APPLICATION OF THE FLORIDA-FRIENDLY LANDSCAPING STATUTE TO HOMEOWNER DISPUTES REGARDING VIOLATION OF RESTRICTIVE COVENANTS

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Jeffery W. Van Treese II and Michael T. Olexa Solo and Small Firm

Most homeowner and condominium associations have restrictive covenants governing the aesthetic appearance of units within each respective association. Often these restrictive covenants require homeowners to maintain the aesthetic appearance of their home landscape to the satisfaction of the association or face financial penalties for failing to do so. Many Floridians have had the unpleasant experience of receiving a letter from their association complaining their lawn is discolored or there are too many weeds and the problem must be remedied within a short time frame (such as 30 days). Depending on the nature and extent of the alleged violation, homeowners are often faced with the dilemma of 1) re-sodding (which requires extensive irrigation and may not be economically feasible) or 2) increased irrigation of their existing lawns.

In an effort to conserve water, the Florida Legislature enacted the Florida-friendly landscaping statute, F.S. §373.185, which limits the ability of homeowners associations (HOAs) to prohibit homeowners from adopting landscaping practices that conserve water or are otherwise environmentally sustainable. The purpose of this article is to provide a comprehensive overview of the Florida-friendly landscaping statute for attorneys, property management professionals, and homeowners. As caselaw on Florida-friendly landscaping is relatively undeveloped, the authors discuss areas of clarity within the statute and areas of ambiguity regarding application of the law in varying circumstances. This article also includes recommendations for legislative reform to provide greater clarity as to the law's meaning and to better achieve the legislative purpose behind the Florida-friendly landscaping statute.

Legislative History

While in the midst of a three-year drought in 2001, state Sen. Ginny Brown-Wait introduced S.B. 126 (2001), which included a definition of "xeriscaping" and prohibited HOAs from adopting or enforcing restrictive covenants that prevented homeowners from xeriscaping their landscapes. The staff analysis and economic impact statements for the bill stated, "in some subdivisions, developers, homeowners' associations, and other entities have developed deed restrictions and covenants that impose strict requirements on homeowners in relation to the manner and style of landscaping and other aesthetic features for the subdivision." F.S. §§125.568(1)(a) and 166.048(1)(a) (2001) specifically stated that xeriscaping be an essential part of water conservation planning. Despite the apparent finding that xeriscaping contributes to the conservation of water, the impact statement did not expressly require HOA participation in encouraging Florida-friendly landscaping.[1]

Restrictive Covenants Regarding Landscaping

In many instances, HOA restrictive covenants require homeowners to use St. Augustine grass as a groundcover due to lack of knowledge/awareness that other types of turf qualify as Florida-friendly landscaping. Any other groundcover or landscape alternative would violate the restrictive covenants and subject the homeowner to mandatory removal of their groundcover and forced re-sodding with St. Augustine grass. These restrictive covenants are put in place largely because St. Augustine grass is considered more aesthetically appealing compared to other southern turf grasses and is often HOAs' preferred choice for uniform landscapes within a community. St. Augustine grass can only be installed via sod, plugs, or sprigs, as it cannot be propagated with seeds. At a cost of several hundred dollars per palette for delivery and installation, even a medium-sized yard can cost a homeowner several thousands of dollars to re-sod. In addition, the environmental cost of requiring St. Augustine grass lawns is substantial, as it requires extensive irrigation, fertilization, and pesticide application compared to other groundcovers.

Legislative Intent

F.S. §373.185(3)(a) provides:

The Legislature finds that the use of Florida-friendly landscaping and other water use and pollution prevention measures to conserve or protect the state's water resources serves a compelling public interest and that the participation of homeowners' associations and local governments is essential to the state's efforts in water conservation and water quality protection and restoration.

By using the phrase "compelling public interest," and the declaration that participation of HOAs is essential to serving this interest, the Florida Legislature all but mandated HOA cooperation with the state in facilitating implementation of Florida-friendly landscaping. Also, F.S. §720.3075(4)(a) (titled, "Prohibited clauses in association documents") recites verbatim the "compelling public interest" language used in F.S. §373.185(3)(a), further emphasizing the priority the Florida Legislature has placed on water conservation and environmental protection.

