

By the Committee on Real Property & Probate and
Representative Edwards

1 A bill to be entitled
2 An act relating to timeshare plans; amending s.
3 721.03, F.S.; revising language with respect to
4 the scope of the chapter; providing for certain
5 rules; amending s. 721.06, F.S.; revising
6 language with respect to contracts for the
7 purchase of timeshare periods; amending s.
8 721.07, F.S.; revising language with respect to
9 public offering statements; providing a time
10 period for amendments which add a new component
11 site to an approved multisite timeshare plan;
12 amending s. 721.075, F.S.; deleting language
13 with respect to certain incidental benefits
14 offered by a developer; amending s. 721.09,
15 F.S.; revising language with respect to
16 reservation agreements; providing for
17 cancellation of such agreements under certain
18 circumstances; amending s. 721.13, F.S.;
19 revising language with respect to management;
20 amending s. 721.15, F.S.; revising language
21 with respect to assessments for common
22 expenses; amending s. 721.18, F.S.; revising a
23 time period with respect to the filing of
24 certain information concerning exchange
25 programs; amending s. 721.26, F.S.; authorizing
26 the imposition of penalties with respect to
27 certain rules; creating part III of chapter
28 721, F.S.; creating the "Timeshare Lien
29 Foreclosure Act"; providing legislative
30 purpose; providing definitions; providing
31 qualifications of trustees and appointment of

1 successor trustees; providing for disclosure
2 and acknowledgment; providing for conditions to
3 the exercise of the power of sale by a trustee;
4 providing for the manner of delivery of notice
5 of default and intent to sell; providing for
6 notice of sale; providing for publication of
7 notice of sale; providing for trustee's
8 certificate of compliance; providing for the
9 manner of sale; providing for the effect of the
10 trustee's sale; providing for the issuance of a
11 trustee's deed; providing for the disposition
12 of the proceeds of sale; providing for the form
13 and effect of the trustee's deed; providing for
14 the application of the part; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Paragraphs (b) and (c) of subsection (1) of
20 section 721.03, Florida Statutes, are amended to read:

21 721.03 Scope of chapter.--

22 (1) This chapter applies to all timeshare plans
23 consisting of more than seven timeshare periods over a period
24 of at least 3 years in which the accommodations or facilities
25 are located within this state; provided that:

26 (b) With respect to timeshare plans containing
27 accommodations or facilities located in this state which are
28 offered for sale outside the jurisdictional limits of the
29 United States, such offers shall be exempt from the
30 requirements of this chapter so long as the seller files the
31 information required by s. 721.07 or s. 721.55 with, and

1 obtains the approval of, the division ~~complies with the~~
2 ~~provisions of this paragraph.~~ This exemption shall come into
3 effect upon the filing of such information with the division,
4 so long as approval is obtained within 6 months after the
5 initial filing at which time the exemption will expire unless
6 the division stipulates otherwise or approves the filing. The
7 fees set forth in s. 721.07(4) shall apply to all filings made
8 hereunder.Each purchase contract utilized in any offer of a
9 timeshare plan that occurs outside the jurisdictional limits
10 of the United States shall contain the following disclosure in
11 conspicuous type immediately above the space provided for the
12 purchaser's signature:

13
14 The offering of this timeshare plan outside the jurisdictional
15 limits of the United States of America is exempt from
16 regulation under Florida law, and any such purchase is not
17 protected by the State of Florida. However, the management
18 and operation of any accommodations or facilities located in
19 Florida is subject to Florida law and may give rise to
20 enforcement action regardless of the location of any offer.

21
22 Purchaser should note that (name of developer or other person
23 or entity) at (address) has a (describe developer's or other
24 person's or entity's actual interest) in the accommodations
25 and facilities of the timeshare plan.

26
27 (c) The exemption provided in paragraph (a) shall not
28 apply unless and until a claim of exemption from regulation
29 containing the information required by paragraph (a) and s.
30 721.51(3)(b) and accompanied by the fee required by s.
31 721.51(3)(b) is filed with and approved by the division. The

1 division is authorized to promulgate rules designating those
2 provisions of ss. 721.07 and 721.55 which need not be
3 addressed in the filings required in paragraph (b). ~~The~~
4 ~~exemption provided in paragraph (b) shall only apply to~~
5 ~~accommodations or facilities which have first been filed with~~
6 ~~and approved by the division pursuant to s. 721.07 or s.~~
7 ~~721.55.~~

8 Section 2. Paragraph (f) of subsection (1) of section
9 721.06, Florida Statutes, is amended to read:

10 721.06 Contracts for purchase of timeshare periods.--

11 (1) Each seller shall utilize, and furnish each
12 purchaser a fully completed and executed copy of, a contract
13 pertaining to the sale, which contract shall include the
14 following information:

15 (f) Immediately prior to the space reserved in the
16 contract for the signature of the purchaser, in conspicuous
17 type, substantially the following statements:

18

19 You may cancel this contract without any penalty or
20 obligation within 10 calendar days after ~~from~~ the date you
21 sign this contract, and within ~~until~~ 10 calendar days after
22 the date you receive the approved public offering statement,
23 whichever is later.

24 If you decide to cancel this contract, you must notify
25 the developer in writing of your intent to cancel. Your
26 notice of cancellation shall be effective upon the date sent
27 and shall be sent to ...(Name of Developer)... at ...(Address
28 of Developer).... Any attempt to obtain a waiver of your
29 cancellation right is unlawful. While you may execute all
30 closing documents in advance, the closing, as evidenced by
31

1 delivery of the deed or other document, before expiration of
2 your 10-day cancellation period, is prohibited.

3 Section 3. Paragraph (a) of subsection (3) of section
4 721.07, Florida Statutes, is amended to read:

5 721.07 Public offering statement.--Prior to offering
6 any timeshare plan, the developer must file a public offering
7 statement with the division for approval as prescribed by s.
8 721.03, s. 721.55, or this section. Until the division
9 approves such filing, any contract regarding the sale of the
10 timeshare plan which is the subject of the public offering
11 statement is voidable by the purchaser.

12 (3)(a)1. Any change to an approved filing shall be
13 filed with the division for approval as an amendment prior to
14 becoming effective. The division shall have 20 days after
15 receipt of a proposed amendment to approve or cite
16 deficiencies in the proposed amendment. If the division fails
17 to act within 20 days, the amendment will be deemed approved.
18 In the event that the proposed amendment adds a new component
19 site to an approved multisite timeshare plan, the division's
20 initial period in which to approve or cite deficiencies shall
21 be 45 days.If the developer fails to adequately respond to
22 any deficiency notice within 30 days, the division may reject
23 the amendment. Subsequent to such rejection, a new filing fee
24 pursuant to subsection (4) and a new division initial review
25 period pursuant to this paragraph shall apply to any refiling
26 or further review of the rejected amendment.

