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CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] (*Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.*)

PART 2. REAL OR IMMOVABLE PROPERTY [[755.] - 945.5] (*Part 2 enacted 1872.*)

TITLE 5. MARKETABLE RECORD TITLE [880.020 - 887.090] (*Title 5 added by Stats. 1982, Ch. 1268, Sec. 1.*)

CHAPTER 5. Powers of Termination [885.010 - 885.070] (*Chapter 5 added by Stats. 1982, Ch. 1268, Sec. 1.*)

885.010. (a) As used in this chapter:

(1) "Power of termination" means the power to terminate a fee simple estate in real property to enforce a restriction in the form of a condition subsequent to which the fee simple estate is subject, whether the power is characterized in the instrument that creates or evidences it as a power of termination, right of entry or reentry, right of possession or repossession, reserved power of revocation, or otherwise, and includes a possibility of reverter that is deemed to be and is enforceable as a power of termination pursuant to Section 885.020.

(2) "Power of termination" includes the power created in a transferee to terminate a fee simple estate in real property to enforce a restriction on the use of the real property in the form of a limitation or condition subsequent to which the fee simple estate is subject, whether the power is characterized in the instrument that creates or evidences it as an executory interest, executory limitation, or otherwise, and includes the interest known at common law as an executory interest preceded by a fee simple determinable.

(b) A power of termination is an interest in the real property.

(c) For the purpose of applying this chapter to other statutes relating to powers of termination, the terms "right of reentry," "right of repossession for breach of condition subsequent," and comparable terms used in the other statutes mean "power of termination" as defined in this section.

(*Amended by Stats. 1991, Ch. 156, Sec. 15.*)

885.015. This chapter does not apply to any of the following:

(a) A power of termination conditioned upon the continued production or removal of oil or gas or other minerals.

(b) A power of termination as to separately owned improvements or fixtures conditioned upon the continued leasehold or possessory interest in the underlying land.

(*Amended by Stats. 1991, Ch. 156, Sec. 16.*)

885.020. Fees simple determinable and possibilities of reverter are abolished. Every estate that would be at common law a fee simple determinable is deemed to be a fee simple subject to a restriction in the form of a condition subsequent. Every interest that would be at common law a possibility of reverter is deemed to be and is enforceable as a power of termination.

(*Added by Stats. 1982, Ch. 1268, Sec. 1.*)

885.030. (a) A power of termination of record expires at the later of the following times:

(1) Thirty years after the date the instrument reserving, transferring, or otherwise evidencing the power of termination is recorded.

(2) Thirty years after the date a notice of intent to preserve the power of termination is recorded, if the notice is recorded within the time prescribed in paragraph (1).

(3) Thirty years after the date an instrument reserving, transferring, or otherwise evidencing the power of termination or a notice of intent to preserve the power of termination is recorded, if the instrument or notice is recorded within 30 years after the date such

an instrument or notice was last recorded.

(b) This section applies notwithstanding any provision to the contrary in the instrument reserving, transferring, or otherwise evidencing the power of termination or in another recorded document unless the instrument or other recorded document provides an earlier expiration date.

(Added by Stats. 1982, Ch. 1268, Sec. 1.)

885.040. (a) If a power of termination becomes obsolete, the power expires.

(b) As used in this section, a power of termination is obsolete if any of the following circumstances applies:

- (1) The restriction to which the fee simple estate is subject is of no actual and substantial benefit to the holder of the power.
- (2) Enforcement of the power would not effectuate the purpose of the restriction to which the fee simple estate is subject.
- (3) It would be otherwise inequitable to enforce the power because of changed conditions or circumstances.

(c) No power of termination shall expire under this section during the life of the grantor if it arises from a grant by a natural person without consideration to a public entity or to a society, corporation, institution, or association exempt by the laws of this state from taxation.

(Added by Stats. 1982, Ch. 1268, Sec. 1.)

885.050. A power of termination shall be exercised only by notice or by civil action and, if the power of termination is of record, the exercise shall be of record. The notice shall be given, and any civil action shall be commenced, within five years after breach of the restriction to which the fee simple estate is subject, or such longer period as may be agreed to by the parties by a waiver or extension recorded before expiration of that period.

(Added by Stats. 1982, Ch. 1268, Sec. 1.)

885.060. (a) Expiration of a power of termination pursuant to this chapter makes the power unenforceable and is equivalent for all purposes to a termination of the power of record and a quitclaim of the power to the owner of the fee simple estate, and execution and recording of a termination and quitclaim is not necessary to terminate or evidence the termination of the power.

(b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.

(c) However, subdivision (b) does not apply to a restriction for which a power of termination has expired under this chapter if the restriction is also an equitable servitude alternatively enforceable by injunction. Such an equitable servitude shall remain enforceable by injunction and any other available remedies, but shall not be enforceable by a power of termination. This subdivision does not constitute a change in, but is declaratory of, the existing law. However, nothing in this subdivision shall be construed to make enforceable any restriction prohibited or made unenforceable by other provisions of law, including Section 53.

(Amended by Stats. 1990, Ch. 1114, Sec. 1.)

885.070. (a) Subject to Section 880.370 (grace period for recording notice) and except as otherwise provided in this section, this chapter applies on the operative date to all powers of termination, whether executed or recorded before, on, or after the operative date.

(b) If breach of the restriction to which the fee simple estate is subject occurred before the operative date of this chapter and the power of termination is not exercised before the operative date of this chapter, the power of termination shall be exercised, or in the case of a power of termination of record, exercised of record, within the earlier of the following times:

- (1) The time that would be applicable pursuant to the law in effect immediately prior to the operative date of this chapter.
- (2) Five years after the operative date of this chapter.

(c) As used in this section, "operative date" means the operative date of this chapter as enacted or, with respect to any amendment of a section of this chapter, the operative date of the amendment.

(Amended by Stats. 1991, Ch. 156, Sec. 17.)