Prohibition Against Deed Restrictions and Covenants that Prohibit Implementation of Florida-Friendly Landscaping

F.S. §373.185(3)(b) states:

A deed restriction or covenant may not prohibit or be enforced so as to prohibit any homeowner from implementing Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision of Part II of this chapter or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of this chapter.

The above language prohibits a deed restriction or covenant from prohibiting a homeowner from implementing Florida-friendly landscaping. Any such deed restriction or covenant is unenforceable under F.S. §373.185(3)(b). F.S. §720.3075(4)(a) ("Prohibited clauses in association documents") recites F.S.

§373.185(3)(b) verbatim. Therefore, a homeowner facing a fine for a deed restriction violation for implementing Florida-friendly landscaping practices can challenge the enforcement of certain deed restrictions by alleging violation of the statute.

Definition of Florida-Friendly Landscaping

F.S. §373.185(1)(b) defines "Florida-friendly landscaping" as:

quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation and proper maintenance.

While seemingly detailed, this definition provides a great deal of potential ambiguity in defining which plants constitute Florida-friendly landscaping. Each sentence of the definition is analyzed in turn below:

"Quality landscapes that conserve water, protect the environment, are adaptable to local conditions and are drought tolerant." The first term in this definition, "quality landscapes," causes ambiguity and potential confusion in determining what plants are protected. What does "quality" mean in the context of a landscape? Does "quality" refer solely to the ecological benefit of the landscape or is it both ecological and aesthetic? If the latter, what weight is to be given to the aesthetic value, and who determines this? The statutory language states that quality landscapes 1) conserve water, 2) protect the environment, 3) adapt to local conditions, and are 4) drought tolerant, "quality" appears to refer primarily to ecological benefits rather than aesthetic benefits.

Choosing Plants That Conserve Water and Inputs

As stated earlier, selecting water-conserving plants over thirsty plants is clearly contemplated and encouraged by the Florida-friendly landscaping statute. While virtually all plants require frequent watering when first planted (approximately three to six months for bedding plants and shrubs and six months to one year for trees), after roots are established, they may not need recurring irrigation, and may only require irrigation during periods of drought or elevated temperatures. Another important aspect of Florida-friendly landscaping is selecting plants that require less pruning and trimming, as well as less mowing and fewer fertilizer and pesticide applications. The Florida Department of Environmental Protection and the University of Florida published the "Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions," which provides guidance on drafting deed restrictions that encourage appropriate plant selection and landscape practices.[2] Not only are reducing these maintenance requirements eco-friendly, they also reduce the time commitment, frustration, and monetary expense of the homeowner.[3]

Soil Conditions

The physical and chemical properties of soils play a major role in plants' ability to grow and thrive. The adaptability of plants to grow in different soil conditions varies greatly between plant taxa. Generally, native plants will have a better tolerance of natural soil conditions. Soil pH, salinity, texture, and structure should all be considered in plant selection. Homeowners can select plants by consulting their local extension office or using plant identification guides available online.

Based on the "right plant, right place" component of F.S. §373.185, one could argue native plants are protected and an HOA cannot prohibit a homeowner from selecting native plants for his or her landscape. However, whether a homeowner can select any native plant remains an open question because F.S. §373.185 does not specifically state native plants are protected. It would appear that architectural review board guidelines would determine plant selection without further clarification of the statute. Perhaps this issue may

only be clarified through litigation. Due to the language of the statute, HOA's are impliedly not authorized to prohibit homeowners from selecting native plants. At the very least, if the homeowner can prove an allegedly prohibited plant selection is native, such a showing should create a presumption that the plant is protected by F.S. §373.185 (see recommendations for legislative reform below). Presently, no plants are protected by the Florida-friendly statute.