27 2. For filings only subject to this part, each
28 approved amendment, other than an amendment made only for the
29 purpose of the addition of a phase or phases to the timeshare
30 plan in the manner described in the timeshare instrument,
31 shall be delivered to a purchaser no later than 10 days prior

1 to closing. For filings made under part II, each approved
2 amendment to the multisite timeshare plan public offering
3 statement, other than an amendment made only for the purpose
4 of the addition, substitution, or deletion of a component site
5 pursuant to part II or the addition of a phase or phases to a
6 component site of a multisite timeshare plan in the manner
7 described in the timeshare instrument, shall be delivered to a
8 purchaser no later than 10 days prior to closing.

9 3. Amendments made to a timeshare instrument for a
10 component site located in this state shall only be delivered
11 to those purchasers who will receive a timeshare estate or a
12 specific timeshare license in that component site. Amendments
13 made to a timeshare instrument for a component site not
14 located in this state are not required to be delivered to
15 purchasers.

16 Section 4. Subsections (4) and (5) of section 721.075,
17 Florida Statutes, are amended to read:

18 721.075 Incidental benefits.--Incidental benefits
19 shall be offered only as provided in this section.

20 ~~(4) If the aggregate represented value of all~~
21 ~~incidental benefits offered by a developer to a purchaser~~
22 ~~exceeds 5 percent of the purchase price paid by that~~
23 ~~purchaser, then, prior to offering the incidental benefits,~~
24 ~~the developer must file an irrevocable letter of credit,~~
25 ~~surety bond, or other assurance acceptable to the director of~~
26 ~~the division that will reasonably assure the delivery of the~~
27 ~~promised incidental benefits to the purchaser; provided,~~
28 ~~however, that the maximum amount of such assurance shall equal~~
29 ~~the portion of the aggregate represented value of the offered~~
30 ~~incidental benefits which exceeds 5 percent of the purchase~~
31 ~~price contracted for by that purchaser. Proceeds from any~~

1 ~~assurance accepted by the division shall be used to provide~~
2 ~~refunds to purchasers pursuant to this section. If the~~
3 ~~aggregate represented value of all incidental benefits offered~~
4 ~~by a developer to a purchaser is equal to or less than 5~~
5 ~~percent of the purchase price paid by that purchaser, no~~
6 ~~assurance shall be required from the developer prior to~~
7 ~~offering any incidental benefit.~~

8 (4)~~(5)~~ All purchaser remedies pursuant to s. 721.21
9 shall be available for any violation of the provisions of this
10 section.

11 Section 5. Subsection (1) of section 721.09, Florida
12 Statutes, is amended to read:

13 721.09 Reservation agreements; escrows.--

14 (1)(a) Prior to filing the public offering statement
15 with the division, a seller shall not offer a timeshare plan
16 for sale but may accept reservation deposits and advertise the
17 reservation deposit program upon approval by the division of a
18 fully executed escrow agreement and reservation agreement
19 properly filed with the division.

20 (b) Reservations shall not be taken on a timeshare
21 plan unless the seller has an ownership interest or leasehold
22 interest, of a duration at least equal to the duration of the
23 proposed timeshare plan, in the land upon which the timeshare
24 plan is to be developed.

25 (c) In the event the timeshare plan which is the
26 subject of the reservation agreement has not been filed with
27 the division pursuant to s. 721.07(5) or s. 721.55 within 90
28 days after the date the division approves the reservation
29 agreement filing, the seller shall immediately cancel all
30 outstanding reservation agreements, refund all escrowed funds
31 to prospective purchasers, and discontinue accepting

1 reservation deposits or advertising the availability of
2 reservation agreements.

3 (d) A seller who has filed a reservation agreement and
4 an escrow agreement pursuant to this section may advertise the
5 reservation agreement program provided that the advertising
6 material meets the following requirements:

7 1. The seller shall comply with the provisions of s.
8 721.11 with respect to such advertising material.

9 2. The advertising material shall be limited to a
10 general description of the proposed timeshare plan, including,
11 but not limited to, a general description of the type, number,
12 and size of accommodations and facilities and the name of the
13 proposed timeshare plan.

14 3. The advertising material shall contain a statement
15 that the advertising material is being distributed in
16 connection with an approved reservation agreement filing only
17 and that the seller cannot offer an interest in the timeshare
18 plan for sale until a public offering statement has been filed
19 with the division in accordance with this chapter.

20 Section 6. Paragraphs (c), (e), and (i) of subsection
21 (3) and subsection (4) of section 721.13, Florida Statutes,
22 are amended to read:

23 721.13 Management.--

24 (3) The duties of the managing entity include, but are
25 not limited to:

26 (c)1. Providing each year to all purchasers an
27 itemized annual budget which shall include all estimated
28 revenues and expenses. The budget shall be in the form
29 required by s. 721.07(5)(x) and shall be the final budget
30 adopted by the managing entity for the current fiscal year.
31 The budget shall contain, as a footnote or otherwise, any

1 related party transaction disclosures or notes which appear in
2 the audited financial statements of the managing entity for
3 the previous budget year as required by paragraph (e). A copy
4 of the final budget shall be filed with the division within 30
5 days after its adoption by the managing entity together with a
6 statement of the number of periods of 7-day annual use
7 availability that exist within the timeshare plan, including
8 those periods filed for sale by the developer but not yet
9 committed to the timeshare plan, for which annual fees are
10 required to be paid to the division pursuant to s. 721.27.

11 2. Notwithstanding anything contained in chapter 718
12 or chapter 719 to the contrary, the board of administration of
13 an owners' association which serves as managing entity may
14 from time to time reallocate reserves for deferred maintenance
15 and capital expenditures required by s. 721.07(5)(x)3.a.(XI)
16 from any deferred maintenance or capital expenditure reserve
17 account to any other deferred maintenance or capital
18 expenditure reserve account or accounts in its discretion
19 without the consent of purchasers of the timeshare plan.
20 Funds in any deferred maintenance or capital expenditure
21 reserve account may not be transferred to any operating
22 account without the consent of a majority of the purchasers of
23 the timeshare plan.

24 (e) Arranging for an annual ~~independent~~ audit of the
25 financial statements ~~all the books and financial records~~ of
26 the timeshare plan by a certified public accountant licensed
27 by the Board of Accountancy of the Department of Business and
28 Professional Regulation, in accordance with generally accepted
29 auditing standards as defined by the rules of the Board of
30 Accountancy of the Department of Business and Professional
31 Regulation. The financial statements required by this section

1 shall be prepared on an accrual basis using fund accounting,
2 and shall be presented in accordance with generally accepted
3 accounting principles. A copy of the audited financial
4 statements ~~audit~~ shall be filed with the division and
5 forwarded to the board of directors and officers of the
6 owners' association, ~~or,~~ if one exists, no later than 5
7 calendar months after the end of the timeshare plan's fiscal
8 year. If no owners' association exists, the owner of each
9 purchaser timeshare period shall be notified, no later than 5
10 months after the end of the timeshare plan's fiscal year, that
11 a copy of the audited financial statements ~~such audit~~ is
12 available upon request to the managing entity. Notwithstanding
13 any requirement of s. 718.111(13) or (14), the audited
14 financial statements required by this section shall be the
15 only annual financial reporting requirements for timeshare
16 condominiums.

