

1 A bill to be entitled
2 An act relating to timeshares; amending s. 721.07, F.S.;
3 providing lien disclosure requirements for filed public
4 offering statements for certain timeshare plans; amending
5 s. 721.16, F.S.; authorizing a managing entity to bring
6 judicial and nonjudicial actions to foreclose certain
7 liens under specified conditions; renaming part III of
8 chapter 721, F.S.; amending s. 721.81, F.S.; revising and
9 providing legislative purposes of the part; amending s.
10 721.82 F.S.; revising and providing definitions; amending
11 s. 721.83, F.S.; revising application to apply to judicial
12 foreclosure actions; amending s. 721.85, F.S.; conforming
13 provisions to changes made by this act; creating s.
14 721.855, F.S.; establishing procedure for the nonjudicial
15 foreclosure of assessment liens; providing for the
16 appointment of a trustee; providing recording requirements
17 for such liens; providing procedures for the initiation of
18 a nonjudicial foreclosure procedure against a timeshare
19 interest; providing procedures for an obligor's objection
20 to the nonjudicial foreclosure procedure; providing
21 conditions to a trustee's exercise of power of sale;
22 providing requirements for a notice of default and intent
23 to sell; providing requirements for a notice of sale;
24 providing requirements for a trustee's certificate of
25 compliance; providing requirements for the sale by auction
26 of foreclosed encumbered timeshare interests; providing
27 for the effect of a trustee's sale; providing requirements
28 for a trustee's deed; providing for the disposition of

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29 | proceeds of the sale; providing that the nonjudicial
30 | foreclosure procedure does not impair or otherwise affect
31 | the right to bring certain actions; providing application;
32 | providing for actions for failure to follow the
33 | nonjudicial foreclosure procedure; creating s. 721.856,
34 | F.S.; establishing procedure for the nonjudicial
35 | foreclosure of mortgage liens; providing for the
36 | appointment of a trustee; providing recording requirements
37 | for such liens; providing procedures for the initiation of
38 | a nonjudicial foreclosure procedure against a timeshare
39 | interest; providing procedures for an obligor's objection
40 | to the nonjudicial foreclosure procedure; providing
41 | conditions to a trustee's exercise of power of sale;
42 | providing requirements for a notice of default and intent
43 | to sell; providing requirements for a notice of sale;
44 | providing requirements for a trustee's certificate of
45 | compliance; providing requirements for the sale by auction
46 | of foreclosed encumbered timeshare interests; providing
47 | for the effect of a trustee's sale; providing requirements
48 | for a trustee's deed; providing for the disposition of
49 | proceeds of the sale; providing that the nonjudicial
50 | foreclosure procedure does not impair or otherwise affect
51 | the right to bring certain actions; providing for actions
52 | for failure to follow the nonjudicial foreclosure
53 | procedure; amending s. 721.86, F.S.; providing for
54 | priority of application in case of conflict; providing an
55 | effective date.
56 |

57 Be It Enacted by the Legislature of the State of Florida:

58

59 Section 1. Paragraph (jj) is added to subsection (5) of
60 section 721.07, Florida Statutes, to read:

61 721.07 Public offering statement.—Prior to offering any
62 timeshare plan, the developer must submit a filed public
63 offering statement to the division for approval as prescribed by
64 s. 721.03, s. 721.55, or this section. Until the division
65 approves such filing, any contract regarding the sale of that
66 timeshare plan is subject to cancellation by the purchaser
67 pursuant to s. 721.10.

68 (5) Every filed public offering statement for a timeshare
69 plan which is not a multisite timeshare plan shall contain the
70 information required by this subsection. The division is
71 authorized to provide by rule the method by which a developer
72 must provide such information to the division.

73 (jj) The following statement in conspicuous type:

74

75 The managing entity has a lien against each timeshare
76 interest to secure the payment of regular or special
77 assessments and ad valorem taxes. Your failure to make
78 any required payments may result in the judicial or
79 nonjudicial foreclosure of an assessment lien and the
80 loss of your timeshare interest. If the managing
81 entity initiates a nonjudicial procedure, you shall
82 have the option to object to the use of the
83 nonjudicial foreclosure procedure and the managing

84 entity may only proceed by filing a judicial
 85 foreclosure action.

86
 87 Section 2. Subsection (2) of section 721.16, Florida
 88 Statutes, is amended to read:

89 721.16 Liens for overdue assessments; liens for labor
 90 performed on, or materials furnished to, a timeshare unit.—

91 (2) The managing entity may bring a judicial ~~an~~ action in
 92 its name to foreclose a lien under subsection (1) in the manner
 93 a mortgage of real property is foreclosed and may also bring an
 94 action to recover a money judgment for the unpaid assessments
 95 without waiving any claim of lien. As an alternative to
 96 initiating a judicial action, the managing entity may initiate a
 97 nonjudicial procedure to foreclose an assessment lien under s.
 98 721.855.