Soil moisture is another important consideration. Sandy soils with higher infiltration rates are more likely to require irrigation of landscape plants compared to loamy, clayey, or muck soils that retain moisture at higher rates. If a site is located on a sandy soil (very common in south Florida), thirsty landscape plants should generally be avoided in favor of drought tolerant landscaping. Notably, all plants thrive when water is abundant. While drought-tolerant plants tolerate low soil moisture, they do not prefer it. Ideally, the plant selection should aim to reduce the need for irrigation. This is especially true considering much of Florida's residential population can only water their plants with municipally treated water, which is very expensive for large lawns. If reclaimed water is used, economic and environmental costs of irrigation may be reduced. However, reclaimed water also has higher salinity, which must be considered in plant selection.[4] Water pumped from a nearby lake and made available to residents for irrigation can also reduce environmental and economic costs. Perhaps HOAs can argue that if cost-efficient reclaimed water or lake water can be used for irrigation, they can require St. Augustine grass; however, this argument has never been ruled upon by the courts and is another open question.[5]

Light Level

Light levels should also be considered in plant selection. Structures such as buildings and fences often block light from reaching plants. Plants situated on the south side of buildings usually receive more light compared to the north side of buildings. In addition, trees and other plants can form canopies that block light from shorter plants nearer the ground. Light requirements

vary with some plants flourishing in full sun, while others prefer some degree of shade.[6]

Disease and Pest Resistance

Selecting a landscape scheme resistant to pests is essential for maintaining a healthy landscape. F.S. §373.185 identifies responsible management of yard pests as a component of Florida-friendly landscaping, which demonstrates a clear legislative intent to protect homeowner selection of disease-resistant landscape plants. Diseases and pests include bacteria, viruses, fungi, insects, nematodes, and even other plants that threaten the health of the intended landscape plant. Use of pest-resistant plants reduces the need for expensive fungicides, herbicides, insecticides, and nematicides (although the latter is relatively unavailable due to EPA restrictions), which can eventually be leached into the water column or be washed away by storm water runoff. The "right plant, right place" paradigm of F.S. §373.185 would appear to contemplate allowing homeowners to choose plants based on their resistance to pests, as doing so would reduce maintenance and promote protection of water resources.

Mulching

F.S. §373.185(1)(b) identifies mulching as being an element of Florida-friendly landscaping. Mulch is often spread around trees, shrubs, planted beds, and covers bare ground in residential and commercial landscapes. Mulch provides numerous environmental benefits including acting as a temperature buffer for soil, preventing it from becoming too hot or too cold. Mulch also maintains soil moisture by reducing evaporation, which in turn reduces the watering requirements of landscape plants (thereby enhancing water efficiency, which is a stated objective under F.S. §373.185(1)(b)). Additionally, mulch acts as a weed barrier by preventing sunlight from reaching the soil, which would otherwise cause seeds to germinate. In addition, mulching around trees and shrubs eases maintenance by improving soil fertility. With respect to appearance, mulching generally improves the aesthetics of a landscape by providing a contrast of color and texture to complement plantings. Mulching is especially useful around areas

where plants do not grow well, such as shady areas or areas that receive a great deal of foot traffic or where vehicles are likely to be driven, damaging turf grass or other plants. Homeowners can also use mulch where mowing, irrigation, or general maintenance is difficult.[7]

Ultimately, homeowners should be aware F.S. §373.185(1)(b) specifically encourages mulching. Although mulching an entire yard may not be practical or permitted by an architectural review board (and may not necessarily qualify as a Florida-friendly landscaping practice), areas where it is difficult to establish turf can potentially be mulched. If a homeowner receives a letter from an HOA mandating the owner to re-sod dead grass, the owner may be able to mulch part of the area or the entire area under F.S. §373.185(1)(b)). This alternative will almost always cost less money, require less irrigation and fertilizer, and otherwise be Florida-friendly. In keeping with the express requirement of F.S. §373.185(3)(a) that HOAs participate in facilitating Florida-friendly landscaping practices (see discussion below as to this provision), HOAs could advise homeowners that mulching is appropriate in many instances.

