



Fund Assembly

# Mastering Florida's Marketable Record Title Act

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# The Utility of MRTA

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# Mastering MRTA

# Mastering MRTA

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# Some Inspiration





# Some More Inspiration

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# A Little More Inspiration

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# The History of MRTA

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- Before MRTA was law in Florida practitioners relied on examination of abstracts
- Proposed in 1961 by the MRTA committee of RPPTL Section of the Florida Bar and approved by the Florida Legislature in 1963
- On July 1, 1965, Ch. 712, F.S., “Marketable Record Title to Real Property” became effective
- On October 1, 2018, officially named “Marketable Record Title Act”



# MRTA Complexities

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Goals of MRTA:

Enhance marketability by extinguishing ancient defects and stale claims

Application of MRTA requires an understanding of Ch. 712, F.S., as well as several other statutes and case law

Misconceptions concerning a MRTA search

Not just a 30 year search, must:

- Examine for exceptions to MRTA before the root of title
- Be aware of matters that are not recorded (possession, taxes, easements in use)

# MRTA Compliant Examination of Title

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Identify the root of title

To qualify as a root of title, an instrument must:

- Be a title transaction affecting title to an estate or an interest in land
- Describe the land sufficiently
- Describe the interest to be conveyed
- Be recorded for at least 30 years

# *Practice to Master – Vocabulary*

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**“Title transaction”** means any recorded instrument or court proceeding that affects title to any estate or interest in land and that describes the land sufficiently to identify its location and boundaries Sec. 712.01(7), F.S.

A title transaction may or may not be a muniment of title

# *Practice to Master*

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Do all quitclaim deeds qualify as a root of title?

# Answer

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No

An “ordinary” quitclaim deed does not specify what interest is being conveyed—it simply conveys whatever interest may exist

“all of my right title and interest in Blackacre” is not an adequate description to qualify as a root of title

The more rarely encountered quitclaim deed describing the interest to be conveyed

“my undivided one-half interest in Blackacre” is an adequate description to qualify as a root of title

*Wilson v. Kelley*, 226 So.2d 123, (Fla. 2nd DCA 1969)



# MRTA Compliant Examination of Title

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Once you have identified a root of title, divide your search:

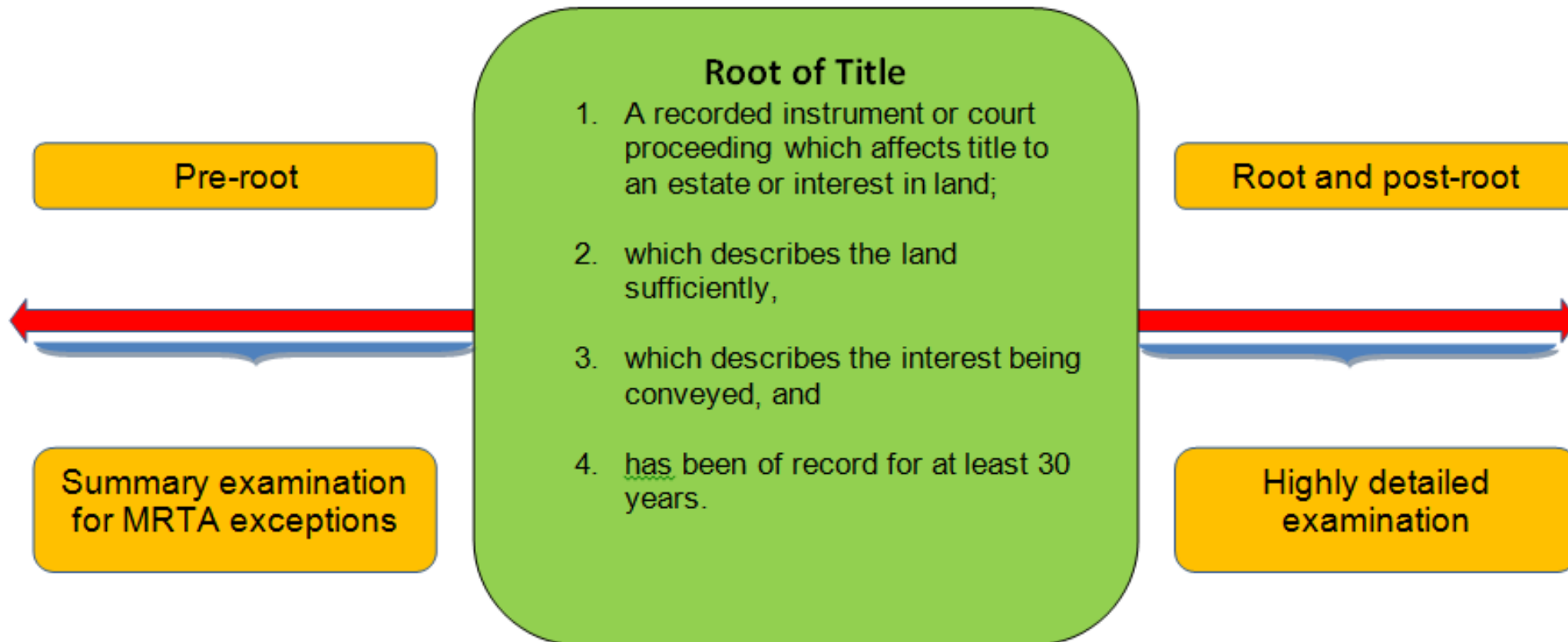
Pre-root—Seek out exceptions to MRTA including the following:

- Governmental interests
- Mineral interests held in fee
- Easements in use

Root of title and post-root—Examine and analyze every instrument thoroughly

# MRTA Compliant Examination of Title

## Two-part MRTA Search



# Know Your Title Information

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- Prepared commitments often rely on title bases or prior policies
- MRTA searches are not routine
- Understand what is included in the search you are using
- Applying MRTA requires a complete MRTA search

# *Practice to Master*

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Does a title insurer have a duty to examine title beyond the parameters of MRTA?

# Answer

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No

Court held that as a consequence of MRTA the title insurer's obligation to search title is limited by root of title

Case involved a claim against Old Republic National Title Insurance Company confirming private ownership of the insured property against rights claimed by the county & city based upon a 1917 plat

*Kahama VI, LLC v. HJH, LLC*, 2016 WL 7104175, Case No. 8:11-cv-2029-T-30TBM, M.D. Fla. (Dec. 6, 2016)



# The Power of MRTA

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Marketable record title is free and clear of all estates, interests, claims, or charges that existed before the effective date of the root of title

Sec. 712.04, F.S.

With some exceptions created by statute and common law, MRTA can be applied to eliminate interests of individuals, corporate, and governmental entities

# Exceptions to MRTA

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Matters disclosed by or inherent in the root of title

Sec. 712.03(1), F.S.

General reference to matters, “subject to restrictions and reservations of record”, is not sufficient to preserve an interest which would otherwise be eliminated

Referenced matters are preserved after the root of title if they are expressly described or specifically identified by reference to a book and page of record on the public records, or by name or recorded plat

# *Practice to Master*

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Will MRTA eliminate property owners' obligations to pay annual maintenance assessments established in recorded restrictive covenants before the root of title and referred to in the owner's vesting deed?

# Answer

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No

A 1982 amendment to restrictive covenants obligating each property owner to pay annual assessments for maintenance was preserved based upon recitations in vesting deeds stating those deeds were subject to obligations of the lot owners at Silver Lakes Acres to the Silver Lakes Property Owners Association. This language did not constitute a general reference. The plain language set forth in the deeds with respect to restrictive covenants was not hidden.

*Barney v. Silver Lakes Acres Property*, 159 So.3d 181 (Fla. 5th DCA 2015)

# *Practice to Master*

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Were setback restrictions in a plat preserved when the plat was recorded before the root of title but the root of title and subsequent conveyances referred to the plat by name, and book and page of recording?



