

By Senators Silver and Dyer

38-311-98

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 that 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 becomes effective  
3 upon the filing of such information with the division, if  
4 approval is obtained within 6 months after the initial filing  
5 at which time the exemption will expire unless the division  
6 stipulates otherwise or approves the filing. The fees set  
7 forth in s. 721.07(4) apply to all filings made hereunder.  
8 Each purchase contract utilized in any offer of a timeshare  
9 plan that occurs outside the jurisdictional limits of the  
10 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 may adopt rules designating those provisions of ss.  
2 721.07 and 721.55 which need not be addressed in the filings  
3 required in paragraph (b).~~The exemption provided in paragraph~~  
4 ~~(b) shall only apply to accommodations or facilities which~~  
5 ~~have first been filed with and approved by the division~~  
6 ~~pursuant to s. 721.07 or s. 721.55.~~

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

9 721.06 Contracts for purchase of timeshare periods.--

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

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

17  
18 You may cancel this contract without any penalty or  
19 obligation within 10 calendar days after ~~from~~ the date you  
20 sign this contract, and within ~~until~~ 10 calendar days after  
21 the date you receive the approved public offering statement,  
22 whichever is later.

23 If you decide to cancel this contract, you must notify  
24 the developer in writing of your intent to cancel. Your  
25 notice of cancellation shall be effective upon the date sent  
26 and shall be sent to ...(Name of Developer)... at ...(Address  
27 of Developer).... Any attempt to obtain a waiver of your  
28 cancellation right is unlawful. While you may execute all  
29 closing documents in advance, the closing, as evidenced by  
30 delivery of the deed or other document, before expiration of  
31 your 10-day cancellation period, is prohibited.

1           Section 3. Paragraph (a) of subsection (3) of section  
2 721.07, Florida Statutes, is amended to read:

3           721.07 Public offering statement.--Prior to offering  
4 any timeshare plan, the developer must file a public offering  
5 statement with the division for approval as prescribed by s.  
6 721.03, s. 721.55, or this section. Until the division  
7 approves such filing, any contract regarding the sale of the  
8 timeshare plan which is the subject of the public offering  
9 statement is voidable by the purchaser.

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

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

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

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

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

16           721.075 Incidental benefits.--Incidental benefits  
17 shall be offered only as provided in this section.

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

1 ~~aggregate represented value of all incidental benefits offered~~  
2 ~~by a developer to a purchaser is equal to or less than 5~~  
3 ~~percent of the purchase price paid by that purchaser, no~~  
4 ~~assurance shall be required from the developer prior to~~  
5 ~~offering any incidental benefit.~~

6 (4)~~(5)~~ All purchaser remedies pursuant to s. 721.21  
7 shall be available for any violation of the provisions of this  
8 section.

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

11 721.09 Reservation agreements; escrows.--

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

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

23 (c) If the timeshare plan subject to the reservation  
24 agreement has not been filed with the division under s.  
25 721.07(5) or s. 721.55 within 90 days after the date the  
26 division approves the reservation agreement filing, the seller  
27 must immediately cancel all outstanding reservation  
28 agreements, refund all escrowed funds to prospective  
29 purchasers, and discontinue accepting reservation deposits or  
30 advertising the availability of reservation agreements.

31

1           (d) A seller who has filed a reservation agreement and  
2 an escrow agreement under this section may advertise the  
3 reservation agreement program if the advertising material  
4 meets the following requirements:

5           1. The seller complies with the provisions of s.  
6 721.11 with respect to such advertising material.

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

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

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

21           721.13 Management.--

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

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



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

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

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

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

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

27 (4) The managing entity shall maintain among its  
28 records and provide to the division upon request a complete  
29 list of the names and addresses of all purchasers and owners  
30 of timeshare units in the timeshare plan. The managing entity  
31 shall update this list no less frequently than quarterly.

1 Pursuant to paragraph (3)(d), the managing entity may not  
2 publish this owner's list or provide a copy of it to any  
3 purchaser or to any third party other than the division.  
4 However, ~~if the managing entity includes a condominium~~  
5 ~~association subject to the provisions of chapter 718 or a~~  
6 ~~cooperative association subject to the provisions of chapter~~  
7 ~~719,~~the managing entity shall initiate a mailing to those  
8 persons listed on the owner's list upon the written request of  
9 any purchaser if the purpose of the mailing is to advance  
10 legitimate association business, such as a proxy solicitation  
11 for any purpose, including the recall of one or more board  
12 members or the discharge of the manager or management firm.  
13 The use of any proxies solicited in this manner must comply  
14 with the provisions of the timeshare instrument and this  
15 chapter. The board of administration of the association shall  
16 be responsible for determining the appropriateness of any  
17 mailing requested pursuant to this subsection, and it shall be  
18 a violation of this chapter and of part VIII of chapter 468  
19 for the board of administration and/or the manager or  
20 management firm to refuse to initiate any mailing requested  
21 for the purpose of advancing legitimate association business.  
22 The purchaser who requests the mailing must reimburse the  
23 association in advance for the association's actual costs in  
24 performing the mailing.

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

27 721.15 Assessments for common expenses.--

28 (1)(a) Until a managing entity is created or provided  
29 pursuant to s. 721.13, the developer shall pay all common  
30 expenses. The timeshare instrument shall provide for the  
31 allocation of common expenses among all timeshare units or

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

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

1           (c) The division may adopt rules, under chapter 120,  
2 necessary to implement, enforce, and interpret this  
3 subsection.

