CHAPTER 712

MARKETABLE RECORD TITLES TO REAL PROPERTY

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712.01 Definitions.—As used in this law:

(1) The term "person" as used herein denotes singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes.

(2) "Root of title" means 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. The effective date of the root of title is the date on which it was recorded.

(3) "Title transaction" means any recorded instrument or court proceeding which affects title to any estate or interest in land and which describes the land sufficiently to identify its location and boundaries.

History.—s. 1, ch. 63-133; s. 11, ch. 65-420; s. 1, ch. 81-242.

712.02 Marketable record title; suspension of applicability.—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 s. 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:

(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.

History.—s. 2, ch. 63-133; s. 1, ch. 65-83; s. 63, ch. 67-226.

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; subject, however, to the provisions of subsection (5).

(2) Estates, interests, claims, or charges preserved by the filing of a proper notice in accordance with the provisions hereof.

(3) Rights of any person in possession of the lands, so long as such person is in such possession.

(4) Estates, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.

(5) Recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights-of-way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof. No notice need be filed in order to preserve the lien of any mortgage or deed of trust or any supplement thereto encumbering any such recorded or unrecorded easements, or rights, interest, or servitude in the nature of easements, rights-of-way, and terminal facilities. However, nothing herein shall be construed as preserving to the mortgagee or grantee of any such mortgage or deed of trust or any supplement thereto any greater rights than the rights of the mortgagor or grantor.

(6) Rights of any person in whose name the land is assessed on the county tax rolls for such period of time as the land is so assessed and which rights are preserved for a period of 3 years after the land is last assessed in such person's name.

(7) State title to lands beneath navigable waters acquired by virtue of sovereignty.

History.—s. 3, ch. 63-133; s. 12, ch. 65-420; s. 1, ch. 73-218; s. 1, ch. 78-288.

712.04 Interests extinguished by marketable record title.—Subject to the matters stated in s. 712.03, such marketable record title shall be free and clear of all estates, interests, claims, or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to the effective date of the root of title. All such estates, interests, claims, or charges, however denominated, whether such estates, interests, claims, or charges are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void, except that this chapter shall not be deemed to affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title.

History.—s. 4, ch. 63-133; s. 1, ch. 65-280.

712.05 Effect of filing notice.—

(1) Any person claiming an interest in land may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

(a) Under a disability,

(b) Unable to assert a claim on his behalf, or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(2) It shall not be necessary for the owner of the marketable record title, as herein defined, to file a notice to protect his marketable record title.

History.—s. 5, ch. 63-133.

712.06 Contents of notice; recording and indexing.

(1) To be effective, the notice above referred to shall contain:

(a) The name or description of the claimant and the name and particular post-office address of the person filing the claim.

(b) The name and post-office address of an owner, or the name and post-office address of the person in whose name said property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for the purpose of such notice, shall be deemed to be an owner.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description, and extent of such claim, except that it shall not be necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim is based upon an instrument of record, such instrument shall be sufficiently described to identify the same, including reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

(2) Such notice shall be filed with the clerk of the circuit court of the county or counties where the land described therein is situated, together with a true copy thereof. The clerk shall enter, record, and index said notice in the same manner that deeds are entered, recorded, and indexed, as though the claimant were the grantee in the deed and the purported owner were the grantor in a deed, and the clerk shall charge the same fees for recording thereof as are charged for recording deeds. In those counties where the circuit court clerk maintains a tract index, such notice shall also be indexed therein.

(3) The clerk of the circuit court shall, upon such filing, mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(11) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(15). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this ____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

(Clerk of the circuit court)
of ____ County, Florida,
By (Deputy clerk)

(4) Failure of any purported owner to receive the mailed notice shall not affect the validity of the notice or vitiate the effect of the filing of such notice.

History.—s. 6, ch. 63-133; s. 5, ch. 77-354; s. 7, ch. 82-205; s. 57, ch. 95-211.

712.07 Limitations of actions and recording acts.—Nothing contained in this law shall be construed to extend the period for the bringing of an action or for the doing of any other act required under any statute of limitations or to affect the operation of any statute governing the effect of the recording or the failure to record any instrument affecting land. This law shall not vitiate any curative statute.

History.—s. 7, ch. 63-133.

712.08 Filing false claim.—No person shall use the privilege of filing notices hereunder for the purpose of asserting false or fictitious claims to land; and in any action relating thereto if the court shall find that any person has filed a false or fictitious claim, the court may award to the prevailing party all costs incurred by him in such action, including a reasonable attorney's fee, and in addition thereto may award to the prevailing party all damages that he may have sustained as a result of the filing of such notice of claim.

History.—s. 8, ch. 63-133.

712.09 Extension of 30-year period.—If the 30-year period for filing notice under s. 712.05 shall have expired prior to July 1, 1965, such period shall be extended to July 1, 1965.

History.—s. 9, ch. 63-133.

712.095 Notice required by July 1, 1983.—Any person whose interest in land is derived from an instrument or court proceeding recorded subsequent to the root of title, which instrument or proceeding did not contain a description of the land as specified by s. 712.01(3), and

whose interest had not been extinguished prior to July 1, 1981, shall have until July 1, 1983, to file a notice in accordance with s. 712.06 to preserve the interest.

History.—s. 2, ch. 81-242.

712.10 Law to be liberally construed.—This law shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in s. 712.02 subject only to such limitations as appear in s. 712.03.

History.—s. 10, ch. 63-133.