Yard Waste Recycling

F.S. §373.185(1)(b) also identifies yard waste recycling as an element of Florida-friendly landscaping. In addition, F.S. §373.185(3) provides that each water management district shall work with the Department of Environmental Protection, local governments, county agents, or offices, nursery and landscape industry groups, and other interested stakeholders to promote, through educational programs, solid waste compost in residential and commercial development. This statutory language clearly indicates the legislative intent to encourage solid waste recycling/composting. Recycling of yard waste involves decomposition of leaves, grass clippings, tree limbs/twigs, as well as kitchen scraps in aerobic conditions to provide a partially decomposed substance (compost) or fully decomposed substance (humus), that can be used as an amendment on a variety of soils (both sandy and clayey soils) as decomposed yard waste contains nitrogen and carbon that can be absorbed by the plants. Recycled yard waste can be applied as a

mulch (see discussion of mulching above). Recycled yard waste can also be used in conjunction with other components as a potting mix. Grass clippings can also be left on the lawn and do not need to be disposed of as they will decompose on the lawn surface and act as a nitrogen source. In addition to the horticultural benefits to the landscape, yard waste recycling is an additional environmentally sound way to reduce solid waste disposal.[8] Despite the economic and ecological benefits, many homeowners may not practice composting because it requires the use of a digester mechanism such as a compost bin or pile. HOAs may attempt to prevent homeowners from installing compost bins because they are often considered unsightly by the property managers. To the extent that HOAs prohibit the installation of compost units in restrictive covenants and/or sanction homeowners for installing said units, it can be argued that F.S. §373.185(1)(b) protects such composting practices and disallows an HOA from sanctioning homeowners for using them. In other words, one could argue F.S. §373.185(1)(b) is analogous to federal telecommunications regulations that prevent an HOA from prohibiting or sanctioning a homeowner from installing a satellite dish on his or her property.[9] However, F.S. §373.185(1)(b) only states recycling of yard waste is an element of Florida-friendly landscaping, but does not say whether and to what extent an HOA can restrict the use of composting. An HOA might attempt to limit the installation of compost bins to concealed areas of the property. However, if composting is given the same protection afforded to satellite dishes, an HOA may be prohibited from restricting the use of compost bins under any circumstances. To what extent HOAs can restrict or sanction recycling of yard waste remains an open question and may be resolved through litigation or legislatively.

Attraction of Wildlife

F.S. §373.185(1)(b) identifies attraction of wildlife as an element of Florida-friendly landscaping. Wildlife is an integral component of environmental health, and homeowners often enjoy viewing and hearing wildlife (with some exceptions). Homeowners can create sanctuaries for wildlife and/or a corridor where wildlife can migrate between spaces. Examples of landscaping practices that attract wildlife include selecting plants with seeds, fruit, foliage,

or flowers that can be used for food. For example, homeowners can plant butterfly gardens with flowers containing nectar that will attract butterflies, and larval foliage can be planted as a food source for caterpillars. Plants that contain berries, fleshy fruits, nuts, and acorns can also be used as food for many animals in Florida, especially birds. Allowing grasses and other flowers to go to seed is an additional technique to attract birds. This involves leaving lawns, or parts thereof, unmowed for extended periods of time.

Another technique for attracting wildlife is supplying water, such as a fountain or birdbath. If a water body is installed for this purpose, the water would need to be changed regularly to prevent bacterial growth and mosquito breeding. Additionally, leaving trunks of dead trees in place, which can be used by birds for perching, nesting, and feeding, may also attract wildlife. Vertical layering of a landscape can provide more cover and feeding opportunities for various wildlife species. Also, installation of nest houses for birds and bats can provide roosts for these important pollinators.[10]