# Answer

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Yes

Setback restrictions shown on the face of the plat were preserved based on reference to that plat name, plat book and page in the legal description in the root of title and subsequent muniments of title

*Sunshine Vistas Homeowners Ass'n v. Caruana*, 623 So.2d 490 (1993)

# *Practice to Master – Vocabulary*

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A **muniment of title** is documentary evidence upon which title is based, as opposed to a title transaction, which is any recorded instrument affecting title

*Cunningham v. Haley*, 501 So.2d 649 (Fla. 5th DCA 1986)

# Exceptions to MRTA

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Matters preserved by the filing of a proper notice under MRTA

Sec. 712.03(2), F.S. and UTS 17.4.

- Secs. 712.05 and 712.06 F.S. outline preservation
- Any person with an interest in land may preserve by filing a notice
  - eff. Oct. 1, 1997, includes a homeowners' association
  - eff. Oct. 1, 2018, includes a property owners' association
- During the 30-year period after root of title

# *Practice to Master – Vocabulary*

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**“Property owners’ association”** means a homeowners’ association as defined in sec. 720.301, F.S., a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels

Sec. 712.01(5), F.S.

# *Practice to Master*

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Is the recordation of a written notice or summary notice pursuant to Sec. 712.05(2), F.S. the only way to preserve CCRs?



# Answer

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No

Sec. 712.05(2), F.S. as amended in 2018 provides options for achieving preservation of community covenants and restrictions by recording in the public records:

1. A written notice in accordance with sec. 712.06, F.S.;
2. A summary notice as required by sec. 720.3032(2), F.S.; or
3. An amendment to community covenant or restriction referencing the recording information for the covenant or restriction to be preserved

# *Practice to Master*

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But didn't the Second DCA hold a post-root of title amendment to restrictions were not extinguished by MRTA?

The Matissek case provided a post-root amendment was not a muniment of title and since the amended restrictions could not stand alone, both the pre-root restrictions and the post-root amendment were extinguished by MRTA

*Matissek v. Waller*, 51 So.3d 625 (Fla. 2nd DCA 2011)

# Answer

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Yes

The 2018 amendment to sec. 712.05(2), F.S. provides the option of an amendment referencing the recording information for the covenant or restriction as a method for preservation

# *Practice to Master*

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Can a property owner compel a homeowners association to preserve a declaration of restrictions?

# Answer

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Yes

Trial court's injunction requiring the homeowners association to preserve the declaration's restrictions was affirmed

The trial court stated that if parcels were allowed to drop out piecemeal from restrictions of the governing documents, "the Association would begin to resemble a piece of Swiss cheese," with some parcels bound and some parcels not bound to the declaration's restrictions

*Southfields of Palm Beach Polo and Country Club Homeowners Ass'n, Inc. v. McCollough*, 111 So.3d 283 (Fla. 4th DCA 2013)

# *Practice to Master*

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Does MRTA mandate a minimum of two-thirds approval by an association's board of directors to preserve CCRs pursuant to sec. 712.05, F.S.?

# Answer

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No

The 2018 amendment to MRTA removed a requirement formerly contained in sec. 712.05(2)(b) pertaining to two-thirds approval of an association's board of directors to consider preservation

However, sec. 720.303(2)(e), F.S. now requires that a board of directors annually consider the desirability of filing notices to preserve covenants or restrictions

# *Practice to Master*

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Can a property owners' association preserve restrictions by filing is preservation after 30 years from the root of title?



# Answer

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No

A notice of preservation must be filed within the 30 year period following the root of title. An association's untimely preservation cannot breath life back into restrictions after they extinguished by MRTA

*Lyday v. Myakka Valley Ranches Improvement Ass'n. Inc.*, 2019 WL 1212782, Case No. 2D17-1726, Fla. 2nd DCA (March 15, 2019)

# *Practice to Master*

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Can CCRs be revived once they have lapsed because 30 years have run from the root of title with no preservation?

# Answer

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Yes

2018 statutory revisions:

- Sec. 712.12, F.S. added to MRTA to allow parcel owners who are not subject to a homeowners' association to revitalize covenants and restrictions
- Secs. 720.403 – .407, F.S. modified recognizing the application of covenant revitalization to property owners' associations

# Covenant Revitalization, Secs. 720.403 – .407, F.S.

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Available for private covenant or restriction, not required by a governmental agency as a condition of a development permit

Process is detailed in Ch. 720, Part III, F.S.