99 Section 3. Part III of chapter 721, Florida Statutes,
 100 entitled "Foreclosure of Liens on Timeshare Estates," is renamed
 101 "Foreclosure of Liens on Timeshare Interests."

102 Section 4. Section 721.81, Florida Statutes, is amended to
 103 read:

104 721.81 Legislative purpose.—The purposes of this part are
 105 to:

106 (1) Recognize that timeshare interests ~~estates are parcels~~
 107 ~~of real property~~ used for vacation experience rather than for
 108 homestead or investment purposes and that there are numerous
 109 timeshare interests ~~estates~~ in this ~~the~~ state.

110 (2) Recognize that the economic health and efficient
 111 operation of the vacation ownership industry are in part

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112 dependent upon the availability of an efficient and economical
 113 process for all timeshare interest foreclosures ~~foreclosure~~.

114 (3) Recognize the need to assist both owners' associations
 115 and mortgagees by simplifying and expediting the process for the
 116 judicial and nonjudicial ~~of~~ foreclosure of assessment liens and
 117 mortgage liens against timeshare interests ~~estates~~.

118 (4) Improve judicial economy and reduce court congestion
 119 and the cost to taxpayers by establishing streamlined procedures
 120 for the judicial and nonjudicial foreclosure of assessment liens
 121 and mortgage liens against timeshare interests ~~estates~~.

122 (5) Recognize that nearly all timeshare interest
 123 foreclosures are uncontested.

124 (6) Protect the ability of consumers who own timeshare
 125 interests located in this state to choose a judicial proceeding
 126 for the foreclosure of an assessment lien or a mortgage lien
 127 against their timeshare interest.

128 (7) Recognize that the use of the nonjudicial foreclosure
 129 procedure established by ss. 721.855 and 721.856 shall have the
 130 same force and effect as the use of the judicial foreclosure
 131 procedure against a timeshare interest with respect to the
 132 provisions of this chapter or any other applicable law. However,
 133 obligors shall not be subject to a deficiency judgment even if
 134 the proceeds from the sale of the timeshare interest are
 135 insufficient to offset the amounts secured by the lien.

136 Section 5. Section 721.82, Florida Statutes, is amended to
 137 read:

138 721.82 Definitions.—As used in this part, the term:

139 (1) "Amounts secured by the lien" means all amounts

140 secured by an assessment lien or mortgage lien, including, but
 141 not limited to, all past due amounts, accrued interest, late
 142 fees, taxes, advances for the payment of taxes, insurance and
 143 maintenance of the timeshare interest, and any fees or costs
 144 incurred by the lienholder or trustee, including any reasonable
 145 attorney's fees, trustee's fees, and costs incurred in
 146 connection with the default.

147 (2)~~(1)~~ "Assessment lien" means:

148 (a) A lien for delinquent assessments as provided in ss.
 149 ~~721.16, 718.116, and 719.108, and 721.16 as to timeshare~~
 150 ~~condominiums~~; or

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

153 (3)~~(2)~~ "Junior interestholder" means any person who has a
 154 lien or interest of record against a timeshare interest ~~estate~~
 155 in the county or counties in which the timeshare interest ~~estate~~
 156 is located, which is inferior to the mortgage lien or assessment
 157 lien being foreclosed under this part.

158 (4)~~(3)~~ "Lienholder" means a holder of an assessment lien
 159 or a holder of a mortgage lien, as applicable. A receiver
 160 appointed under s. 721.26 is a lienholder for purposes of
 161 foreclosure of assessment liens under this part.

162 (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.
 163 697.01.

164 (6)~~(5)~~ "Mortgage lien" means a security interest in a
 165 timeshare interest ~~estate~~ created by a mortgage encumbering the
 166 timeshare interest ~~estate~~.

167 (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

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168 (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien
 169 or a person who has assumed the obligation secured by a mortgage
 170 lien.

171 (9)~~(8)~~ "Notice address" means:

172 (a) As to an assessment lien, the address of the ~~current~~
 173 owner of a timeshare interest ~~estate~~ as reflected by the books
 174 and records of the timeshare plan under ss. 721.13(4) and
 175 721.15(7).