17 (i) Submitting to the division the statement of
18 receipts and disbursements regarding the ad valorem tax escrow
19 account as required by s. 192.037(6)(e). The statement of
20 receipts and disbursements shall also include a statement
21 disclosing that all ad valorem taxes have been paid in full to
22 the tax collector through the current assessment year, or, if
23 all such ad valorem taxes have not been paid in full to the
24 tax collector, a statement disclosing those assessment years
25 for which there are outstanding ad valorem taxes due and the
26 total amount of all delinquent taxes, interest, and penalties
27 for each such assessment year as of the date of the statement
28 of receipts and disbursements.

29 (4) The managing entity shall maintain among its
30 records and provide to the division upon request a complete
31 list of the names and addresses of all purchasers and owners

1 of timeshare units in the timeshare plan. The managing entity
2 shall update this list no less frequently than quarterly.
3 Pursuant to paragraph (3)(d), the managing entity may not
4 publish this owner's list or provide a copy of it to any
5 purchaser or to any third party other than the division.
6 However, ~~if the managing entity includes a condominium~~
7 ~~association subject to the provisions of chapter 718 or a~~
8 ~~cooperative association subject to the provisions of chapter~~
9 ~~719,~~the managing entity shall initiate a mailing to those
10 persons listed on the owner's list upon the written request of
11 any purchaser if the purpose of the mailing is to advance
12 legitimate association business, such as a proxy solicitation
13 for any purpose, including the recall of one or more board
14 members or the discharge of the manager or management firm.
15 The use of any proxies solicited in this manner must comply
16 with the provisions of the timeshare instrument and this
17 chapter. The board of administration of the association shall
18 be responsible for determining the appropriateness of any
19 mailing requested pursuant to this subsection, and it shall be
20 a violation of this chapter and of part VIII of chapter 468
21 for the board of administration and/or the manager or
22 management firm to refuse to initiate any mailing requested
23 for the purpose of advancing legitimate association business.
24 The purchaser who requests the mailing must reimburse the
25 association in advance for the association's actual costs in
26 performing the mailing.

27 Section 7. Subsection (1) of section 721.15, Florida
28 Statutes, is amended to read:

29 721.15 Assessments for common expenses.--

30 (1)(a) Until a managing entity is created or provided
31 pursuant to s. 721.13, the developer shall pay all common

1 expenses. The timeshare instrument shall provide for the
2 allocation of common expenses among all timeshare units or
3 timeshare periods on a reasonable basis, ~~as appropriate~~,
4 including timeshare periods owned or not yet sold by the
5 developer. The timeshare instrument may provide that the
6 common expenses allocated may differ between those units which
7 are part of the timeshare plan and those units that are not
8 part of the timeshare plan; however, the different proportion
9 of expenses shall be based upon reasonable differences in the
10 benefit provided to each.The timeshare instrument shall
11 allocate common expenses to timeshare periods owned or not yet
12 sold by the developer on the same basis that common expenses
13 are allocated to similar or equivalent timeshare periods sold
14 to purchasers. ~~Timeshare plans that are also governed by~~
15 ~~chapter 718 or chapter 719 shall allocate common expenses~~
16 ~~among the timeshare units in the manner required by those~~
17 ~~chapters.~~

18 (b) Notwithstanding any provision of chapter 718 or
19 chapter 719 to the contrary, the allocation of total common
20 expenses for a condominium or a cooperative timeshare plan may
21 vary on any reasonable basis including, but not limited to,
22 unit size, unit type, unit location, specific identification,
23 or a combination of these factors, so long as the percentage
24 interest in the common elements attributable to each timeshare
25 condominium parcel or timeshare cooperative parcel equals the
26 share of the total common expenses allocable to that parcel.
27 Similarly, the share of a timeshare interest in the common
28 expenses allocable to the timeshare condominium parcel or the
29 timeshare cooperative parcel containing such interest may vary
30 on any reasonable basis, so long as the timeshare interest's
31 share of its parcel's common expense allocation is equal to

1 that timeshare interest's share of the percentage interest in
2 common elements attributable to such parcel.

3 (c) The division is authorized to promulgate rules,
4 pursuant to chapter 120, necessary to implement, enforce, and
5 interpret this subsection.

6 Section 8. Subsection (2) of section 721.18, Florida
7 Statutes, is amended to read:

8 721.18 Exchange programs; filing of information and
9 other materials; filing fees; unlawful acts in connection with
10 an exchange program.--

11 (2) Each exchange company offering an exchange program
12 to purchasers in this state shall file the information
13 specified in subsection (1) and the audit specified in
14 subsection (1) on or before June 1 ~~at least 20 days prior to~~
15 ~~July 1~~ of each year. However, an exchange company shall make
16 its initial filing at least 20 days prior to offering an
17 exchange program to any purchaser in this state. Each filing
18 shall be accompanied by an annual filing fee of \$500. Within
19 20 days of receipt of such filing, the division shall
20 determine whether the filing is adequate to meet the
21 requirements of this section and shall notify the exchange
22 company in writing that the division has either approved the
23 filing or found specified deficiencies in the filing. If the
24 division fails to respond within 20 days, the filing shall be
25 deemed approved. The exchange company may correct the
26 deficiencies; and, within 10 days after receipt of corrections
27 from the exchange company, the division shall notify the
28 exchange company in writing that the division has either
29 approved the filing or found additional specified deficiencies
30 in the filing. If at any time the division determines that any
31 of such information supplied by an exchange company fails to

1 meet the requirements of this section, the division may
2 undertake enforcement action against the exchange company in
3 accordance with the provision of s. 721.26.

4 Section 9. The introductory paragraph and paragraphs
5 (a) and (e) of subsection (5) of section 721.26, Florida
6 Statutes, are amended to read:

7 721.26 Regulation by division.--The division has the
8 power to enforce and ensure compliance with the provisions of
9 this chapter, except for part III, using the powers provided
10 in this chapter, as well as the powers prescribed in chapters
11 498, 718, and 719. In performing its duties, the division
12 shall have the following powers and duties:

13 (5) Notwithstanding any remedies available to
14 purchasers, if the division has reasonable cause to believe
15 that a violation of this chapter, or of any division rule or
16 order promulgated or issued pursuant to this chapter, has
17 occurred, the division may institute enforcement proceedings
18 in its own name against any regulated party, as such term is
19 defined in this subsection:

20 (a)1. "Regulated party," for purposes of this section,
21 means any developer, exchange company, seller, managing
22 entity, association, association director, association
23 officer, management firm, escrow agent, trustee, any
24 respective assignees or agents, or any other person having
25 duties or obligations pursuant to this chapter.

