To: All WFG Policy issuing agents; all WFG title examiners and officers
From: Florida Underwriting Department
Date: July 25, 2018
Bulletin No. FL2018-13
Subject: Revisions to Marketable Record Title Act (MRTA)

During the 2018 Florida legislative session, MRTA was revised to address a non-title problem. Understanding the root of the problem will provide context for the trade-offs and compromises which went into the revisions.[1] The changes in the law take effect October 1, 2018.

The Problem

In 1985, Florida adopted the State and Regional Planning Act. That growth management act, among other things, allowed local governments to shift some of the future costs of maintaining drainage systems, road improvements, environmental preserves and the like to property owners' associations, funded in perpetuity by assessments of the properties in the community.

Thirty years later, someone realized that those covenants – and the attached funding -- could start to be eliminated by MRTA.

The knee-jerk government solution was "just don't make MRTA apply to anything we care about" – which is easier said than done. The second proposal was – don't make MRTA apply to ANY Covenants or Restrictions (CC&R).

Those of us involved in title and real estate transactions – and fortunately the Florida legislature – understood that not every covenant and restriction should be continued forever. Communities change, uses of property change, expected setbacks change. Perceptions of the appropriateness of racial covenants and liquor covenants have certainly changed. After enough time, covenants and restrictions can start to actively interfere with the highest and best use of a property. They should then cease to apply, or at least be reconsidered by the affected community.

Some covenants are good, some are bad. It is all but impossible to come up with statutory language which adequately and clearly distinguishes a "Good Covenant" from a "Bad Covenant." As we explored the problem further, we discovered that many of the association covenants that had lapsed were the result of misunderstandings by associations of how MRTA

[1] 2018 Laws of Florida, ch. 2018-55.

affects them. Simply put, MRTA is not an area of law that association managers consider on a regular basis.

The Compromise Solution

The compromise solution, which is embodied in the new law, had three elements:

1. Make it less likely that a "Good Covenant" with an active association will be inadvertently eliminated by MRTA. This was addressed by:
    a. Placing reminders about the effect of MRTA in the Florida Statute chapter that governs property owners' associations (ch. 720).
    b. Making it significantly easier for an active association to preserve covenants that are still desired, without automatically preserving those covenants and restrictions that are truly obsolete. To make it easier, there will now be three ways for an association to preserve covenants from elimination by MRTA:[2]
        i. The traditional filing under s. 712.06 – which will be indexed to every affected property owner.
        ii. Filing of a summary notice to preserve – which usually will NOT be indexed to every property owner. This will generally be a one or two page filing which identifies every covenant and restriction instrument to be preserved by recording information.[3]
        iii. Filing an amendment to the covenants and restrictions – which need not be indexed to every property owner.
    c. The requirement for advance notice of any action to preserve covenants was removed from MRTA, and a simple majority of the association's board (not the current 2/3) may take action to preserve. Notice and open meeting requirements of ch. 718 and 720 will still apply.

2. Allowing any Property Owners' Association – not just those in residential communities – to preserve their covenants from elimination by MRTA.

3. Simplifying the process for "revitalizing" covenants that have previously been eliminated by MRTA. Making the revitalization tools available for any type of Property Owners' Association, not just residential[4], and for covenants which have no association.[5]

How it affects Title Examination and Our Underwriting.

1. WFG's underwriting position is that recorded covenants are NOT to be omitted from a commitment or "insured over" on the basis of MRTA -- without express underwriting approval.

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[2] §712.05(2)
[3] New §720.3032 provides a statutory form for the summary notice to preserve under MRTA.
[4] Revised §§720.403-.407
[5] New §712.12.

2. A normal grantor-grantee search will not pick up the summary notice to preserve or an amendment to the covenants and restrictions (which also has the effect of preserving under MRTA). So your search should include a General Index search of (a) the legal name of the association; (b) the name of the subdivision (from the plat) or condominium, as appropriate; and (c) the common name of the community, if different.

   This additional search is not required when searching a geographically indexed title plant (as the amendments or summary notice should have been posted to all affected parcels).

If you have questions about this, please contact your WFG Underwriter.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.