



February 8, 2022

HOMEOWNERS' ASSOCIATIONS – REMEMBER TO DISCUSS PRESERVING YOUR COMMUNITY COVENANTS

By: Alexander J. Menendez, Esq.

It's something that's easy to put off. However, after being recorded for thirty (30) years, if not properly preserved, a community's covenants or deed restrictions can be extinguished by Florida's Marketable Record Title Act (known as "MRTA" for short). Further, while extinguished covenants and restrictions can be "revitalized," the process of revitalization is very costly and time consuming. Fortunately, communities that plan have the ability to preserve their covenants and restrictions for an additional thirty (30) years by making the necessary filing in their county's public records.

Since October 1st of 2018, Section 720.303(2)(e), F.S., has required that homeowners' associations include a discussion of "the desirability" of preservation as an agenda item at the first board meeting after the annual meeting (excluding the organizational meeting). Given the consequences of failing to timely preserve a community's covenants and restrictions, it is very important that boards take this requirement seriously. The discussion does not have to be drawn-out. For example, it might include an acknowledgment of the deadline to preserve followed by a vote on whether to hire legal counsel for a preservation. At the very least, including the discussion in the minutes of the meeting will create a helpful reminder and allow directors to voice their opinions on the matter.

MRTA primarily affects communities governed by homeowners' associations. This is because the deeds in these communities do not necessarily have legal descriptions that reference the covenants and restrictions by book and page number. Instead, these deeds often reference plat books. Notwithstanding, it is important to note that the covenants and restrictions of a master condominium association can be extinguished. Most often, this will be a condominium association that manages roadways or recreational facilities that are shared by multiple condominiums.

MRTA can be complicated, and no two communities are alike. You should consult with your association's legal counsel on when your community's covenants may be extinguished. You should also work with your legal counsel to ensure that any preservation is prepared and filed properly.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

Alexander J. Menendez is an experienced community association and real estate attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 336-6256 Fax: (239) 332-2243. To view past articles, please click “Publications” on our firm website.

Pavese Law has five attorneys Board Certified in Condominium and Planned Development Law; three of only thirty attorneys in the State of Florida who are Board Certified in both Real Estate Law and Condominium and Planned Development Law; and one of only two attorneys in the State of Florida who is Board Certified in both Construction Law and Condominium and Planned Development Law.

We are a full-service law firm and capable of handling all your legal needs.

Firm Practice Areas include:

- Agricultural
- Banking and Finance
- Business and Corporate
- Civil Litigation
- Condominium and Homeowners’ Association Law
- Construction
- Employment
- Environmental and Water
- Estate Planning, Probate and Trusts
- Land Use and Local Government
- Marital and Family
- Real Estate

Visit us on the web at www.PaveseLaw.com.

