

MARKUP #1 ->

MARKUP #1 · MRTA 30-YEAR COVENANT EXPIRATION RISK

BOARD & COUNSEL REVIEW

holders.

12 **DURATION OF COVENANTS; AMENDMENTS.**

ISSUE #1

12.1 **Duration of Covenants.** The covenants, conditions, easements and restrictions in this Golf Declaration shall run with and bind the property, and shall inure to the benefit of and be enforceable by the Golf Club, and any Member, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the ninety-ninth (99) anniversary of the date of recording this Golf Declaration in the Public Records of Lee County, Florida. Upon the expiration of said initial period, this Golf Declaration shall be automatically renewed and extended for an unlimited number of successive ten (10) year periods, this Golf Declaration as it may be amended being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, until terminated as provided below.

12.2 **Termination.** This Golf Declaration may be terminated at any time after the initial period if not less than eighty percent (80%) of the voting interests of all voting classes of the Golf Members of the Golf Club vote in favor of terminating this Golf Declaration. Written notice of any meeting at which a proposal to terminate this Golf Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Golf Members vote to terminate this Golf Declaration, the President and Secretary of the Golf Club shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Golf Club at which the resolution was adopted, the date that notice of the meeting was given, the total number of votes cast in favor of the resolution, and the total number of votes cast against the resolution. The certificate shall be recorded in the public records of the County, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Golf Declaration. The termination shall be effective on the date the Certificate is recorded in the public records.

12.3 **Amendments.** This Golf Declaration may be amended at any time. Except as otherwise specifically provided, amendments to this Golf Declaration may be proposed by the Board of Directors or by written petition of at least one-fourth (1/4) of the voting interests.

12.4 **Procedure.** Upon any amendment or amendments to this Golf Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the Golf Members not later than the next annual meeting for which proper notice can be given.

12.5 **Vote Required.** Except as otherwise provided by law, or by specific provision of this Golf Declaration, including but not limited to Sections 12.7, below, a proposed amendment to this Golf Declaration shall be adopted if it is approved at an annual or special meeting called for the purpose by at least a majority of the voting interests present and voting, in person or by proxy or by electronic voting, at a meeting of the membership at which a quorum has been attained, provided that notice of the text of each proposed amendment was sent to the Golf Members with notice of the meeting.

12.6 **Certificate; Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Golf Declaration, which certificate shall be executed by officers of the Golf Club with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County. The

Sec. 12.2 (p. 19): Declaration duration/automatic-renewal clause relies on private renewal language without addressing Florida Marketable Record Title Act (MRTA, Ch. 712) 30-year statutory extinguishment.

Statutory / Legal Reference: Fla. Stat. Ch. 712 (§§ 712.05 - 712.06), § 720.303(2)(e) & § 720.3032

Statutory Comparison: Under Florida's Marketable Record Title Act (Ch. 712), residential HOA covenants expire by operation of law 30 years after their root of title despite private 50- or 90-year terms or automatic 10-year renewal clauses, unless the Board timely records a Summary Notice of Preservation (§ 712.05(2)(b)) or Statement of Marketable Title Action (§ 720.3032). Furthermore, § 720.303(2)(e) requires the Board to consider the desirability of preserving the covenants from MRTA extinguishment at the first board meeting after the annual meeting each year.

CURRENT WORDING IN DOCUMENT:

automatically renewed and extended for an unlimited number of successive ten (10) year periods, this Golf Declaration as it may be amended being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, until terminated as provided below.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Notwithstanding the stated term or automatic renewal periods above, pursuant to Fla. Stat. Chapter 712 and §§ 720.303(2)(e) and 720.3032, the Board of Directors shall annually consider preservation of these covenants at the first board meeting (excluding the organizational meeting) following each annual meeting of the members, and shall record a Summary Notice of Preservation or Statement of Marketable Title Action in the County Public Records prior to the expiration of thirty (30) years from the root of title.