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

6           721.18 Exchange programs; filing of information and  
7 other materials; filing fees; unlawful acts in connection with  
8 an exchange program.--

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

31

1 undertake enforcement action against the exchange company in  
2 accordance with the provision of s. 721.26.

3 Section 9. Section 721.26, Florida Statutes, is  
4 amended to read:

5 721.26 Regulation by division.--The division has the  
6 power to enforce and ensure compliance with the provisions of  
7 this chapter, except for part III, using the powers provided  
8 in this chapter, as well as the powers prescribed in chapters  
9 498, 718, and 719. In performing its duties, the division  
10 shall have the following powers and duties:

11 (1) To aid in the enforcement of this chapter, or any  
12 division rule or order promulgated or issued pursuant to this  
13 chapter, the division may make necessary public or private  
14 investigations within or outside this state to determine  
15 whether any person has violated or is about to violate this  
16 chapter, or any division rule or order promulgated or issued  
17 pursuant to this chapter.

18 (2) The division may require or permit any person to  
19 file a written statement under oath or otherwise, as the  
20 division determines, as to the facts and circumstances  
21 concerning a matter under investigation.

22 (3) For the purpose of any investigation under this  
23 chapter, the director of the division or any officer or  
24 employee designated by the director may administer oaths or  
25 affirmations, subpoena witnesses and compel their attendance,  
26 take evidence, and require the production of any matter which  
27 is relevant to the investigation, including the identity,  
28 existence, description, nature, custody, condition, and  
29 location of any books, documents, or other tangible things and  
30 the identity and location of persons having knowledge of  
31 relevant facts or any other matter reasonably calculated to

1 lead to the discovery of material evidence. Failure to obey a  
2 subpoena or to answer questions propounded by the  
3 investigating officer and upon reasonable notice to all  
4 persons affected thereby shall be a violation of this chapter.  
5 In addition to the other enforcement powers authorized in this  
6 subsection, the division may, at its discretion, apply to the  
7 circuit court for an order compelling compliance.

8 (4) The division may prepare and disseminate a  
9 prospectus and other information to assist prospective  
10 purchasers, sellers, and managing entities of timeshare plans  
11 in assessing the rights, privileges, and duties pertaining  
12 thereto.

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 (b) The division may permit any person whose conduct  
12 or actions may be under investigation to waive formal  
13 proceedings and enter into a consent proceeding whereby an  
14 order, rule, or letter of censure or warning, whether formal  
15 or informal, may be entered against that person.

16 (c) The division may issue an order requiring a  
17 regulated party to cease and desist from an unlawful practice  
18 under this chapter and take such affirmative action as in the  
19 judgment of the division will carry out the purposes of this  
20 chapter.

21 (d)1. The division may bring an action in circuit  
22 court for declaratory or injunctive relief or for other  
23 appropriate relief, including restitution.

24 2. The division shall have broad authority and  
25 discretion to petition the circuit court to appoint a receiver  
26 with respect to any managing entity which fails to perform its  
27 duties and obligations under this chapter with respect to the  
28 operation of a timeshare plan. The circumstances giving rise  
29 to an appropriate petition for receivership under this  
30 subparagraph include, but are not limited to:

31



1           a. Damage to or destruction of any of the  
2 accommodations or facilities of a timeshare plan, where the  
3 managing entity has failed to repair or reconstruct same.

4           b. A breach of fiduciary duty by the managing entity,  
5 including, but not limited to, undisclosed self-dealing or  
6 failure to timely assess, collect, or disburse the common  
7 expenses of the timeshare plan.

8           c. Failure of the managing entity to operate the  
9 timeshare plan in accordance with the timeshare instrument and  
10 this chapter.

11  
12 If, under the circumstances, it appears that the events giving  
13 rise to the petition for receivership cannot be reasonably and  
14 timely corrected in a cost-effective manner consistent with  
15 the timeshare instrument, the receiver may petition the  
16 circuit court to implement such amendments or revisions to the  
17 timeshare instrument as may be necessary to enable the  
18 managing entity to resume effective operation of the timeshare  
19 plan, or to enter an order terminating the timeshare plan, or  
20 to enter such further orders regarding the disposition of the  
21 timeshare property as the court deems appropriate. All  
22 reasonable costs and fees of the receiver relating to the  
23 receivership shall become common expenses of the timeshare  
24 plan upon order of the court.

25           3. The division may revoke its approval of any filing  
26 for any timeshare plan for which a petition for receivership  
27 has been filed pursuant to this paragraph.

28           (e)1. The division may impose a penalty against any  
29 regulated party for a violation of this chapter or any rule  
30 adopted thereunder. A penalty may be imposed on the basis of  
31 each day of continuing violation, but in no event may the

1 penalty for any offense exceed \$10,000. All accounts  
2 collected shall be deposited with the Treasurer to the credit  
3 of the Division of Florida Land Sales, Condominiums, and  
4 Mobile Homes Trust Fund.

5 2.a. If a regulated party fails to pay a penalty, the  
6 division shall thereupon issue an order directing that such  
7 regulated party cease and desist from further operation until  
8 such time as the penalty is paid; or the division may pursue  
9 enforcement of the penalty in a court of competent  
10 jurisdiction.