Process involves:

- Application to the Department of Economic Opportunity
- Culminating in the recordation of a revived declaration of covenants, articles of incorporation and bylaws of the association, letter of approval from the Department, and the legal description of the affected parcels

# Covenant Revitalization, Secs. 720.403 – .407, F.S,

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Indexing:

- Association as the grantee
- Parcel owners as grantors in the title transaction

# Covenant Revitalization, Secs. 720.403 – .407, F.S.

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Owners of any parcels that are no longer governed by a covenant or restriction as of Oct. 1, 2018, may bring an action to establish that revitalization would unconstitutionally deprive that owner of rights

Action must be brought by Oct. 1, 2019

A judicial determination of this nature will bar subsequent covenant revitalization

Sec. 712.12(3), F.S.

# Covenant Revitalization, Secs. 720.403 – .407, F.S.

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Second DCA interpreted the 2018 amendment to MRTA to eliminate an exclusive ownership requirement in applying covenant revitalization to common ownership in condominium common elements.

*Eastwood Shores Property Owners Ass'n., Inc. v. Dept. of Economic Opportunity*, 2019 WL 321031 (Fla. 2nd DCA 2019)

# Covenant Revitalization, Secs. 720.403 – 407, F.S.

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Recent Administrative Hearing Orders pertaining to proposed revitalization:

- *Young v. Springlake-Northwood Homeowners Ass'n, Inc.*, 2019 WL 164907, Case No. 18-5291, (Fla.Div.Admin.Hrgs. Jan. 4, 2019)
- *Villas of Social Club, Inc. v. Dept. of Economic Opportunity*, 2018 WL 3131859, Case No. 17-5576, (Fla.Div.Admin.Hrgs. Mar. 23, 2018)
- *Nikorowicz v. Antiquers Aerodrome, Inc.*, 2017 WL 838507, Case Nos. 15-7236 and 15-7237, (Fla.Div.Admin.Hrgs Feb. 24, 2017)



# Recommended Reading

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“The Marketable Record Title Act, Covenant and Restriction Preservation and Revitalization” 50 *Fund Concept* 97 (Oct. 2018)

# Exceptions to MRTA

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Rights of persons in possession are not eliminated by MRTA

Sec. 712.03(3), F.S.

TN 10.01.02

UTS 17.5

*Dorsey v. Robinson*, 2019 WL 1498300, Case No. 1D18-1297, Fla. 1st DCA (April 5, 2019)

# Exceptions to MRTA

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Matters recorded subsequent to the root of title.

Sec. 712.03(4), F.S.  
UTS 17.6.

To be preserved under MRTA, the matter must appear in the root or a post root **muniment of title**

Remember, a **muniment of title** is documentary evidence upon which title is based, as opposed to a **title transaction**, which is any recorded instrument affecting title

# Exceptions to MRTA

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Recorded or unrecorded easements, or rights, licenses or servitudes

Sec. 712.03(5), F.S.

# *Practice to Master*

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Does the easement, rights, licenses and servitudes exception apply to rights-of-way held in fee?

# Answer

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Yes

In 2015, Florida Supreme Court resolved that the sec. 712.03(5), F.S. exception is applicable to rights of way held in fee.

*FDOT v. Clipper Bay Investments, LLC*, 160 So.3d 858 (2015)

# Exceptions to MRTA

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Rights of any person assessed on the county tax rolls, for so long as assessed and three years after it is last assessed in that person's name

Sec. 712.03(6), F.S.

UTS 17.7

# Exceptions to MRTA

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Sovereignty lands

Sec. 712.03(7), F.S.



# *Practice to Master*

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Was the 1978 addition of sec. 712.03(7), F.S. exception for sovereignty lands an unconstitutional taking of rights to submerged lands that were already vested in private parties by earlier application of MRTA?