Of course, HOAs may take issue to any or all the above techniques for attraction of wildlife. Not mowing one's yard is something that will often result in a letter from an HOA, but such a practice may be protected under F.S. §373.185(1)(b) because it provides food for wildlife. HOAs may seek to require approval of the property manager/board of directors prior to installing nest houses and bird baths and may reject homeowner requests for building such structures, arguing they may appear unsightly. Leaving dead tree trunks on a front lawn for birds to nest in may also be objected to by HOAs, as they would likely perceive the dead tree as an eyesore. Vertical layering may create an unsightly lawn that is not uniform with surrounding properties, and an HOA may object to this, as well. Also, many plants that may be protected under F.S. §373.185(1)(b) because they provide food/habitat for wildlife may be considered weeds by HOAs and property managers.[11]

The Florida Legislature did not identify which landscaping practices that attract wildlife are protected. To the extent landscaping that attracts wildlife is protected, there is a question as to how liberally this protection is to be construed. If any landscaping feature that attracts any wildlife is protected,

this may obliterate the authority of an HOA to restrict landscaping practices. It is also not clear whether landscape practices that attract endangered/threatened wildlife enjoy more protection compared to wildlife with a conservation status of "least concern" by the International Union of Conservation of Nature. Also, HOAs may consider some wildlife to be a nuisance and may assert they have a legitimate right in prohibiting landscaping practices that attract such taxa. For example, nesting birds become territorial and will swoop down on pedestrians or people in neighboring driveways. The ability of an HOA to sanction a homeowner for wildlife attraction practices and under what circumstances it may do so is an open question and is yet another issue that may be resolved through litigation or legislation.[12]

Florida Law Governing Deed Restrictions

F.S. §720.305 entitled, "Obligations of members; remedies at law or in equity, levy of fines and suspension of use rights," includes subsection (2), which provides that an association may levy a fine of up to $100 per violation for failure to comply with any rules established by the association and that such fine may be imposed for each day of a continuing violation for a maximum of 10 days for a total of $1,000 (the aggregate fine may exceed $1,000 if the governing documents provide for such a fining schedule). F.S. §720.305 also provides that a fine of less than $1,000 may not become a lien against the parcel. Therefore, a fine equaling $1,000 could become a lien, which may be the case with an alleged landscape violation. F.S. §720.305 also provides that the prevailing party is entitled to reasonable attorneys' fees and costs from the non-prevailing party as determined by the court. F.S. §720.305(2)(b) provides the homeowner must be given at least 14 days' notice of the fine and be given an opportunity to attend a hearing before a grievance committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee.

This statutory schedule created by F.S. §720.305 for fining homeowners for alleged deed restrictions is wholly antithetical to the compelling public policy

purpose of environmental protection created by F.S. §373.185. In fact, F.S. §720.305 transfers virtually all of the risk associated with asserting rights to implement Florida-friendly landscaping on the homeowner. If the homeowner implements what he or she believes to be Florida-friendly landscaping practices, he or she is at the mercy of the HOA deciding it no longer approves of the practice in question and would prefer the homeowner re-sod the entire lawn at his or her expense. The hearing process is highly flawed as deed restriction violation letters are often amorphous and include directives, such as "remove weeds" or "re-sod lawn," and the appointed appeals board is not required — and rarely possess — the expertise to determine if a landscape is Florida-friendly. Such a determination would require a basic knowledge of the ecological niche where the homeowner lives, basic landscaping principles, and a thorough understanding of the statutory scheme or intent. The Florida DEP/UF model ordinances can provide guidance as to these determinations.

If the homeowner decides to fight the HOA's demand in court (presumably after an unsuccessful appeal to the grievance committee), the homeowner is subject to a $1,000 fine and a lien on the property. If the homeowner takes the HOA to court, he or she will owe attorneys' fees to the HOA if he or she loses (*i.e.*, if the judge/jury decides the landscaping practice is not Florida-friendly). In other words, while the Florida-friendly landscaping statute provides some protection, the guidelines for determining what is Florida-friendly is too vague to provide any certainty that a given practice is protected. The result is the homeowner being placed in a precarious situation, where the threat of having to pay the HOA's attorneys' fees and costs may result in the homeowner simply giving in to the HOA's demands. Further, the HOA has no corresponding disincentive to take the homeowner to court as the HOA board of directors is not spending its own money; rather, it is spending the collective contribution of members' assessments. An HOA motivated by spite or recalcitrance can force a homeowner to spend tens of thousands of dollars and risk a judgment for tens of thousands of dollars more to assert rights under a statute that is meant to conserve water and