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

14 (f) In order to permit the regulated party an  
15 opportunity either to appeal such decision administratively or  
16 to seek relief in a court of competent jurisdiction, the order  
17 imposing the penalty or the cease and desist order shall not  
18 become effective until 20 days after the date of such order.

19 (g) Any action commenced by the division shall be  
20 brought in the county in which the division has its executive  
21 offices or in the county where the violation occurred.

22 (h) Notice to any regulated party shall be complete  
23 when delivered by United States mail, return receipt  
24 requested, to the party's address currently on file with the  
25 division or to such other address at which the division is  
26 able to locate the party. Every regulated party has an  
27 affirmative duty to notify the division of any change of  
28 address at least 5 business days prior to such change.

29 (6) The division is authorized to adopt, amend, or  
30 repeal rules pursuant to chapter 120 as necessary to  
31 implement, enforce, and interpret this chapter.



1 dependent upon the availability of an efficient and economical  
2 process for foreclosure.

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

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

9 (5) Give statutory recognition to the right of persons  
10 to privately contract for a power of sale as their remedy in  
11 lieu of a judicial remedy to foreclose liens on timeshare  
12 estates.

13 721.82 Definitions.--As used in this part, the term:

14 (1) "Assessment lien" means:

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

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

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

22 (3) "Junior interestholder" means any person who has a  
23 lien or interest of record prior to the recording of the  
24 notice of sale under s. 721.85(8) against a timeshare estate  
25 in the county in which the timeshare estate is located which  
26 is inferior to the mortgage lien or assessment lien being  
27 foreclosed under this part.

28 (4) "Lienholder" means a holder of an assessment lien  
29 or a holder of a mortgage lien, as applicable. A receiver  
30 appointed under s. 721.26 must be considered a lienholder for  
31 purposes of this part.

1           (5) "Mortgage" means a mortgage as defined in s.  
2 697.01.

3           (6) "Mortgage lien" means a security interest in a  
4 timeshare estate created by a mortgage encumbering the  
5 timeshare estate.

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

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

10           (9) "Notice address" means:

11           (a) As to an assessment lien, the address of the  
12 current owner of a timeshare estate as reflected by the books  
13 and records of the timeshare plan under ss. 721.13(4) and  
14 721.15(7);

15           (b) As to a mortgage lien:

16           1. The address of the mortgagor as set forth in the  
17 mortgage, the promissory note or a separate document executed  
18 by the mortgagor at the time the mortgage lien was created, or  
19 the most current address of the mortgagor according to the  
20 records of the mortgagee; and

21           2. The address of the current owner of the timeshare  
22 estate as reflected by the books and records of the timeshare  
23 plan under ss. 721.13(4) and 721.15(7); or

24           (c) As to a junior interestholder, the address as set  
25 forth in the recorded instrument creating the junior interest  
26 or lien, or any recorded supplement thereto changing the  
27 address and written notification by the junior interestholder  
28 to the foreclosing lienholder of such change in address.

29           (10) "Obligor" means either the mortgagor, the person  
30 obligated under a claim of lien, or the record owner of the  
31 timeshare estate, as the context requires.

1           (11) "Power of sale" means:  
2           (a) An express written agreement in a mortgage  
3 identifying the mortgagor, the mortgagee, and the trustee; or  
4           (b) An express written provision in a timeshare  
5 instrument identifying the managing entity and the trustee,  
6 which authorizes the trustee to sell the timeshare estate  
7 without judicial action at a foreclosure sale regularly  
8 conducted and duly held in accordance with this part.  
9  
10 However, as to assessment liens only, no written agreement may  
11 be required for a receiver appointed under s. 721.26 for the  
12 association to sell a timeshare estate without judicial action  
13 at a foreclosure sale regularly conducted and duly held in  
14 accordance with this part.  
15           (12) "Trustee" means any person entitled to exercise a  
16 power of sale. The lienholder may not serve as the trustee.  
17           721.83 Qualifications of trustees and appointment of  
18 successor trustees.--  
19           (1) A trustee is:  
20           (a) An attorney who is an active licensed member of  
21 The Florida Bar in good standing or a law firm whose members  
22 include such an attorney; or  
23           (b) A title insurance company, title insurance agent  
24 that is licensed under s. 626.8417, or title insurance agency  
25 that is licensed under s. 626.8418.  
26           (2) An attorney who is a trustee under paragraph  
27 (1)(a) may represent the lienholder foreclosing under this  
28 part in addition to performing the duties of a trustee under a  
29 power of sale.  
30           (3) Successor trustees may be appointed by a  
31 lienholder at any time by recording a notice of substitution

1 of trustee in the public records for the county in which the  
2 timeshare estate is located. From the time the substitution of  
3 trustee is recorded, the successor trustee succeeds to all the  
4 powers, duties, and authority of the original trustee and  
5 successor trustees, if any.

6 (4) The recorded notice of substitution of trustee  
7 must identify:

8 (a) The mortgage or timeshare instrument.

9 (b) The names of the original parties to the mortgage  
10 or timeshare instrument.

11 (c) The date of recordation of the mortgage or  
12 timeshare instrument.

13 (d) The official record book and page number where the  
14 mortgage or timeshare instrument is recorded.

15 (e) The name of the successor trustee.

16 (f) The name of the trustee being replaced.

