE WHERE THE MUNIMENTS OF TITLE IN THE CHAIN OF TITLE DESCRIBED THE PROPERTY BY ITS LEGAL DESCRIPTION WHICH MAKES SPECIFIC REFERENCE TO THE PLAT AND THE MUNIMENTS OF TITLE STATE THAT THE CONVEYANCE IS GIVEN SUBJECT TO COVENANTS AND RESTRICTIONS OF RECORD.

A. The Florida Marketable Record Title Act Does Not Extinguish A Use Restriction On Property Where, As In This Case, The Restriction Is Disclosed By And Inherent In The "Muniments Of Title" Of That Property.

As correctly noted by the district court below, Chapter 712 of the Florida Statutes established a comprehensive statutory scheme for reforming and simplifying the procedures utilized in the conveyancing of real property. As part of this simplification of real property conveyancing, there can be little argument that the simplification of the review of the title to conveyed property and the extinguishment of ancient defects was of central importance to the Florida Legislature. The narrowing of the time period for an investigation of potentially competing interests in property thus

served as the cornerstone of the Florida Marketable Record Title Act (the "Act") and similar statutes enacted throughout the country.

Section 712.02 of the Act established a thirty-year yardstick for the analysis of title to land in Florida.[3/] Accordingly, it states as follows:

> Any person having the legal capacity to own land in this state, who, alone or together with his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in §712.03. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:
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> (1) The person claiming such estate; or
>
> (2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed.

Thus, unless one of the exceptions to marketability as defined by Fla. Stat. §712.03 can be established, the property in question is then made legally "free and clear" of any competing claims that may exist. As the Second District Court of Appeal

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[3/]As noted herein, the determination of the "root of title" and the inclusion of statutory exceptions to the Act's preclusive effect for the most part require a more comprehensive analysis than just thirty years prior to the deed in question.

noted in an early decision interpreting the Act, it was, at the very least, intended to obviate the need to perform a title search "back to the sovereign." Wilson v. Kelley, 226 So.2d 123, 127 (Fla. 2d DCA 1969).

The Act, however, does not eliminate, nor did it ever purport to eliminate, all ancient interests that may adversely affect the marketability of property. As noted, Fla. Stat. §712.03, which identifies exceptions to the Act's extinguishment of stale use restrictions, states the following exceptions in pertinent part:

> **712.03. Exceptions to marketability**
>
> Such marketable record title shall not affect or extinguish the following rights:
>
> (1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests...

(emphasis supplied).

Under the plain language of the Act, there can be no dispute that a specific reference in the "muniments of title" to a use restriction such as a plat restriction which predates the "root of title" preserves the use restriction and excepts it from the

Act. As to restrictions which are disclosed by or inherent in the "muniments of title on which said estate is based, beginning with the root of title," they are also preserved and may be enforced by those who possess said interests if reference is made, in the case of a plat restriction, to the book and page number of the plat which imposed the restriction.[4/]

It is clear that a general reference contained in the muniments of title to a use restriction which was created prior to the root of title is not sufficient to preserve it in the absence of a "specific identification" of the document which created the use restriction. The Act is silent, however, as to how the muniment of title must specifically disclose the use restriction or how that restriction must be identified by reference to the book and page of the recorded plat. The district court below takes the position that a recital in a deed that the deed is subject to restrictions of record, when coupled with the specific reference to the plat and its book and page reference in the deed's legal description, fails to meet the test enunciated by §712.03. This decision flies in the face of both established caselaw and common

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[4/]A "muniment of title," by way of definition, is "[a]ny documentary evidence upon which title is based." Cunningham v. Haley, 501 So.2d 649, 652 (Fla. 5th DCA 1985), while Fla. Stat. §712.01(2) defines "root of title," in pertinent part, as "any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined."

sense, and, accordingly, it must be quashed by virtue of this Court answering the certified question in the negative.

B. The Use Restrictions At Issue Were All Created By A Plat And Were Disclosed By And Inherent In The "Muniments Of Title" Of The Subject Property By Virtue Of Specific References In All Relevant Deeds To The Appropriate Plat.

Assuming that the root of title begins, as the defendants contend, with the 1951 deed from John H. Heuer and Helen L. Heuer, his wife, to James D. Pasco, Jr., that deed, as a matter of law, specifically references the plat restrictions which the appellant seeks to enforce.[5/] First, the legal description of the property on the face of the deed states that the deed conveys "Lots 16 and 17 in Block 5 of SUNSHINE VISTAS as per plat thereof recorded in Plat Book 16, Page 29 of the Public Records of Dade County, Florida." Additionally, the deed is "[s]ubject to restrictions, conditions and limitations of record."