protect the environment. In addition, F.A.C.R. 61E14-2.001, which governs the standards of professional conduct for licensed community association managers, contains no reference to Florida-friendly landscaping, and there is no language in that rule establishing liability and/or disciplinary action for a community association manager willfully disregarding the protections afforded to homeowners under F.S. §373.185. Ultimately, there remains great risk to the homeowner asserting his or her rights to protect the environment and conserve water, and there is little to no personal risk to HOA board members and property managers from preventing such conservation measures from taking place.

Need for Legislative Reform

It is the authors' position that legislative reform is necessary to carry out the compelling public interest of water conservation and environmental protection set forth in F.S. §720.305 and make the following policy recommendations:

1) Create an administrative process where statutorily appointed specialists settle disputes as to whether a landscape practice is Florida-friendly. In other words, an individual such as a University of Florida Institute of Food and Agricultural Sciences (IFAS) faculty or extension agent (if allowed by their department) or Water Management District or Department of Environmental Protection (DEP) scientist would act as a hearing officer to settle disputes between HOAs and homeowners as to whether a landscape is Florida-friendly and, therefore, protected. The specialist could undergo training and receive certification for evaluating residential landscapes and determining if they are Florida-friendly. The homeowner and HOA should be allowed to present written authorities. such as soil survey reports and extension documents, especially publications from the Institute of Food and Agricultural Sciences and the Florida DEP/UF models for ordinances, covenants, and restrictions, as support for their respective positions. Because of his or her training with respect to landscape ecology, the specialist would have far more knowledge in the subject matter and would be better suited for settling disputes

compared to an HOA appeals committee, judge, or jury. Both the HOA and the homeowner could present evidence to the specialist, who would make a binding decision on the parties, one appealable to the courts under an abuse of discretion standard. Such a measure would greatly reduce the burden on the homeowner and the courts and better effectuate the statutory purpose of F.S. §720.305.

2) Eliminate the loser-pays provision associated with F.S. §720.305 as it applies to Florida-friendly landscaping. As F.S. §720.305 contains a compelling public policy interest of water conservation and environmental protection, a homeowner should feel free to assert his or her rights to implement Florida-friendly landscaping and to challenge any deed restriction or fine imposed by an HOA that violates F.S. §720.305(2)(B). If the specialist hearing officer described above determines the landscaping practices are not Florida-friendly, the homeowner would be given a reasonable time to take necessary measures to alter his or her landscape.

3) The burden of proof should be placed on the HOA to demonstrate the landscaping practices are not Florida-friendly if it intends to fine the homeowner. Property managers are rarely qualified to determine if a landscape is Florida-friendly, and the authors believe it is improper for them to assess fines when they are in no position to determine if the landscape practices are protected under F.S. §720.305. Furthermore, if HOAs/property managers want to impose fines on a homeowner for the related landscape's lack of aesthetic appeal, the burden should rest with the HOA to prove the landscaping practice is not Florida-friendly. Such an outcome is reasonable and just as the HOA's interest in maintaining aesthetic appeal has been statutorily determined to be less important than environmental protection and water conservation. Further, the HOA should be required to prospectively obtain third-party expert opinion that the landscaping practices are not Florida-friendly prior to assessing any fine, and such opinion can be presented to the specialist hearing officer in (1) above if the HOA decides to take action against the homeowner.