17  
18 The notice must recite acceptance by the successor trustee of  
19 his or her duties and must be dated, signed, and acknowledged  
20 by the lienholder and the successor trustee. Such notice of  
21 substitution of trustee is validly made when completed in  
22 accordance with this subsection and recorded in accordance  
23 herewith. No resignation of the original trustee is required.

24 721.84 Disclosure and acknowledgment.--

25 (1) To foreclose a mortgage lien under this part, the  
26 following conditions must be met:

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

31

1       "There is a mortgage lien against your timeshare estate  
2 which must be repaid in accordance with this mortgage. Your  
3 failure to make the payments required by this mortgage may  
4 result in foreclosure of the mortgage lien.

5           Mortgagor acknowledges that if the obligations  
6 established by this mortgage are not satisfied and mortgagor  
7 does not cure such default in accordance with the terms  
8 hereof, then the mortgage lien created by this mortgage can be  
9 foreclosed through a nonjudicial procedure in accordance with  
10 part III of chapter 721, Florida Statutes. Mortgagor  
11 understands that he or she will not be subject to a deficiency  
12 judgment or personal liability resulting from a nonjudicial  
13 foreclosure procedure, even if the sale of his or her  
14 timeshare estate resulting from the foreclosure is  
15 insufficient to satisfy the amount of the debt. Mortgagor  
16 further acknowledges that trustee will send the notice  
17 required by such procedure to the mortgagor's notice address  
18 and mortgagor agrees to inform mortgagee of address changes.  
19 Mortgagor consents to notification by certified or registered  
20 mail and agrees that any person at the mortgagor's notice  
21 address may acknowledge receipt of any correspondence received  
22 in connection with such procedure. Mortgagor understands that  
23 trustee may notify mortgagor of the commencement of the  
24 procedure by publication if delivery of the notice is not  
25 accepted at the notice address. If mortgagor sends trustee a  
26 written objection to the nonjudicial procedure stating the  
27 reasons for such objection, the matter will be transferred to  
28 a judicial procedure but mortgagor understands and agrees that  
29 in the judicial foreclosure procedure, he or she may be  
30 subject to a deficiency judgment or personal liability if the  
31 sale of his or her timeshare estate resulting from the



1 foreclosure is insufficient to satisfy the amount of the debt.  
2 Mortgagor further understands and agrees that in the judicial  
3 procedure if the court finds that there is a complete absence  
4 of a justiciable issue of either law or fact raised by the  
5 objection or defense, then mortgagor may be personally liable  
6 for the costs and attorney's fees incurred by the lienholder  
7 in the judicial foreclosure."

8 (b) The mortgage, promissory note, or a separate  
9 instrument signed by the mortgagor must contain the  
10 mortgagor's notice address.

11 (2) To foreclose an assessment lien under this part,  
12 the following conditions must be met:

13 (a) The timeshare instrument recorded in the public  
14 records of the county in which the timeshare estate being  
15 foreclosed is located must contain a statement in conspicuous  
16 type in substantially the following form:

17 "Each owner understands that if the obligations owed  
18 for assessments of the association and for ad valorem taxes  
19 and special assessments are not satisfied and owner does not  
20 timely cure such default, then the lien securing the payment  
21 of such obligations can be foreclosed through a nonjudicial  
22 procedure in accordance with part III of chapter 721, Florida  
23 Statutes. Owner understands that he or she will not be subject  
24 to a deficiency judgment or personal liability resulting from  
25 a nonjudicial foreclosure procedure, even if the sale of his  
26 or her timeshare estate resulting from the foreclosure is  
27 insufficient to offset the amount of the default. Owner  
28 acknowledges trustee will send the notice required by such  
29 procedure to the owner's notice address and owner agrees to  
30 inform the managing entity of address changes. Owner consents  
31 to notification by certified or registered mail and agrees

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

20 (b) The public offering statement text must contain a  
21 statement in conspicuous type in substantially the following  
22 form:

23 "There is a lien or lien right against each timeshare  
24 estate to secure the payment of assessments or other amounts  
25 due from owners to the association in accordance with the  
26 operating budget and special assessments and to secure payment  
27 of assessments for ad valorem real estate taxes. A purchaser's  
28 failure to make such required payments may result in  
29 foreclosure of an assessment lien.

30 Assessment liens may be foreclosed in accordance with  
31 the judicial procedure established by Florida law or a

1 nonjudicial procedure established by part III of chapter 721,  
2 Florida Statutes. By purchasing a timeshare estate in the  
3 timeshare plan described in this public offering statement,  
4 purchaser acknowledges and agrees that any assessment lien  
5 against the timeshare estate owned by purchaser may be  
6 foreclosed by such nonjudicial procedure and agrees that the  
7 notice of such procedure may be made by the use of certified  
8 or registered mail. Purchaser is required to provide an  
9 address for the delivery of all such notices and to inform the  
10 managing entity of any changes in the purchaser's notice  
11 address."

12 (c) As to any timeshare instrument recorded prior to  
13 the effective date of this part, an amendment to the timeshare  
14 instrument must have been made to include the notice required  
15 by paragraph (a), and upon approval of the amendment to the  
16 timeshare instrument, a copy of such amendment must be sent by  
17 the managing entity to each timeshare estate owner. The  
18 amendment must be approved by the association by the vote  
19 required for amendments of this type as provided in the  
20 timeshare instrument or, if there is no such provision, on the  
21 affirmative vote of a majority of the owners of the  
22 association. If such amendment is adopted, the notice required  
23 under paragraph (b) is not required to be given to existing  
24 owners.