26 2. Any person who materially participates in any offer
27 or disposition of any interest in, or the management or
28 operation of, a timeshare plan in violation of this chapter or
29 relevant rules involving fraud, deception, false pretenses,
30 misrepresentation, or false advertising or the disbursement,
31 concealment, or diversion of any funds or assets, which

1 conduct adversely affects the interests of a purchaser, and
2 which person directly or indirectly controls a regulated party
3 or is a general partner, officer, director, agent, or employee
4 of such regulated party, shall be jointly and severally liable
5 under this subsection with such regulated party, unless such
6 person did not know, and in the exercise of reasonable care
7 could not have known, of the existence of the facts giving
8 rise to the violation of this chapter. A right of
9 contribution shall exist among jointly and severally liable
10 persons pursuant to this paragraph.

11 (e)1. The division may impose a penalty against any
12 regulated party for a violation of this chapter or any rule
13 promulgated hereunder. A penalty may be imposed on the basis
14 of each day of continuing violation, but in no event may the
15 penalty for any offense exceed \$10,000. All accounts
16 collected shall be deposited with the Treasurer to the credit
17 of the Division of Florida Land Sales, Condominiums, and
18 Mobile Homes Trust Fund.

19 2.a. If a regulated party fails to pay a penalty, the
20 division shall thereupon issue an order directing that such
21 regulated party cease and desist from further operation until
22 such time as the penalty is paid; or the division may pursue
23 enforcement of the penalty in a court of competent
24 jurisdiction.

25 b. If an association or managing entity fails to pay a
26 civil penalty, the division may pursue enforcement in a court
27 of competent jurisdiction.

28 Section 10. Part III of chapter 721, Florida Statutes,
29 consisting of ss. 721.80, 721.81, 721.82, 721.83, 721.84,
30 721.85, 721.86, 721.87, 721.88, 721.89, 721.90, 721.91,
31

1 721.92, 721.93, 721.94, and 721.95, Florida Statutes, is
2 created to read:

3 PART III

4 FORECLOSURE OF LIENS ON TIMESHARE ESTATES

5 721.80 Short title.--This part may be cited as the
6 "Timeshare Lien Foreclosure Act."

7 721.81 Legislative purpose.--The purposes of this part
8 are to:

9 (1) Give statutory recognition to timeshare estates as
10 parcels of real property used for vacation experience rather
11 than for homestead purposes.

12 (2) Recognize that the economic health and efficient
13 operation of the vacation ownership industry are in part
14 dependent upon the availability of an efficient and economical
15 process for foreclosure.

16 (3) Establish streamlined procedures for the
17 foreclosure of any and all assessment liens and mortgage liens
18 against a timeshare estate.

19 (4) Recognize the need to assist vacation ownership
20 resort owners' associations by simplifying and expediting the
21 process of foreclosure of assessment liens and mortgage liens.

22 (5) Give statutory recognition to the right of persons
23 to privately contract for a power of sale as their remedy in
24 lieu of a judicial remedy to foreclose liens on timeshare
25 estates.

26 721.82 Definitions.--As used in this part, the term:

27 (1) "Assessment lien" means:

28 (a) A lien for delinquent assessments as provided in
29 ss. 721.16 and 718.116 as to timeshare condominiums; or

30 (b) A lien for unpaid taxes and special assessments as
31 provided in s. 192.037(8).

1 (2) "Claim of lien" means a claim of an assessment
2 lien recorded as provided in ss. 721.16 and 718.116 as to
3 timeshare condominiums.

4 (3) "Junior interestholder" means any person who has a
5 lien or interest of record prior to the recording of the
6 notice of sale pursuant to s. 721.85(8) against a timeshare
7 estate in the county in which the timeshare estate is located
8 which is inferior to the mortgage lien or assessment lien
9 being foreclosed under this part.

10 (4) "Lienholder" means a holder of an assessment lien
11 or a holder of a mortgage lien, as applicable. A receiver
12 appointed pursuant to s. 721.26 shall be considered a
13 lienholder for purposes of this part.

14 (5) "Mortgage" shall have the same meaning in this
15 part as set forth in s. 697.01.

16 (6) "Mortgage lien" means a security interest in a
17 timeshare estate created by a mortgage encumbering the
18 timeshare estate.

19 (7) "Mortgagee" means a person holding a mortgage
20 lien.

21 (8) "Mortgagor" means a person granting a mortgage
22 lien.

23 (9) "Notice address" means:

24 (a) As to an assessment lien, the address of the
25 current owner of a timeshare estate as reflected by the books
26 and records of the timeshare plan pursuant to ss. 721.13(4)
27 and 721.15(7);

28 (b) As to a mortgage lien:

29 1. The address of the mortgagor as set forth in the
30 mortgage, the promissory note or a separate document executed
31 by the mortgagor at the time the mortgage lien was created, or

1 the most current address of the mortgagor according to the
2 records of the mortgagee; and
3 2. The address of the current owner of the timeshare
4 estate as reflected by the books and records of the timeshare
5 plan pursuant to ss. 721.13(4) and 721.15(7); or
6 (c) As to a junior interestholder, the address as set
7 forth in the recorded instrument creating the junior interest
8 or lien, or any recorded supplement thereto changing the
9 address and written notification by the junior interestholder
10 to the foreclosing lienholder of such change in address.
11 (10) "Obligor" means either the mortgagor, the person
12 obligated under a claim of lien, or the record owner of the
13 timeshare estate, as the context requires.
14 (11) "Power of sale" means:
15 (a) An express written agreement in a mortgage
16 identifying the mortgagor, mortgagee, and the trustee; or
17 (b) An express written provision in a timeshare
18 instrument identifying the managing entity and the trustee,
19 which authorizes the trustee to sell the timeshare estate
20 without judicial action at a foreclosure sale regularly
21 conducted and duly held in accordance with this part.
22
23 However, as to assessment liens only, no written agreement
24 shall be required for a receiver appointed pursuant to s.
25 721.26 for the association to sell a timeshare estate without
26 judicial action at a foreclosure sale regularly conducted and
27 duly held in accordance with this part.
28 (12) "Trustee" means any person entitled to exercise a
29 power of sale. The lienholder may not serve as the trustee.
30 721.83 Qualifications of trustees and appointment of
31 successor trustees.--