Conclusion

The Florida-friendly landscaping statute is an important step in promoting water conservation and environmental protection. The Florida Legislature has recognized water conservation is critical to the future of the state. The statute has created a framework that appears to allow homeowners to adopt more water-efficient and environmentally friendly landscaping measures. However, homeowners' rights under the statute are far from clear, and there is great need for legislative reform to clarify the statute and to adopt institutional changes that more effectively promote the compelling legislative purpose. Also, if the deed restrictions require architectural review board approval prior to installing a specific landscape practice, then approval must be sought, even if the practice is protected. If the HOA denies the homeowner's application or takes enforcement action against the homeowner after adoption of the landscape practice, the homeowner is required to fight the HOA in court, in order to assert their rights under F.S. §373.185. Litigation is expensive and time-consuming, and many homeowners do not have the financial means to litigate and end up giving in to HOA demands by replacing their otherwise protected landscape plants in order to appease the HOA. Homeowners are further discouraged from asserting their rights under F.S. §373.185 because the "loser pays" provision of F.S. §720.305 forces a homeowner to pay the HOA's attorneys' fees in the event his or her Florida-friendly landscaping defense is unsuccessful. Further, HOA's are notorious for retaliation, and many attorneys will advise homeowners to cave in to the HOA's demands rather than assert a valid legal defense that their landscaping practices are Florida-friendly. Homeowners may be able to assert a claim against the HOA, property manager, or HOA attorney for violation of the FDCPA and FCCPA under some circumstances; unfortunately, this is likely not enough to prevent HOAs from willfully violating F.S. §373.185. The current statutory scheme lays out a compelling state interest of environmental protection and water conservation and provides protection to homeowners for environmental stewardship. Regrettably, all the costs and risks associated with asserting these rights are placed on the homeowner, with no help from

the state of Florida. By adopting the legislative reforms recommended in this article, the state of Florida will move closer to a sustainable future.

[1] Karen Greene, *Tapping the Last Oasis: Florida-Friendly Landscaping and Homeowners' Associations*, 84 Fla. B. J. 39 (May 2010).
[2] Florida Department of Environmental Protection, University of Florida, *Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions* (2009).
[3] Geoffrey Denney & Gail Hanson, *Right Plant, Right Place: The Art and Science of Landscape Design-Plant Selection and Siting*, University of Florida Institute of Food and Agricultural Sciences, Florida Cooperative Extension Document ENH1156 (2016).
[4] Gurpal S. Toor & Mary Lusk, *Reclaimed Water Use in the Landscape: Frequently Asked Questions about Reclaimed Water*, University of Florida Institute of Agricultural Sciences, Florida Cooperative Extension Document SL339 (2015).
[5] Amy L. Shober, *Soils and Fertilizers for Master Gardeners: Soil Physical Properties*, University of Florida Institute of Food and Agricultural Sciences, Florida Cooperative Extension Document SL268 (2009).
[6] *Id.*
[7] University of Florida Institute of Food and Agricultural Sciences, *Mulch: Landscaping Principles for Florida-Friendly Yards*, *available at* https://fyn.ifas.ufl.edu/handbook/Mulch.pdf.
[8] Sydney Park Brown, *Compost Tips for the Home Gardener*, University of Florida Institute of Food and Agricultural Sciences, Florida Cooperative Extension Document ENH 1065 (2017).
[9] 47 C.F.R. §1.4000.
[10] Mark E. Hostetler, Gregg Klowden, Sarah Webb Miller, & Kara N. Youngentob, *Landscaping Backyards for Wildlife: Top Ten Tips for Success*, University of Florida Institute of Agricultural Sciences, Florida Cooperative Extension Document CIR 1249 (2017).
[11] *Id.*
[12] *Id.*

Jeffery W. Van Treese II, *J.D., Ph.D., is the instructor and director of the Palm Beach Lakes High School Law Academy, where he coaches mock trial and moot court. He is an attorney with Zappolo and Farwell, P.A., in Palm Beach Gardens, practicing commercial litigation. He is also an adjunct/dual enrollment professor of business law and environmental science at Palm Beach State College.*

Michael T. Olexa, *Ph.D., J.D., is a professor and director of the University of Florida's Institute of Food and Agricultural Sciences Center for Agricultural and Natural Resource Law.*

This column is submitted on behalf of the Solo and Small Firm Section, Timothy Shaw, chair, and Jennifer Dietz, editor.