25 (3) Notwithstanding anything to the contrary in this  
26 part, a receiver for the association may exercise a power of  
27 sale as to assessment liens regardless of whether the notices  
28 or the acknowledgment required by subsection (2) have been  
29 given.

30  
31

1           721.85 Conditions to exercise of power of sale by  
2 trustee.--A trustee may exercise a power of sale provided  
3 that:

4           (1) The requirements of s. 721.84 have been met, and  
5 any substitution of trustee is filed for record in the public  
6 records of the county in which the timeshare estate is  
7 located.

8           (2) There is a default by the obligor under the  
9 mortgage, the timeshare instrument, or applicable law, the  
10 performance of which is secured by the mortgage or required  
11 under the timeshare instrument, or applicable law, with  
12 respect to any provision in the mortgage, the timeshare  
13 instrument, or applicable law, which authorizes foreclosure in  
14 the event of default of such provision.

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

20           (4) A claim of lien, together with all amendments and  
21 assignments, if any, is recorded in the public records of the  
22 county in which the timeshare estate is located under s.  
23 721.16 or, if applicable, s. 718.116 when an assessment lien  
24 is to be foreclosed.

25           (5) The trustee has sent written notice of default and  
26 intent to sell the timeshare estate to the obligor's and  
27 junior interestholder's notice addresses as required by s.  
28 721.86 with a statement in conspicuous type in substantially  
29 the following form:

30           "If you fail to cure the default or take other  
31 appropriate action with regard to this matter within 30

1 calendar days after the date of this notice, you will risk  
2 losing your interest in this timeshare estate through a  
3 nonjudicial foreclosure procedure. However, under this  
4 nonjudicial procedure, you will not be subject to a deficiency  
5 judgment or personal liability, even if the sale of your  
6 timeshare estate resulting from the nonjudicial foreclosure is  
7 insufficient to satisfy the amount in which you are in debt.  
8 You may object to the sale of your timeshare estate through  
9 the nonjudicial foreclosure procedure and require foreclosure  
10 of your timeshare interest to proceed through the judicial  
11 process. Such an objection must be made in writing and  
12 received by the trustee before the end of the 30-day time  
13 period. You must state the reason for your objection and  
14 include your address on the written objection. In a judicial  
15 foreclosure proceeding that results from your objection, you  
16 may be subject to a deficiency judgment and personal liability  
17 if the sale of your timeshare estate resulting from the  
18 judicial foreclosure is insufficient to satisfy the amount in  
19 which you are in debt. You may also be subject to a personal  
20 money judgment for the costs and attorney's fees incurred by  
21 your mortgagee or by the managing entity, as applicable, in  
22 the judicial foreclosure proceeding if the court finds that  
23 there is a complete absence of a justiciable issue of either  
24 law or fact raised by your objections or defenses. You have  
25 the right to cure your default at any time before the sale of  
26 your timeshare estate by payment of all past due loan payments  
27 or assessments, accrued interest, late fees, taxes, and all  
28 fees and costs incurred by the lienholder and trustee,  
29 including attorney's fees and costs, in connection with the  
30 default."  
31

1           (6) A period of at least 30 calendar days has elapsed  
2 since the sending of the notice of default and intent to sell  
3 by the trustee without receipt by the trustee of a written  
4 objection to the sale.

5           (7) If the trustee receives a written objection to the  
6 sale from the obligor setting forth a specific objection to a  
7 sale of the timeshare estate by the trustee, the trustee must  
8 not proceed under this part, but the lienholder must file a  
9 foreclosure action as provided in chapter 702. If the court  
10 determines that there was a complete absence of justiciable  
11 issues of either law or fact raised by the objection received  
12 by the trustee under this subsection, or the defenses raised  
13 in the subsequent judicial foreclosure proceeding, the  
14 lienholder is entitled to entry of a separate personal  
15 judgment against the obligor for reasonable attorney's fees  
16 and costs incurred by the mortgagee or managing entity, as  
17 applicable, in the judicial foreclosure action.

18           (8) The notice of sale required under s. 721.87 has  
19 been recorded in the public records of the county in which the  
20 timeshare estate is located.

21           721.86 Manner of delivery of notice of default and  
22 intent to sell.--

23           (1) In any foreclosure proceeding under this part, the  
24 trustee shall notify the obligor, including persons in this  
25 state, outside of this state, or in foreign countries, by  
26 delivering a written notice of default and intent to sell  
27 under s. 721.85, to the notice addresses of the obligor and  
28 junior interestholder, as applicable, by certified or  
29 registered mail as follows:

30           (a) The trustee shall place a copy of the notice of  
31 default and intent to sell in a sealed envelope with adequate

1 postage addressed to the obligor, including the record owner  
2 of the timeshare estate, if different, and the junior  
3 interestholder.

4 (b) The envelope must be placed in the mail as  
5 certified or registered mail, return receipt requested.

6 (c) Notice under this subsection is considered  
7 perfected upon the signing of the return receipt by a person  
8 at the notice address.

9 (2) If the certified or registered mail that is sent  
10 as provided in subsection (1) is returned with an endorsement  
11 or stamp showing "refused," the trustee may send the notice by  
12 first-class mail to the notice address. The failure to claim  
13 certified or registered mail is not refusal of notice within  
14 the meaning of this subsection. Notice under this subsection  
15 must be delivered as follows:

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

19 (b) The envelope must be mailed by first-class mail  
20 with the return address of the trustee on the envelope.