Although the district court endorsed the respondents' contention that a "general reference to restrictions of record, in conjunction with a legal description of the property incorporating a reference to the plat, is not sufficient under the Act to preserve these plat restrictions," they offered no citation to applicable Florida caselaw to support this claim. In fact, Florida law could not be more clear that a reference to a specific plat

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[5/]Petitioner Sunshine Vistas would agree, as it did below, that it would be precluded from enforcing similar restrictions had they been initially created by a deed before the effective date of the root of title.

book and page, when combined with the recitation that the property is "subject to restrictions of record," requires that the terms of the plat be incorporated into the deed. Wahrendorff v. Moore, 93 So.2d 720, 721 (Fla. 1957) (restrictive covenants contained in plat enforced where "each deed subsequent to the plat referred thereto and in substance recited that the property was 'subject to restrictions of record' ").[6/]

Analogously, Florida courts have consistently maintained the position that where, for example, the dimensions of certain property are described, within a deed, by reference to a plat, the plat "becomes as much a part of the deed as if it were copied therein." Crenshaw v. Holzberg, 503 So.2d 1275, 1277 (Fla. 2d DCA 1987); Lawyers Title Guaranty Fund v. Milgo Electronics, 318 So.2d

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[6/]Under long-settled Florida law, the legislature is presumed to be familiar with existing common law at the time of the enactment of a statute. Ford v. Wainwright, 451 So.2d 471, 475 (Fla. 1984) ("It is an accepted rule of statutory construction that the legislature is presumed to be acquainted with judicial decisions on the subject concerning which it subsequently enacts a statute"); Akins v. Bethea, 33 So.2d 638, 640 (Fla. 1948); Bermudez v. Florida Power and Light Co., 433 So.2d 565, 567 (Fla. 3d DCA 1983), review denied, 444 So.2d 416 (Fla. 1984). Accordingly, any purported dismantling of the holding of Wahrendorff v. Moore, 93 So.2d 720 (Fla. 1957), relied upon by the petitioner and issued by this Court only six years before the enactment of the Act, should have been undertaken with greater clarity. See Akins, 33 So.2d at 640 (legislative intent to depart from pre-existing law requires "clearer and more explicit language...in the statute revealing such intent..."). Thus, even if this Court is not convinced that the plain language of §712.03(1) requires the enforcement of the plat restrictions at issue, any ambiguity must be resolved in favor of the survival of the plat restrictions under the Act. In light of this fundamental principle of statutory construction, the district court's summary dismissal of pre-act caselaw by the district court must be set aside.

416 (Fla. 3d DCA 1975) (where party takes title by deed which describes property by plat reference, "particulars appearing on plat are to be regarded as if expressly set forth in deed"). This position is clearly enunciated by the Florida Bar's Real Property, Probate and Trust Law Section in Title Standard 11.6, which states that "[i]f a deed describes property conveyed by reference to a recorded plat, the conveyance is taken subject to every particular shown on the plat."

There can be no doubt in this case that every one of the warranty deeds in the chain of title, from the 1951 Heuer deed to the 1990 deed from David Block and his wife to defendant Townsend Construction Corporation, specifically reference the plat by book and page. Both the Heuer deed and the 1977 deed, from James D. Pasco, Jr. to David Block, state that the deed is subject to restrictions "of record." In light of the plain language of the Marketable Record Title Act and the caselaw requiring that specific references to a plat in the legal description of a deed incorporate the plat's terms into the deed, there can be no question that, as a matter of law, the plat restrictions in the Sunshine Vistas Plat, and the plat itself, are specifically disclosed by the deeds, excepted from the Act, and must be enforced by this Court. The use restrictions are also inherent in the "muniments of title" and thus excepted from the Act.

Furthermore, this Court must also consider the effect of the Attorney's Title Insurance Fund's Title Notes on the issue of

the Marketable Record Title Act's effect on plat restrictions.[7] Title Note 28.03.01, which specifically speaks to the Marketable Record Title Act and use restrictions, offers the following opinion:

> Where there is a warranty deed of record for more than 30 years which was placed of record subsequent to the last deed imposing or making specific reference to the restrictions and reverter and they are not on the plat according to which the property was described, the Fund's opinion is that the restrictions and reverter are eliminated provided no claim has been filed as allowed by Sec. 712.05, F.S. 1981, or as protected by Sec. 712.03(2) F.S. 1981...
>
> Accordingly, if they were not on the plat by which the property was described, the restrictions and reverter have been eliminated by the Marketable Record Title Act and a Fund policy on the title could be issued without an exception for them.