- 1 (1) A trustee shall be any:
2 (a) Attorney who is an active licensed member of The
3 Florida Bar in good standing or a law firm among whose members
4 includes such an attorney; or
5 (b) Title insurance company, title insurance agent
6 that is licensed pursuant to s. 626.8417, or title insurance
7 agency that is licensed pursuant to s. 626.8418.
8 (2) An attorney who is a trustee under paragraph
9 (1)(a) may represent the lienholder foreclosing under this
10 part in addition to performing the duties of a trustee under a
11 power of sale.
12 (3) Successor trustees may be appointed by a
13 lienholder at any time by recording a notice of substitution
14 of trustee in the public records for the county in which the
15 timeshare estate is located. From the time the substitution of
16 trustee is recorded, the successor trustee shall succeed to
17 all the powers, duties, and authority of the original trustee
18 and successor trustees, if any.
19 (4) The recorded notice of substitution of trustee
20 must identify:
21 (a) The mortgage or timeshare instrument.
22 (b) The names of the original parties to the mortgage
23 or timeshare instrument.
24 (c) The date of recordation of the mortgage or
25 timeshare instrument.
26 (d) The official record book and page number where the
27 mortgage or timeshare instrument is recorded.
28 (e) The name of the successor trustee.
29 (f) The name of the trustee being replaced.
30
31

1 The notice must recite acceptance by the successor trustee of
2 his or her duties and must be dated, signed, and acknowledged
3 by the lienholder and the successor trustee. Such notice of
4 substitution of trustee shall be validly made when completed
5 in accordance with this subsection and recorded in accordance
6 herewith. No resignation of the original trustee is required.

7 721.84 Disclosure and acknowledgment.--

8 (1) In order to foreclose a mortgage lien pursuant to
9 this part, the following conditions shall have been met:

10 (a) The mortgage recorded in the public records of the
11 county in which the timeshare estate being foreclosed is
12 located shall contain a statement in conspicuous type in
13 substantially the following form:

14 There is a mortgage lien against your timeshare estate
15 which must be repaid in accordance with this mortgage. Your
16 failure to make the payments required by this mortgage may
17 result in foreclosure of the mortgage lien.

18 Mortgagor acknowledges that if the obligations
19 established by this mortgage are not satisfied and mortgagor
20 does not cure such default in accordance with the terms
21 hereof, then the mortgage lien created by this mortgage can be
22 foreclosed through a nonjudicial procedure in accordance with
23 part III of chapter 721, Florida Statutes. Mortgagor
24 understands that he or she will not be subject to a deficiency
25 judgment or personal liability resulting from a nonjudicial
26 foreclosure procedure, even if the sale of his or her
27 timeshare estate resulting from the foreclosure is
28 insufficient to satisfy the amount of the debt. Mortgagor
29 further acknowledges that trustee will send the notice
30 required by such procedure to the mortgagor's notice address
31 and mortgagor agrees to inform mortgagee of address changes.

1 Mortgagor consents to notification by certified or registered
2 mail and agrees that any person at the mortgagor's notice
3 address may acknowledge receipt of any correspondence received
4 in connection with such procedure. Mortgagor understands that
5 trustee may notify mortgagor of the commencement of the
6 procedure by publication if delivery of the notice is not
7 accepted at the notice address. If mortgagor sends trustee a
8 written objection to the nonjudicial procedure stating the
9 reasons for such objection, the matter will be transferred to
10 a judicial procedure but mortgagor understands and agrees that
11 in the judicial foreclosure procedure, he or she may be
12 subject to a deficiency judgment or personal liability if the
13 sale of his or her timeshare estate resulting from the
14 foreclosure is insufficient to satisfy the amount of the debt.
15 Mortgagor further understands and agrees that in the judicial
16 procedure if the court finds that there is a complete absence
17 of a justiciable issue of either law or fact raised by the
18 objection or defense, then mortgagor may be personally liable
19 for the costs and attorney's fees incurred by the lienholder
20 in the judicial foreclosure.

21 (b) The mortgage, promissory note, or a separate
22 instrument signed by the mortgagor shall contain the
23 mortgagor's notice address.

24 (2) In order to foreclose an assessment lien pursuant
25 to this part, the following conditions shall have been met:

26 (a) The timeshare instrument recorded in the public
27 records of the county in which the timeshare estate being
28 foreclosed is located shall contain a statement in conspicuous
29 type in substantially the following form:

30 Each owner understands that if the obligations owed for
31 assessments of the association and for ad valorem taxes and

1 special assessments are not satisfied and owner does not
2 timely cure such default, then the lien securing the payment
3 of such obligations can be foreclosed through a nonjudicial
4 procedure in accordance with part III of chapter 721, Florida
5 Statutes. Owner understands that he or she will not be subject
6 to a deficiency judgment or personal liability resulting from
7 a nonjudicial foreclosure procedure, even if the sale of his
8 or her timeshare estate resulting from the foreclosure is
9 insufficient to offset the amount of the default. Owner
10 acknowledges trustee will send the notice required by such
11 procedure to the owner's notice address and owner agrees to
12 inform the managing entity of address changes. Owner consents
13 to notification by certified or registered mail and agrees
14 that any person at the owner's notice address may acknowledge
15 receipt of any correspondence received in connection with such
16 procedure. Owner understands that trustee may notify owner of
17 the commencement of the procedure by publication if delivery
18 of the notice is not accepted at the notice address. If owner
19 sends the trustee a written objection to the nonjudicial
20 procedure stating the reasons for such objection, the matter
21 will be transferred to a judicial procedure but owner
22 understands and agrees that in the judicial foreclosure
23 procedure, the owner may be subject to a deficiency judgment
24 or personal liability if the sale of his or her timeshare
25 estate resulting from the foreclosure is insufficient to
26 offset the amount of the default. Owner further understands
27 and agrees that in the judicial procedure if the court finds
28 that there is a complete absence of a justiciable issue of
29 either law or fact raised by the owner's objection or defense,
30 then owner may be personally liable for the costs and
31

1 attorney's fees incurred by the lienholder in the judicial
2 foreclosure.

3 (b) The public offering statement text shall contain a
4 statement in conspicuous type in substantially the following
5 form:

6 There is a lien or lien right against each timeshare
7 estate to secure the payment of assessments or other amounts
8 due from owners to the association in accordance with the
9 operating budget and special assessments and to secure payment
10 of assessments for ad valorem real estate taxes. A purchaser's
11 failure to make such required payments may result in
12 foreclosure of an assessment lien.

13 Assessment liens may be foreclosed in accordance with
14 the judicial procedure established by Florida law or a
15 nonjudicial procedure established by part III of chapter 721,
16 Florida Statutes. By purchasing a timeshare estate in the
17 timeshare plan described in this public offering statement,
18 purchaser acknowledges and agrees that any assessment lien
19 against the timeshare estate owned by purchaser may be
20 foreclosed by such nonjudicial procedure and agrees that the
21 notice of such procedure may be made by the use of certified
22 or registered mail. Purchaser is required to provide an
23 address for the delivery of all such notices and to inform the
24 managing entity of any changes in the purchaser's notice
25 address.