# Answer

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The 5th DCA ruled that any retroactive application of this MRTA exception would be an unconstitutional taking of private property rights previously vested under MRTA

*Trustees of the Internal Improvement Trust Fund v. Paradise Fruit Co. Inc.*, 414 So.2d 10 (Fla. 5th DCA 1982), *reh'g denied* 432 So.2d 37 (Fla. 1983)

# Answer

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In 1986, the Florida Supreme Court ruled:

- (i) there was an implied reservation of sovereignty lands in all State deeds – even those deeds which were absolute on their face; and
- (ii) MRTA did not serve to quiet sovereignty lands into private ownership because sovereignty lands were never private property

*Coastal Petroleum Co. v. American Cyanimid Co.*, 492 So.2d 339 (Fla. 1986) *cert. denied*, 479 U.S. 1065, 107 S.Ct. 950

# Exceptions to MRTA

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State and federal reservations

Sec. 712.04, F.S.

UTS 17.8

Reserved interests by the United States, Florida or any of its officers, boards, commission or other agencies, are excepted from application of MRTA

2010 amendment to sec. 712.03, F.S. added subsection (9) providing:  
“Any right, title or interest held by the Board of Trustees of the Internal Improvement Trust Fund, and water management district created under Ch. 373, or the United States” shall not be extinguished by MRTA



# *Practice to Master*

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Is it possible that any governmental interest may be eliminated by MRTA?

# Answer

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Yes, but this is limited

An interest reserved by the United States or Florida in any deed conveying property is not affected by MRTA; but an interest acquired and “not conveyed” might have been extinguished by MRTA prior to the 2010 amendment

Subsequent to the 2010 amendment, no federal or state interest could be extinguished by MRTA

# Exceptions to MRTA

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Environmental restrictions or covenants

Sec. 712.03(8), F.S.

# Exceptions to MRTA

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Mineral rights held in fee

Courts have held that mineral rights form a separate estate from the surface rights

These interests form a separate chain of title so they cannot be extinguished by MRTA

TN 10.01.02



# *Practice to Master*

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Are rights of entry to mineral interests subject to being extinguished by MRTA?

# Answer

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Sec. 704.05, F.S. provides rights of entry are an easement, given or reserved for mining, drilling, exploring, or developing for oil, gas, minerals, or fissionable materials are interests which are subject to extinguishment by MRTA

A right of entry is an interest in the nature of an easement, and therefore presumably subject to indefinite continuation so long as any part of it is used

TN 27.01.02

# Exceptions to MRTA

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Matters of governmental regulation

# *Practice to Master*

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Can a restrictive covenant that was required as part of a government imposed condition be eliminated by MRTA?

# Answer

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No

The Third DCA held that such a restriction constituted a governmental regulation with the force of law and was not an estate, interest, claim or charge to title to real property subject to MRTA

Appeal filed with the Florida Supreme Court

*Save Calusa Trust v. St. Andrews Holdings*, 193 So.3d 910 (Fla. 3rd DCA 2016), *reh'g denied*, (2016), *appeal docketed*, SC16-1189 (Fla. 2016), *reh'g denied*, 2016 WL 7474142 (Fla. 2016)

# The Power of MRTA

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What interests can be extinguished by MRTA?

# MRTA Can Extinguish

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Fee ownership including breaks in the chain of title prior to the root of title



# MRTA Can Extinguish

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## Section 16 lands

On March 3, 1845 “An Act Supplementary to An Act for the Admission of Florida and Iowa to the Union and for Other Purposes” grants every 16th section throughout the State of Florida for the support of public schools. MRTA will permit the extinguishment of this interest.

*Askew v. Sonson*, 409 So.2d 7 (Fla. 1981)



# MRTA Can Extinguish

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Interest held by a governmental entity

“Person” is defined to include the state and any political subdivision or agency thereof sec. 712.01(4), F.S.

The application of MRTA to extinguish governmental interests is limited to interests that were not reserved and to those governmental interests that were eliminated prior to or outside of the application of the 2010 addition of sec. 712.03(9), F.S.