21 (c) Notice under this subsection is considered  
22 perfected upon the mailing of the envelope.

23 (3) If notice is perfected under subsection (1), the  
24 trustee must file an affidavit setting forth the manner of  
25 notice as part of the certificate of compliance specified in  
26 s. 721.89. The affidavit must state the nature of the process;  
27 the date on which the process was mailed by certified or  
28 registered mail; the name and address on the envelope  
29 containing the notice; the fact that the notice was mailed  
30 certified or registered mail, return receipt requested; and  
31 the name of the person who signed the return receipt, if

1 known, and the basis for that knowledge. The return receipt  
2 from the certified or registered mail must be attached to the  
3 affidavit.

4 (4) If notice is perfected under subsection (2), the  
5 trustee must file an affidavit setting forth the manner of  
6 notice as part of the certificate of compliance specified in  
7 s. 721.89. The affidavit must state the nature of the notice;  
8 the date on which the notice was mailed by certified or  
9 registered mail; the name and address on the envelope  
10 containing the notice; the fact that the notice was mailed  
11 certified or registered mail and was returned with the  
12 endorsement or stamp "refused"; the date, if known, on which  
13 the notice was "refused"; the date on which the notice was  
14 mailed by first-class mail; the name and address on the  
15 envelope containing the notice that was mailed by first-class  
16 mail; and the fact that the notice was mailed by first-class  
17 mail with the return address of the trustee on the envelope.  
18 The return envelope from the attempt to mail notice by  
19 certified or registered mail and the return envelope, if any,  
20 from the attempt to mail the envelope by first-class mail must  
21 be attached to the affidavit.

22 (5) If the trustee is unable to perfect notice under  
23 either subsection (1) or subsection (2) because the copy of  
24 the notice mailed by certified or registered mail is returned  
25 by the United States Post Office as undeliverable or for any  
26 other reason, and if by a diligent search and inquiry the  
27 trustee cannot obtain a different address for the obligor with  
28 which the trustee shall repeat the mailing required by  
29 subsection (1), the trustee may perfect notice by publication,  
30 in a newspaper of general circulation in the county in which  
31 the timeshare estate is located, once a week for 2 successive



1 weeks and by delivery of a copy of the notice to the obligor  
2 by first class mail to the notice address of the obligor and  
3 to any other address of the obligor obtained through the  
4 trustee's diligent search and inquiry. If notice is perfected  
5 by publication under this subsection, the trustee must attach  
6 an affidavit of publication to the certificate of compliance  
7 set forth in s. 721.89 and state that the notice was perfected  
8 by publication after diligent search and inquiry was made for  
9 the obligor's address, attaching the returned envelope with  
10 the notation from the United States Post Office. No other  
11 action of the trustee is necessary to perfect notice. If the  
12 diligent search and inquiry has produced a different address  
13 than the notice address, such address must then be used in  
14 lieu of the notice address of the obligor for subsequent  
15 mailings required under this part.

16 721.87 Notice of sale.--

17 (1) The notice of sale must state:

18 (a) The names and notice addresses of the obligor,  
19 including the record owner of the timeshare estate, if  
20 different, and the junior interestholders.

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

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

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

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

27 (f) The amount secured by the mortgage or the  
28 assessment lien; accrued interest and late charges as of the  
29 date of notice of sale and including a per diem amount to  
30 account for further accrual of interest and late charges;  
31 advances for the payment of taxes, insurance, and maintenance

1 of the timeshare estate; and costs of the sale, including a  
2 title search fee and reasonable trustee's and attorney's fees  
3 and costs.

4 (g) The trustee's intention to sell the timeshare  
5 estate to satisfy the obligation.

6 (h) The date, time, and place of sale, which is to be  
7 held after 9 a.m. and before 4 p.m. on a regular business day  
8 not fewer than 30 days after the recording of the notice of  
9 sale.

10 (i) The right of the obligor to cure the default or  
11 the right of the junior interestholder to redeem its interest  
12 up to the date the trustee issues the certificate of sale in  
13 accordance with s. 721.90.

14 (2) The trustee shall send a copy of the notice of  
15 sale on the date it is submitted for recording, by first class  
16 mail, postage prepaid, to the notice addresses of the obligor  
17 and the junior interestholder. In addition, a copy of the  
18 notice of sale must be sent by certified or registered mail to  
19 the lienholder.

20 (3) Except as provided in this part, notice need not  
21 be given to any person claiming an interest subsequent to the  
22 recording of the notice of sale. The recording of the notice  
23 of sale has the same effect as the filing of a lis pendens in  
24 a judicial proceeding under s. 48.23.

25 721.88 Publication of notice of sale.--The trustee  
26 shall publish the notice of sale, in a newspaper of general  
27 circulation in the county in which the sale is to be held,  
28 once a week for 2 consecutive weeks prior to the date of the  
29 sale. The last publication must occur at least 5 days before  
30 the sale.

31 721.89 Trustees' certificate of compliance.--

1           (1) On the date the trustee conducts a sale, the  
2 trustee must execute a duly acknowledged certificate of  
3 compliance and shall record the certificate of compliance in  
4 the public records of the county in which the timeshare estate  
5 is located.