26 (c) As to any timeshare instrument recorded prior to
27 the effective date of this part, an amendment to the timeshare
28 instrument shall have been made to include the notice required
29 by paragraph (a) and upon approval of the amendment to the
30 timeshare instrument, a copy of such amendment shall be sent
31 by the managing entity to each timeshare estate owner. The

1 amendment shall be approved by the association by the vote
2 required for amendments of this type as provided in the
3 timeshare instrument or, if there is no such provision, on the
4 affirmative vote of a majority of the owners of the
5 association. If such amendment is adopted, the notice required
6 under paragraph (b) shall not be required to be given to
7 existing owners.

8 (3) Notwithstanding anything to the contrary in this
9 part, a receiver for the association may exercise a power of
10 sale as to assessment liens regardless of whether the notices
11 or the acknowledgment required by subsection (2) have been
12 given.

13 721.85 Conditions to exercise of power of sale by
14 trustee.--A trustee may exercise a power of sale provided
15 that:

16 (1) The requirements of s. 721.84 have been met, and
17 any substitution of trustee is filed for record in the public
18 records of the county in which the timeshare estate is
19 located.

20 (2) There is a default by the obligor under the
21 mortgage, the timeshare instrument, or applicable law, the
22 performance of which is secured by the mortgage or required
23 under the timeshare instrument, or applicable law, with
24 respect to any provision in the mortgage, the timeshare
25 instrument, or applicable law, that authorizes foreclosure in
26 the event of default of such provision.

27 (3) There exists no pending lis pendens recorded
28 regarding a judicial action for foreclosure of the mortgage
29 lien or the assessment lien against the same timeshare estate,
30 and the trustee has not been served notice of the filing of
31 any action to enjoin the power of sale procedure.

1 (4) A claim of lien, together with all amendments and
2 assignments, if any, is recorded in the public records of the
3 county in which the timeshare estate is located pursuant to s.
4 721.16 or, if applicable, s. 718.116, when an assessment lien
5 is to be foreclosed.

6 (5) The trustee has sent written notice of default and
7 intent to sell the timeshare estate to the obligor's and
8 junior interestholder's notice addresses as required by s.
9 721.86 with a statement in conspicuous type in substantially
10 the following form:

11 If you fail to cure the default or take other
12 appropriate action with regard to this matter within 30
13 calendar days after the date of this notice, you will risk
14 losing your interest in this timeshare estate through a
15 nonjudicial foreclosure procedure. However, under this
16 nonjudicial procedure, you will not be subject to a deficiency
17 judgment or personal liability, even if the sale of your
18 timeshare estate resulting from the nonjudicial foreclosure is
19 insufficient to satisfy the amount in which you are in debt.
20 You may object to the sale of your timeshare estate through
21 the nonjudicial foreclosure procedure and require foreclosure
22 of your timeshare interest to proceed through the judicial
23 process. Such an objection must be made in writing and
24 received by the trustee before the end of the 30-day time
25 period. You must state the reason for your objection and
26 include your address on the written objection. In a judicial
27 foreclosure proceeding that results from your objection, you
28 may be subject to a deficiency judgment and personal liability
29 if the sale of your timeshare estate resulting from the
30 judicial foreclosure is insufficient to satisfy the amount in
31 which you are in debt. Furthermore, you may also be subject to

1 a personal money judgment for the costs and attorney's fees
2 incurred by your mortgagee or by the managing entity, as
3 applicable, in the judicial foreclosure proceeding if the
4 court finds that there is a complete absence of a justiciable
5 issue of either law or fact raised by your objections or
6 defenses. You have the right to cure your default at any time
7 before the sale of your timeshare estate by payment of all
8 past due loan payments or assessments; accrued interest; late
9 fees; taxes; and all fees and costs incurred by the lienholder
10 and trustee, including attorney's fees and costs, in
11 connection with the default.

12 (6) A period of at least 30 calendar days has elapsed
13 since the sending of the notice of default and intent to sell
14 by the trustee without receipt by the trustee of a written
15 objection to the sale.

16 (7) If the trustee receives a written objection to the
17 sale from the obligor setting forth a specific objection to a
18 sale of the timeshare estate by the trustee, the trustee shall
19 not proceed under this part, but the lienholder shall be
20 required to file a foreclosure action as provided in chapter
21 702. If the court determines that there was a complete absence
22 of justiciable issues of either law or fact raised by the
23 objection received by the trustee under this subsection, or
24 the defenses raised in the subsequent judicial foreclosure
25 proceeding, the lienholder shall be entitled to entry of a
26 separate personal judgment against the obligor for reasonable
27 attorney's fees and cost incurred by the mortgagee or managing
28 entity, as applicable, in the judicial foreclosure action.

29 (8) The notice of sale required by s. 721.87 has been
30 recorded in the public records of the county in which the
31 timeshare estate is located.

1 721.86 Manner of delivery of notice of default and
2 intent to sell.--

3 (1) In any foreclosure proceeding under this part, the
4 trustee is required to notify the obligor, including persons
5 in this state, outside of this state, or in foreign countries,
6 by delivering a written notice of default and intent to sell
7 under s. 721.85, to the notice addresses of the obligor and
8 junior interestholder, as applicable, by certified or
9 registered mail as follows:

10 (a) The trustee shall place a copy of the notice of
11 default and intent to sell in a sealed envelope with adequate
12 postage addressed to the obligor, including the record owner
13 of the timeshare estate, if different, and the junior
14 interestholder.

15 (b) The envelope shall be placed in the mail as
16 certified or registered mail, return receipt requested.

17 (c) Notice under this subsection shall be considered
18 perfected upon the signing of the return receipt by a person
19 at the notice address.

20 (2) If the certified or registered mail which is sent
21 as provided in subsection (1) is returned with an endorsement
22 or stamp showing "refused," the trustee may send the notice by
23 first-class mail to the notice address. The failure to claim
24 certified or registered mail is not refusal of notice within
25 the meaning of this subsection. Notice pursuant to this
26 subsection shall be delivered as follows:

27 (a) The trustee shall place a copy of the notice of
28 default and intent to sell in a sealed envelope with adequate
29 postage addressed to the obligor and junior interestholder.

30 (b) The envelope shall be mailed by first-class mail
31 with the return address of the trustee on the envelope.

1 (c) Notice under this subsection shall be considered
2 perfected upon the mailing of the envelope.

3 (3) If notice is perfected under subsection (1), the
4 trustee shall file an affidavit setting forth the manner of
5 notice as part of the certificate of compliance set forth in
6 s. 721.89. The affidavit shall state the nature of the
7 process; the date on which the process was mailed by certified
8 or registered mail; the name and address on the envelope
9 containing the notice; the fact that the notice was mailed
10 certified or registered mail, return receipt requested; and
11 who signed the return receipt, if known, and the basis for
12 that knowledge. The return receipt from the certified or
13 registered mail shall be attached to the affidavit.