# MRTA Can Extinguish

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Cotenants and remaindermen

# MRTA Can Extinguish

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## Restrictions and reverts

### Extinguished only when

- No specific reference in muniments, beginning with the root of title, to the book and page of a recorded title transaction containing the restrictions or reverter,
- No CCR preservation or revitalization, and
- No recorded amendment to CCRs

# *Practice to Master*

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Is there any legal mechanism for eliminating reverters in advance of the operation of MRTA?

# Answer

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Yes

Sec. 689.18, F.S., limits reverts to 21 years from a deed

Application of this limitation period excludes governmental, literary, scientific, religious and certain public interest charitable corporations

Sec. 712.07, F.S., provides that MRTA shall not vitiate any other curative statute. Therefore, a shorter period of 21 years may eliminate a right of reverter, before MRTA

# MRTA Can Extinguish

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Easements including easements of necessity

# *Practice to Master*

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Are all easements by way of necessity eliminated by MRTA?

# Answer

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Common law way of necessity can be extinguished by MRTA

- *H & F Land, Inc. v. Panama City-Bay County Airport and Industrial District*, 706 So.2d 327 (Fla. 1st DCA 1998); *aff'd*, 736 So.2d 1167 (Fla. 1999)

Statutory ways of necessity are not extinguished by MRTA

- *Blanton v. City of Pinellas Park*, 887 So.2d 1224 (Fla. 2004)



## *Practice to Master*

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Are easements pursuant to sec. 704.08, F.S., providing relatives and descendants of those buried in cemeteries with visitation within a reasonable time and manner, eliminated by MRTA?

# Answer

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No

An insured developer made a title insurance claim concerning a cemetery that had been created in an instrument recorded over 100 years earlier, prior to the root of title

Court held that no title claim existed because no party asserted a legal right to access the cemetery and stated sec. 704.08, F.S., does not create an interest in real property

*Village Carver Phase I, LLC v. Fidelity Nat'l Title Ins. Co.*, 128 So.3d 107 (Fla. 3rd DCA 2013)

# MRTA Can Extinguish

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Rights of entry to explore for mineral rights

## REMEMBER

Sec. 704.05, F.S., rights of entry for mining, drilling, exploring or developing subsurface rights are an easement subject to extinguishment by MRTA so long as no part is used

TN 27.01.02

# MRTA Can Extinguish

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Oil, gas and mineral leases

Leases can be eliminated by MRTA provided:

- no one claiming under the lease is in possession, or
- has been assessed real property taxes on the tax rolls for the current and three prior years

# MRTA Can Extinguish

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## Homestead rights

A surviving spouse purchased tax certificates which formed root of title for MRTA to extinguish vested homestead remainder interests of children

- *Harrell v. Wester*, 853 F.2d 828, *modified* 861 F.2d 1546 (11th Cir. 1988)

A widow's deed to self formed a root of title for MRTA to extinguish vested homestead interests of children

- *ITT Rayonier, Inc. v. Wadsworth*, 386 F.Supp. 940 (M.D. Fla. 1975)

# MRTA Can Extinguish

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Rights of bankrupt's creditors

# Attorney's Fee in Claims Related to MRTA

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A court may award costs and reasonable attorney's fees to the prevailing party when any person has filed a false or fictitious claim

Sec. 712.08, F.S.

## *Practice to Master*

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Does an award of attorney's fees for filing a false or fictitious action based upon MRTA require deliberate untruthfulness?



# Answer

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An award of attorney's fees in a false or fictitious claim may be made where there was no deliberate untruthfulness, but instead a mistaken idea

*Sand Lake Hills Homeowners Ass'n, Inc. v. Busch*, 210 So.3d 706 (Fla. 5th DCA 2017)

# 55<sup>TH</sup> ANNUAL FUND ASSEMBLY

*The Fund has conferred upon you the honorary degree*  
***Master of Florida's***  
***Marketable Record Title Act***  
*And all of the rights and privileges*  
*thereunto pertaining*  
*given at Orlando, Florida this 10th day for May, 2019.*



# Congratulations – you have mastered MRTA

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