6           (2) In the certificate of compliance the trustee must:

7           (a) Set forth the manner of delivery of the notice of  
8 default and intent to sell under s. 721.86 with the required  
9 affidavit, state that the notice contained the conspicuous  
10 language required by s. 721.85(5), state that the default was  
11 not cured and the timeshare estate was not redeemed, and state  
12 that the trustee did not receive any written objection within  
13 the period required under s. 721.85(6).

14           (b) Confirm that the notice of sale was published as  
15 required by s. 721.88 and attach an affidavit of publication  
16 for the notice of sale.

17           (c) Confirm that the notice of sale was mailed as  
18 required by s. 721.87(2), together with a list of the parties  
19 to whom the notice of sale was mailed and the address used for  
20 each such party.

21           (3) In furtherance of the execution and recording of  
22 the certificate of compliance required under this section, the  
23 trustee may rely upon an affidavit or certification from the  
24 lienholder as to the facts and circumstances of default and  
25 failure to cure the default.

26           721.90 Manner of sale.--

27           (1) The sale of a timeshare estate by public auction  
28 must be held on the date and at the time and place designated  
29 in the notice of sale. The auction must take place in the  
30 county in which the timeshare estate is located.

31

1           (2) Any person, including the lienholder may bid at  
2 the sale. The trustee may bid for the lienholder but not for  
3 himself or herself. The attorney for the trustee may conduct  
4 the sale and may act at the sale as the auctioneer for the  
5 trustee.

6           (3) The person conducting the sale may postpone the  
7 sale from time to time. In every such case, notice of  
8 postponement must be given by oral public proclamation thereof  
9 by such person at the time and place last appointed for the  
10 sale. The notice of sale regarding the postponed sale must be  
11 mailed and recorded under s. 721.87(1) and published under s.  
12 721.88. The effective date of the initial notice of sale for  
13 purposes of s. 721.87(3) is not affected by a postponed sale.

14           (4) The buyer shall pay in cash or certified funds on  
15 the day of sale the price bid to the trustee or to the  
16 attorney for the trustee acting as the auctioneer. The  
17 lienholder must receive a credit on its bid for the amount set  
18 forth in the notice of sale as required by s. 721.87(1)(f).

19           (5) Upon the issuance of the trustee's deed the buyer  
20 at the sale is entitled to possession and use of the timeshare  
21 estate in accordance with the timeshare instrument. Any other  
22 person thereafter claiming possession of the timeshare estate  
23 is considered a tenant at sufferance, and the buyer is  
24 entitled, upon application to a court of competent  
25 jurisdiction, to a writ of possession.

26           (6) On the date of the sale, and upon receipt of the  
27 amount bid, the trustee shall issue to the buyer a certificate  
28 of sale stating that a sale conforming to the requirements of  
29 this part has occurred and including the following  
30 information: the time, place, and date of the sale; the  
31 amount of the mortgage lien or the assessment lien, as

1 applicable; the amount of the purchase price; and the name and  
2 address of the successful bidder. A copy of the certificate  
3 of sale must be mailed by certified or registered mail,  
4 postage prepaid, to all persons entitled to receive a notice  
5 of sale under s. 721.86.

6 721.91 Effect of trustee's sale.--

7 (1) A sale conducted by a trustee or the attorney for  
8 the trustee forecloses and terminates all interest in the  
9 timeshare estate of all persons to whom notice is given under  
10 ss. 721.85(5) and 721.87(2) and of any other person claiming  
11 an interest by, through, or under such person. The assessment  
12 lien or mortgage lien does not merge into the trustee's deed  
13 to any extent that a subsequent judicial foreclosure or  
14 reforeclosure of the assessment lien or mortgage lien under  
15 this part becomes necessary or is required. A failure to give  
16 notice to any person entitled to notice does not affect the  
17 validity of the sale as to persons notified. A person  
18 entitled to notice but not given notice has the rights of a  
19 person not made a defendant in a judicial foreclosure. Any  
20 subsequent foreclosure required by failure to notify a party  
21 under s. 721.87(2) may be conducted under this part.

22 (2) On the issuance of a certificate of sale under s.  
23 721.90(6), all rights of redemption foreclosed under this part  
24 terminate.

25 (3) The lienholder has no right to any deficiency  
26 judgment against the obligor after a sale of the obligor's  
27 timeshare estate under this part as to the obligation  
28 foreclosed on.

29 (4) The validity of the sale is presumed upon the  
30 recording of the certificate of compliance and issuance of the  
31 certificate of sale.

1           721.92 Issuance of trustee's deed.--Ten days after a  
2 sale, absent the filing and service on the trustee of a  
3 judicial action to enjoin issuance of the trustee's deed to  
4 the timeshare estate or objecting to the sale on the grounds  
5 that the requirements of this part were not met by the  
6 trustee, the trustee shall issue a trustee's deed to the  
7 purchaser at the sale. Such deed must be recorded in the  
8 public records of the county in which the timeshare estate is  
9 located.

10           721.93 Disposition of proceeds of sale.--

11           (1) The trustee shall apply the proceeds of the sale  
12 as follows:

13           (a) To the expenses of the sale, including  
14 compensation of the trustee and a reasonable fee by the  
15 trustee's attorney, if applicable.

16           (b) To the amounts owed and specified by s.  
17 721.87(1)(f).

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

20           (d) To an obligor entitled to the surplus, if any.