176 (b) As to a mortgage lien:

177 1. The address of the mortgagor as set forth in the
 178 mortgage, the promissory note or a separate document executed by
 179 the mortgagor at the time the mortgage lien was created, or the
 180 most current address of the mortgagor according to the records
 181 of the mortgagee; and

182 2. If the ~~current~~ owner of the timeshare interest ~~estate~~
 183 is different from the mortgagor, the address of the ~~current~~
 184 owner of the timeshare interest ~~estate~~ as reflected by the books
 185 and records of the mortgagee.

186 (c) As to a junior interestholder, the address as set
 187 forth in the recorded instrument creating the junior lien
 188 ~~interest~~ or interest ~~lien~~, or in any recorded amendment
 189 ~~supplement~~ thereto changing the address, or in any written
 190 notification by the junior interestholder to the foreclosing
 191 lienholder changing the ~~of such change in~~ address.

192 (10)~~(9)~~ "Obligor" means the mortgagor, the person subject
 193 to an assessment lien, or the record owner of the timeshare
 194 interest ~~estate~~.

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195 (11) "Permitted delivery service" means any nationally
 196 recognized common carrier delivery service or international
 197 airmail service requiring a signed return receipt.

198 ~~(12)~~~~(10)~~ "Registered agent" means an agent duly appointed
 199 by the obligor under s. 721.84 for the purpose of accepting all
 200 notices and service of process under this part. A registered
 201 agent may be an individual resident in this state whose business
 202 office qualifies as a registered office, or a domestic or
 203 foreign corporation or a not-for-profit corporation as defined
 204 in chapter 617 authorized to transact business or to conduct its
 205 affairs in this state, whose business office qualifies as a
 206 registered office. A registered agent for any obligor may not be
 207 the lienholder or the attorney for the lienholder.

208 ~~(13)~~~~(11)~~ "Registered office" means the street address of
 209 the business office of the registered agent appointed under s.
 210 721.84, located in this state.

211 (14) "Trustee" means an attorney who is a member in good
 212 standing of The Florida Bar or his or her law firm, or a title
 213 insurer authorized to transact business in this state under s.
 214 624.401, appointed as trustee or as substitute trustee in
 215 accordance with s. 721.855 or s. 721.856. A receiver appointed
 216 under s. 721.26 may act as a trustee under s. 721.855. A trustee
 217 must be independent as required by s. 721.05(20).

218 Section 6. Section 721.83, Florida Statutes, is amended to
 219 read:

220 721.83 Consolidation of judicial foreclosure actions.—

221 (1) A complaint in a foreclosure proceeding involving
 222 timeshare interests ~~estates~~ may join in the same action multiple

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223 defendant obligors and junior interestholders of separate
 224 timeshare interests ~~estates~~, provided:

225 (a) The foreclosure proceeding involves a single timeshare
 226 property.

227 (b) The foreclosure proceeding is filed by a single
 228 plaintiff.

229 (c) The default and remedy provisions in the written
 230 instruments on which the foreclosure proceeding is based are
 231 substantially the same for each defendant.

232 (d) The nature of the defaults alleged is the same for
 233 each defendant.

234 (e) No more than 15 timeshare interests ~~estates~~, without
 235 regard to the number of defendants, are joined within the same
 236 consolidated foreclosure action.

237 (2) In any foreclosure proceeding involving multiple
 238 defendants filed under subsection (1), the court shall sever for
 239 separate trial any count of the complaint in which a defense or
 240 counterclaim is timely raised by a defendant.

241 (3) A consolidated timeshare foreclosure action shall be
 242 considered a single action, suit, or proceeding for the payment
 243 of filing fees and service charges pursuant to general law. In
 244 addition to the payment of such filing fees and service charges,
 245 an additional filing fee of up to \$10 for each timeshare
 246 interest ~~estate~~ joined in that action shall be paid to the clerk
 247 of court.

248 Section 7. Section 721.85, Florida Statutes, is amended to
 249 read:

250 721.85 Service to notice address or on registered agent.-

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251 (1) Service of process for a foreclosure proceeding
 252 involving a timeshare interest ~~estate~~ may be made by any means
 253 recognized by law. In addition, substituted service on an
 254 obligor ~~a party~~ who has appointed a registered agent under s.
 255 721.84 may be made on such registered agent at the registered
 256 office. Also, when using s. 48.194 where in rem or quasi in rem
 257 relief only is sought, such service of process provisions are
 258 modified in connection with a foreclosure proceeding against a
 259 timeshare interest ~~estate~~ to provide that:

260 (a) Such service of process may be made on any person
 261 whether the person is located inside or outside this state, by
 262 certified or registered mail, return receipt requested, or by a
 263 permitted delivery service, return receipt requested, addressed
 264 to the person to be served at the notice address, or on the
 265 person's ~~party's~~ registered agent duly appointed under s.
 266 721.84, at the registered office; and

267 (b) Service shall be considered obtained upon the signing
 268 of the return receipt by any person at the notice address, or by
 269 the registered agent.