14 (4) If notice is perfected under subsection (2), the
15 trustee shall file an affidavit setting forth the manner of
16 notice as part of the certificate of compliance set forth in
17 s. 721.89. The affidavit shall state the nature of the notice;
18 the date on which the notice was mailed by certified or
19 registered mail; the name and address on the envelope
20 containing the notice; the fact that the notice was mailed
21 certified or registered mail and was returned with the
22 endorsement or stamp "refused"; the date, if known, on which
23 the notice was "refused"; the date on which the notice was
24 mailed by first-class mail; the name and address on the
25 envelope containing the notice that was mailed by first-class
26 mail; and the fact that the notice was mailed by first-class
27 mail with the return address of the trustee on the envelope.
28 The return envelope from the attempt to mail notice by
29 certified or registered mail and the return envelope, if any,
30 from the attempt to mail the envelope by first-class mail
31 shall be attached to the affidavit.

1 (5) If the trustee is unable to perfect notice
2 pursuant to either subsection (1) or subsection (2), because
3 the copy of the notice mailed by certified or registered mail
4 is returned by the United States Post Office as undeliverable
5 or for any other reason and if by a diligent search and
6 inquiry the trustee cannot obtain a different address for the
7 obligor with which the trustee shall repeat the mailing
8 required by subsection (1), the trustee may perfect notice by
9 publication in a newspaper of general circulation in the
10 county in which the timeshare estate is located, once a week
11 for 2 successive weeks and by delivery of a copy of the notice
12 to the obligor by first class mail to the notice address of
13 the obligor and to any other address of the obligor obtained
14 through the trustee's diligent search and inquiry. If notice
15 is perfected by publication under this subsection, the trustee
16 shall attach an affidavit of publication to the certificate of
17 compliance set forth in s. 721.89 and shall state that the
18 notice was perfected by publication after diligent search and
19 inquiry was made for the obligor's address, attaching the
20 returned envelope with the notation from the United States
21 Post Office. No other action of the trustee is necessary to
22 perfect notice. If the diligent search and inquiry has
23 produced a different address than the notice address, such
24 address shall then be used in lieu of the notice address of
25 the obligor for subsequent mailings required under this part.

26 721.87 Notice of sale.--

27 (1) The notice of sale shall set forth:

28 (a) The names and notice addresses of the obligor,
29 including the record owner of the timeshare estate, if
30 different, and the junior interestholders.

31 (b) The name and address of the trustee.

1 (c) A description of the existence of a default under
2 the mortgage, the timeshare instrument, or applicable law.

3 (d) The official record book and page numbers where
4 the mortgage or the claim of lien is recorded.

5 (e) The legal description of the timeshare estate.

6 (f) The amount secured by the mortgage or the
7 assessment lien; accrued interest and late charges as of the
8 date of notice of sale and including a per diem amount to
9 account for further accrual of interest and late charges;
10 advances for the payment of taxes, insurance, and maintenance
11 of the timeshare estate; and costs of the sale, including a
12 title search fee and reasonable trustee's and attorney's fees
13 and costs.

14 (g) A statement of the trustee's intention to sell the
15 timeshare estate to satisfy the obligation.

16 (h) The date, time, and place of sale to be held after
17 9 a.m. and before 4 p.m. on a regular business day not less
18 than 30 days after the recording of the notice of sale.

19 (i) The right of the obligor to cure the default or
20 the right of the junior interestholder to redeem its interest
21 up to the date the trustee issues the certificate of sale in
22 accordance with s. 721.90.

23 (2) The trustee shall send a copy of the notice of
24 sale on the date it is submitted for recording, by first class
25 mail, postage prepaid, to the notice addresses of the obligor
26 and the junior interestholder. In addition, a copy of the
27 notice of sale shall be sent by certified or registered mail
28 to the lienholder.

29 (3) Except as provided in this part, no notice shall
30 be required to be given to any person claiming an interest
31 subsequent to the recording of the notice of sale as set forth

1 in this section. The recording of the notice of sale shall
2 have the same force and effect as the filing of a lis pendens
3 in a judicial proceeding pursuant to s. 48.23.

4 721.88 Publication of notice of sale.--The trustee
5 shall publish the notice of sale in a newspaper of general
6 circulation in the county in which the sale is to be held once
7 a week for 2 consecutive weeks prior to the date of the sale.
8 The last publication shall occur at least 5 days prior to the
9 sale.

10 721.89 Trustees' certificate of compliance.--

11 (1) On the date the trustee conducts a sale, the
12 trustee shall execute a duly acknowledged certificate of
13 compliance and shall record the certificate of compliance in
14 the public records of the county in which the timeshare estate
15 is located.

16 (2) In the certificate of compliance the trustee
17 shall:

18 (a) Set forth the manner of delivery of the notice of
19 default and intent to sell under s. 721.86 with the required
20 affidavit, state that the notice contained the conspicuous
21 language required by s. 721.85(5), state that the default was
22 not cured and the timeshare estate was not redeemed, and state
23 that the trustee did not receive any written objection within
24 the period required under s. 721.85(6).

25 (b) Confirm that the notice of sale was published as
26 required by s. 721.88 and attach an affidavit of publication
27 for the notice of sale.

28 (c) Confirm that the notice of sale was mailed
29 pursuant to s. 721.87(2), together with a list of the parties
30 to whom the notice of sale was mailed and the address used for
31 each such party.

1 (3) In furtherance of the execution and recording of
2 the certificate of compliance required pursuant to this
3 section, the trustee is entitled to rely upon an affidavit or
4 certification from the lienholder as to the facts and
5 circumstances of default and failure to cure the default.

6 721.90 Manner of sale.--

7 (1) The sale of a timeshare estate by public auction
8 shall be held on the date and at the time and place designated
9 in the notice of sale, provided such auction shall take place
10 in the county in which the timeshare estate is located.

11 (2) Any person, including the lienholder may bid at
12 the sale. The trustee may bid for the lienholder but not for
13 himself or herself. The attorney for the trustee may conduct
14 the sale and may act at the sale as the auctioneer for the
15 trustee.

16 (3) The person conducting the sale may postpone the
17 sale from time to time. In every such case, notice of
18 postponement shall be given by oral public proclamation
19 thereof by such person at the time and place last appointed
20 for the sale. The notice of sale regarding the postponed sale
21 shall be mailed and recorded pursuant to s. 721.87(1) and
22 published pursuant to s. 721.88. The effective date of the
23 initial notice of sale for purposes of s. 721.87(3) shall not
24 be affected by a postponed sale.

25 (4) The buyer shall pay in cash or certified funds at
26 the day of sale the price bid to the trustee or to the
27 attorney for the trustee acting as the auctioneer. The
28 lienholder shall receive a credit on its bid for the amount
29 set forth in the notice of sale as required by s.
30 721.87(1)(f).