Attorney's Title Insurance Fund, Fund Title Notes §28.03.01 (1989) (emphasis supplied).

The district court's opinion also failed to consider the authoritative analysis provided by an academic with first-hand knowledge of Florida's marketable title legislation. Coincidentally addressing the identical issue presented to this Court, Prof. Walter E. Barnett concluded that plat restrictions such as those contained in the Sunshine Vistas plat are preserved as

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[7] This Court cannot deny the importance of the title notes to its consideration of what is, in essence, a title question. Furthermore, the title notes have, in the past, been relied upon as legal authority by courts in this state. See Summa Investing Corp. v. McClure, 569 So.2d 500, 502 (Fla. 3d DCA 1990).

interests "inherent" in the muniments of title. Highlighting the inconsistencies revealed by the plain language of the marketable title acts, Prof. Barnett observed as follows:

> In 1965 the writer purchased a house in an exclusively residential area on the outskirts of Miami, Florida. Title examination showed that the subdivision was platted and the sale of lots commenced in 1937, restrictive covenants being inserted only in the deeds to the individual lots as they were sold. Yet the writer's house was not built until 1952, and a number of homes were built even more recently. Under the Florida act, which provides for a thirty-year period and contains no exception for restrictive covenants, the covenants burdening a lot sold in 1937 might be extinguished in 1967, unless some owner in the subdivision filed a notice of claim before then. Such a possibility would become reality if a purchaser in 1937 conveyed the same year without specifically identifying the deed to him, which contained the restrictions; in 1967 his conveyance would cut off those restrictions. The unburdening of one lot in the subdivision might cause the restrictions to become unenforceable throughout the subdivision, because the entire subdivision would no longer be burdened uniformly.
>
> If the restrictions appear on the plat, presumably such a "disaster" cannot occur, since each successive conveyance of a lot must identify the plat in order to describe the land conveyed; thus, they are preserved by the exception for "interests and defects which are inherent in the muniments of which [the owner's] . . . chain of record title is formed." So, of two methods traditionally used to impose restrictive covenants on a subdivision, one rather accidentally preserves the covenants from extinguishment, while the other does not. This is one example of how the mechanical operation of marketable title acts may extinguish one interest and preserve another of the very same kind, though justice demands the same treatment for both.

Barnett, Marketable Title Acts - Panacea Or Pandemonium, 53 Cornell Law Rev. 45, 75 (1967) (emphasis supplied).

The deeds in the chain of title leading up to the respondents' deed all specifically reference the Sunshine Vistas Plat. The deeds are all subject to restrictions of record. Under Florida law, there can be no question that the plat restrictions, having been incorporated into each deed by specific reference to the plat, fall within the well-recognized statutory exceptions to the Marketable Record Title Act and must be enforced.

C. The Enforcement Of The Plat Restrictions At Issue Does Not Contravene Either The Plain Language Or The Purpose Of The Marketable Record Title Act.

The district court flatly failed to recognize the significance of petitioner Sunshine Vistas' attempt to enforce plat restrictions rather than deed restrictions. Although the district court correctly acknowledged the circuit court's conclusion that the Act should be "liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions," it should have concluded that the enforcement of restrictions contained on the face of a plat is consistent with the implicit and stated legislative purpose of the Act.

When the Act is utilized to extinguish a use restriction that is contained in an ancient deed, there is little question that it is promoting the simplification of property conveyances. In this scenario, the title examiner must only review the chain of title back to the root of title, and must only then review those

documents which predate the root of title and which are specifically referenced by the root or by title transactions subsequent to the root.[8/]

In addition to specifically recognizing the furtherance of conveyance simplification through the exception of estates and use restrictions which are both specifically disclosed by and inherent in the title documents, this Court should be mindful that other exceptions are made in the Act for rights derived by individuals "in possession of the lands" or for "recorded or unrecorded easements or rights" where such easements are in use. See Fla. Stat. §712.03(3)-(5). These exceptions must be interpreted by this Court to coexist with the purpose of the Act, which is to limit the scope of the title search to that which is readily apparent from a review of the chain of title or from the use of the property. Restrictions contained on the face of a plat - of any age - can also be readily ascertained from a simple public records search and must also be enforced.