21           (2) In disposing of the proceeds of sale, the trustee  
22 may rely on the information provided in the public records as  
23 to the claims of junior interestholders and, in the event of a  
24 dispute or uncertainty over such claims, the trustee may  
25 submit the matter to adjudication by court, by interpleader,  
26 or otherwise. All costs and fees, including attorney's fees  
27 and costs, of adjudication must be paid out of the proceeds of  
28 sale after payment of the amounts specified in paragraphs  
29 (1)(a) and (b).

30           721.94 Form and effect of trustee's deed.--

31

1           (1) The trustee's deed must include the name and  
2 address of the trustee, the name and address of the buyer, the  
3 name of the obligor, including the owner of the timeshare  
4 estate on the date of the recordation of the notice of sale,  
5 and the name and address of the preparer of the trustee's  
6 deed. The trustee's deed must recite that the certificate of  
7 compliance was recorded and the regular conduct of a sale, and  
8 must contain no warranties of title from the trustee.

9           (2) Upon the recording of the trustee's deed, the  
10 certificate of compliance and trustee's deed together  
11 constitute conclusive evidence of the truth of the matters set  
12 forth therein.

13           (3) The trustee's deed conveys to the purchaser all  
14 right, title, and interest in the timeshare estate that the  
15 owner had, or had the power to convey, at the time of the  
16 execution of the mortgage or recording of the claim of lien,  
17 together with all right, title, and interest of the owner or  
18 his successors in interest acquired after the execution of the  
19 mortgage or recording of the claim of lien.

20           (4) If an action is filed based on any claim that the  
21 trustee failed to follow the procedures in this part or that  
22 the sale was otherwise improper, it is presumed that the  
23 trustee was acting solely as the agent of the lienholder, and  
24 any liability resulting therefrom is the sole responsibility  
25 of the mortgagee or managing entity and not the trustee.

26           721.95 Miscellaneous provisions.--

27           (1) The procedures set forth in this part do not  
28 impair or otherwise affect the continuing right to bring a  
29 judicial action to foreclose a mortgage lien or claim of lien  
30 regardless of whether such mortgage or the timeshare  
31

1 instrument, as the case may be, provides a trustee with a  
2 power of sale.

3 (2) Nothing in this part impairs the right of any  
4 person to assert his or her legal and equitable rights in a  
5 court of competent jurisdiction; however, no such action may  
6 be pursued to set aside a sale or void a trustee's deed  
7 subsequent to the recordation of the trustee's deed.

8 (3) The procedures in this part must be given effect  
9 in the context of any reference to judicial foreclosure  
10 proceedings or procedures set forth in this chapter or chapter  
11 718.

12 (4) If any provision of this part or the application  
13 thereof to any person or circumstances is held invalid, such  
14 invalidity does not affect other provisions or applications of  
15 this part which can be given effect without the invalid  
16 provision or application, and to this end, the provisions of  
17 this part are declared severable.

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

20 (6) Notwithstanding s. 721.13, a managing entity shall  
21 release the address of the owner of a timeshare estate to a  
22 lienholder who can demonstrate that the timeshare estate is  
23 subject to an assessment lien or a mortgage lien held by such  
24 lienholder. Such information may be used by the lienholder  
25 solely for purposes of complying with the foreclosure  
26 procedures described in this part.

27 Section 11. This act shall take effect upon becoming a  
28 law; however, with respect to any timeshare plan filing  
29 approved by the division prior to the date this act becomes a  
30 law, the amendment to s. 721.06(1)(f), Florida Statutes, shall  
31 not apply to such filing until January 1, 1999, unless and



1 only to the extent that the developer otherwise voluntarily  
2 agrees to comply with all or a portion of such provisions.

3  
4 \*\*\*\*\*

5 LEGISLATIVE SUMMARY

6 Revises various provisions of law relating to timeshare  
7 plans to:

- 8 1. Authorize the adoption of described rules with  
respect to exemptions from chapter 721, F.S.
- 9 2. Provide that, if a proposed amendment to an  
approved multisite timeshare plan adds a new component  
10 site, the initial period to approve or cite deficiencies  
shall be 45 days.
- 11 3. Delete a provision with respect to incidental  
benefits which requires the developer to file an  
irrevocable letter of credit, surety bond, or other  
12 assurance to guarantee the delivery of the incidental  
benefits to the purchaser.
- 13 4. Revise provisions with respect to reservation  
agreements.
- 14 5. Revise provisions relating to the duties of the  
managing entity.
- 15 6. Revise provisions with respect to assessments  
for common expenses to provide that timeshare plans may  
16 vary with respect to common expenses irrespective of the  
provisions of chapters 718 and 719, F.S.

17  
18 Creates the "Timeshare Lien Foreclosure Act" to:

- 19 1. Give statutory recognition to timeshare estates  
as parcels of real property used for vacation experience  
rather than for homestead purposes.
- 20 2. Recognize that the economic health and efficient  
operation of the vacation ownership industry are in part  
21 dependent upon the availability of an efficient and  
economical process for foreclosure.
- 22 3. Establish streamlined procedures for the  
foreclosure of any and all assessment liens and mortgage  
23 liens against a timeshare estate.
- 24 4. Recognize the need to assist vacation ownership  
resort owners' associations by simplifying and expediting  
25 the process of foreclosure of assessment liens and  
mortgage liens.

26 (See bill for details.)  
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31