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1 (5) Upon the issuance of the trustee's deed the buyer
2 at the sale shall be entitled to possession and use of the
3 timeshare estate in accordance with the timeshare instrument.
4 Any other person thereafter claiming possession of the
5 timeshare estate shall be deemed to be a tenant at sufferance,
6 and the buyer shall be entitled, upon application to a court
7 of competent jurisdiction, to a writ of possession.

8 (6) On the date of the sale, and upon receipt of the
9 amount bid the trustee shall issue to the buyer a certificate
10 of sale stating that a sale conforming to the requirements of
11 this part has occurred, including the time, place, and date of
12 the sale, that the property was sold, the amount of the
13 mortgage lien or the assessment lien, as applicable, the
14 amount of the purchase price, and the name and address of the
15 successful bidder. A copy of the certificate of sale shall be
16 mailed by certified or registered mail, postage prepaid, to
17 all persons entitled to receive a notice of sale under s.
18 721.86.

19 721.91 Effect of trustee's sale.--

20 (1) A sale conducted by a trustee or the attorney for
21 the trustee shall foreclose and terminate all interest in the
22 timeshare estate of all persons to whom notice is given under
23 ss. 721.85(5) and 721.87(2) and of any other person claiming
24 by, through or under such person. The assessment lien or
25 mortgage lien does not merge into the trustee's deed to any
26 extent that a subsequent judicial foreclosure or reforeclosure
27 of the assessment lien or mortgage lien under this part
28 becomes necessary or is required. A failure to give notice to
29 any person entitled to notice shall not affect the validity of
30 the sale as to persons notified. A person entitled to notice,
31 but not given notice, shall have the rights of a person not

1 made a defendant in a judicial foreclosure. Any subsequent
2 foreclosure required by failure to notify a party under s.
3 721.87(2) may be conducted under this part.

4 (2) On the issuance of a certificate of sale pursuant
5 to s. 721.90(6), all rights of redemption foreclosed pursuant
6 to this part shall terminate.

7 (3) The lienholder shall have no right to any
8 deficiency judgment against the obligor after a sale of the
9 obligor's timeshare estate under this part as to the
10 obligation foreclosed on.

11 (4) The validity of the sale shall be presumed upon
12 the recording of the certificate of compliance and issuance of
13 the certificate of sale.

14 721.92 Issuance of trustee's deed.--Ten days after a
15 sale, absent the filing and service on the trustee of a
16 judicial action to enjoin issuance of the trustee's deed to
17 the timeshare estate or objecting to the sale on the grounds
18 that the requirements of this part were not met by the
19 trustee, the trustee shall issue a trustee's deed to the
20 purchaser at the sale. Such deed shall be recorded in the
21 public records of the county in which the timeshare estate is
22 located.

23 721.93 Disposition of proceeds of sale.--

24 (1) The trustee shall apply the proceeds of the sale
25 as follows:

26 (a) To the expenses of the sale, including
27 compensation of the trustee and a reasonable fee by the
28 trustee's attorney, if applicable.

29 (b) To the amount owed set forth in the notice of such
30 as required by s. 721.87(1)(f).

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1 (c) To all junior interestholders as their liens or
2 interests may appear of record in the order of priority.

3 (d) The surplus, if any, to an obligor entitled to
4 such surplus.

5 (2) In disposing of the proceeds of sale, the trustee
6 may rely on the information provided in the public records as
7 to the claims of junior interestholders and, in the event of a
8 dispute or uncertainty over such claims, the trustee shall
9 have the discretion to submit the matter to adjudication by
10 court, by interpleader or otherwise. All costs and fees,
11 including attorney's fees and costs, of adjudication shall be
12 paid out of the proceeds of sale after payment of the amounts
13 pursuant to paragraphs (1)(a) and (b).

14 721.94 Form and effect of trustee's deed.--

15 (1) The trustee's deed shall include the name and
16 address of the trustee, the name and address of the buyer, the
17 name of the obligor, including the owner of the timeshare
18 estate on the date of the recordation of the notice of sale,
19 and the name and address of the preparer of the trustee's
20 deed. The trustee's deed shall recite that the certificate of
21 compliance was recorded and the regular conduct of a sale, and
22 shall contain no warranties of title from the trustee.

23 (2) Upon the recording of the trustee's deed, the
24 certificate of compliance and trustee's deed together shall be
25 conclusive evidence of the truth of the matters set forth
26 therein.

27 (3) The trustee's deed shall convey to the purchaser
28 all right, title, and interest in the timeshare estate that
29 the owner had, or had the power to convey, at the time of the
30 execution of the mortgage or recording of the claim of lien,
31 together with all right, title, and interest in the owner or

1 his successors in interest acquired after the execution of the
2 mortgage or recording of the claim of lien.

3 (4) If an action is filed based on any claim that the
4 trustee failed to follow the procedures in this part or that
5 the sale was otherwise improper, it shall be presumed that the
6 trustee was acting solely as the agent of the lienholder, and
7 any liability resulting therefrom shall be the sole
8 responsibility of the mortgagee or managing entity and not the
9 trustee.

10 721.95 Miscellaneous provisions.--

11 (1) The procedures set forth in this part shall not
12 impair or otherwise affect the continuing right to bring a
13 judicial action to foreclose a mortgage lien or claim of lien
14 regardless of whether such mortgage or the timeshare
15 instrument, as the case may be, provides a trustee with a
16 power of sale.

17 (2) Nothing in this part shall be construed to impair
18 the right of any person to assert his or her legal and
19 equitable rights in a court of competent jurisdiction;
20 however, no such action may be pursued to set aside a sale or
21 void a trustee's deed subsequent to the recordation of the
22 trustee's deed.

23 (3) The procedures in this part shall be given effect
24 in the context of any reference to judicial foreclosure
25 proceedings or procedures set forth in this chapter or chapter
26 718.

27 (4) If any provision of this part or the application
28 thereof to any person or circumstances is held invalid, such
29 invalidity shall not affect other provisions or applications
30 of this part which can be given effect without the invalid
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1 provision or application. To this end, the provisions of this
2 part are declared severable.

3 (5) The division has no authority to regulate,
4 enforce, or ensure compliance with any provision of this part.

5 (6) Notwithstanding anything in s. 721.13 to the
6 contrary, a managing entity shall release the address of the
7 owner of a timeshare estate to a lienholder who can
8 demonstrate that the timeshare estate is subject to an
9 assessment lien or a mortgage lien held by such lienholder.
10 Such information shall be used by the lienholder solely for
11 purposes of complying with the foreclosure procedures
12 described in this part.

13 Section 11. This act shall take effect upon becoming a
14 law; however, with respect to any timeshare plan filing
15 approved by the division prior to the date this act becomes a
16 law, the amendment to s. 721.06(1)(f), Florida Statutes, shall
17 not apply to such filing until January 1, 1998, unless and
18 only to the extent that the developer otherwise voluntary
19 agrees to comply with all or a portion of such provisions.

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