It is also clear from a consideration of these relevant exceptions, particularly the exception for "unrecorded" easements,

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[8/]Rather than interminably searching for any and all transactions which potentially affect the property, the title examiner under the Act only searches those documents to which a specific reference exists in the public records. By virtue of a specific reference to a plat that is contained in a deed for property within a platted area (i.e. Official Records Book and Page), the title examiner must review the subject plat by retrieving it from the county records. No greater effort is expended in searching for the plat than is involved in searching for a deed or other instrument referenced in the chain of title.

that the Act was not intended to be applied mechanically, and that conveyance simplification was not a hollow watchword by which interests which predated the root of title would be automatically extinguished. If some easements which are not recorded are not extinguished by the Act, there hardly seems to exist a compelling reason for this Court, in interpreting the Act, to extinguish use restrictions appearing in the public records and referenced throughout the chain of title.

Nor is the simplification of conveyancing procedures the only policy objective served by the Act. For example, the legislature also specifically evidenced its intention to ensure that the Act did not encroach upon "any statute governing the effect of the recording or the failure to record any instrument affecting land." Fla. Stat. §712.07.

The district court's facile simplification of the legislative purpose of the Act is further exposed and made vulnerable by the presence of competing interests contained in related statutory provisions, particularly those concerning plats. To the extent that these competing interests find support in recent decisions of the district court, a reversal of the district court's opinion is further warranted.

D. The Enforcement Of Plat Restrictions Such As The Ones At Issue Is Consistent With The Intention Of The Florida Legislature To Respect The Legal Effect Of Duly Recorded Plats.

Under Florida law, a plat like the one at issue must be duly recorded to have legal effect. Fla. Stat. §177.111. By failing to give the proper legal effect to a duly recorded plat, the district court's decision contravenes the intent of the Act and simultaneously undercuts the relevant statutory scheme for plat recording. The district court's judgment should be reversed, and the certified question answered in the negative, for this reason alone.

The public nature of the plat, which is derived from its public recording, compels that the logic of the district court be reversed. As the Third District Court of Appeal recently recognized, and should have recognized below, restrictions included in a publicly recorded plat become "public restrictions" which may be exercised by local governments on behalf of their constituents. Dade County v. Timinsky, 579 So.2d 356, 357 (Fla. 3d DCA 1991), citing Coffman v. James, 177 So.2d 25, 30 (Fla. 1st DCA 1965). See also Dade County v. Timinky, 598 So.2d 266 (Fla. 3d DCA 1992). If the district court's decision is upheld by this Court, or if the certified question is answered in the affirmative, plat restrictions in all subdivisions will be at the mercy of private individuals who could contract for a deed that would reference the plat in its legal description but would not, as required by the decision below, reference the restriction with specificity in a

recital. In light of the large number of platted areas in Florida and the distinct possibility that few references to plat restrictions must presently exist that would satisfy the criteria set forth by the district court, the affirmance of the district court's decision would cause chaos in older platted neighborhoods and would undermine the public nature ascribed by Florida courts to the interests furthered by plats and restrictions contained within them.

No logical explanation can be advanced in support of title simplification where that explanation fails to recognize the need to generate certainty through the enforcement of restrictions contained in duly recorded instruments such as plats. The logic supporting the district court's decision becomes even more tenuous where, in accordance with the Act, those duly recorded documents are specifically referenced by book and page in title transactions which are subsequent to the root of title, and themselves recorded, and which are also referenced in the root of title. This Court must interpret the Act to yield a result that is entirely consistent with its plain language and its clear intent. In the interest of respecting the effect of validly recorded plat restrictions throughout Florida, the district court's decision must not stand and the certified question must be answered in the negative.

CONCLUSION

The district court wishes this Court to interpret the Act to require specific references to plat restrictions in the recitals of the deed where no such requirement is required by the Act or by any Florida caselaw interpreting the Act. The district court also disregards pre-Act caselaw which clarifies the Act rather than conflicts with it, as well as Florida Title Standards and Title Notes which embrace the petitioner's legal position.

For the reasons set forth above, petitioner Sunshine Vistas Homeowners' Association requests that this Court answer the certified question in the negative, reverse the decision of the district court, and remand this action for further proceedings consistent with its judgment.

Respectfully submitted,

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By _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand upon David Rogero, Esq., and Angela Flowers, Esq., Blackwell & Walker, P.A., 2400 AmeriFirst Building, One Southeast Third Avenue, Miami, FL 33131, this 24TH day of July, 1992.

JOHN K. SHUBIN

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