270 (2) The current owner and the mortgagor of a timeshare
 271 interest ~~estate~~ must promptly notify the owners' association and
 272 the mortgagee of any change of address.

273 (3) Substituted notice under s. 721.855 or s. 721.856 for
 274 any party who has appointed a registered agent under s. 721.84
 275 may be made on such registered agent at the registered office.

276 Section 8. Section 721.855, Florida Statutes, is created
 277 to read:

278 721.855 Procedure for the nonjudicial foreclosure of

279 assessment liens.—The provisions of this section establish a
 280 nonjudicial foreclosure procedure for assessment liens.

281 (1) APPOINTMENT OF TRUSTEE.—

282 (a) A trustee or a substitute trustee may be appointed by
 283 a lienholder at any time by recording a notice of appointment of
 284 trustee or notice of substitution of trustee in the public
 285 records of the county or counties in which the timeshare
 286 interest is located. A lienholder may appoint multiple trustees
 287 in a single appointment, and any appointed trustee may be used
 288 by the lienholder regarding the nonjudicial foreclosure of any
 289 assessment lien under any timeshare plan for which the trustee
 290 is appointed.

291 (b) The recorded notice of appointment of trustee or
 292 notice of substitution of trustee shall contain the name and
 293 address of the trustee or substitute trustee, the name and
 294 address of the lienholder, and the name and address of the
 295 timeshare plan.

296 (c) The lienholder shall maintain a list of all trustees
 297 and substitute trustees appointed by the lienholder and shall
 298 provide an obligor with verification that a particular person is
 299 an appointed trustee or substitute trustee within 3 business
 300 days following receipt of a written request for such
 301 verification from the obligor.

302 (2) INITIATING THE USE OF A NONJUDICIAL FORECLOSURE
 303 PROCEDURE.—

304 (a) Before initiating the nonjudicial foreclosure
 305 procedure against any timeshare interest in a given timeshare
 306 plan, the managing entity shall inform owners of timeshare

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307 interests in the timeshare plan in writing that the managing
308 entity has the right to elect to use the nonjudicial foreclosure
309 procedure with respect to foreclosure of assessment liens as
310 established in this section. The managing entity shall be deemed
311 to have complied with the requirements of this paragraph if the
312 owners of timeshare interests in the given timeshare plan are
313 informed by mail sent to each owner's notice address, in the
314 notice of an annual or special meeting of the owners, by posting
315 on the website of the applicable timeshare plan, or by any owner
316 communication used by the managing entity.

317 (b) Before initiating the nonjudicial foreclosure
318 procedure against any timeshare interest, a claim of lien
319 against the timeshare interest shall be recorded pursuant to s.
320 721.16 or, if applicable, s. 718.116 or s. 719.108, and the
321 notice of the intent to file a lien shall be given pursuant to
322 s. 718.121 for timeshare condominiums and s. 719.108 for
323 timeshare cooperatives.

324 (c)1. In order to initiate a nonjudicial foreclosure
325 procedure against a timeshare interest, the lienholder shall
326 deliver an affidavit to the trustee that identifies the obligor,
327 the notice address of the obligor, the timeshare interest, the
328 official records book and page number where the claim of lien is
329 recorded, and the name and notice address of any junior
330 interestholder. The affidavit shall be accompanied by a title
331 search of the timeshare interest identifying any junior
332 interestholders of record, and the title search must be
333 performed within 60 calendar days before the date of the
334 affidavit.

335 2. The affidavit shall also state that the obligor has
 336 defaulted in the obligation to make a payment under a specified
 337 provision of the timeshare instrument or applicable law.

338 3. The affidavit shall also specify the amounts secured by
 339 the lien as of the date of the affidavit and a per diem amount
 340 to account for further accrual of the amounts secured by the
 341 lien.

342 (3) OBLIGOR'S RIGHT TO OBJECT TO USE OF THE NONJUDICIAL
 343 FORECLOSURE PROCEDURE.—

344 (a) The obligor may object to the lienholder's use of the
 345 nonjudicial foreclosure procedure for a specific default at any
 346 time before the sale of the timeshare interest under subsection
 347 (8) by delivering a written objection to the trustee using the
 348 objection form provided for in subsection (5). If the trustee
 349 receives the written objection from the obligor, the trustee may
 350 not proceed with the nonjudicial foreclosure procedure as to the
 351 default specified in the notice of default and intent to sell
 352 under subsection (5), and the lienholder may proceed thereafter
 353 only with a judicial foreclosure action as to that specified
 354 default.

355 (b) If the obligor delivers the written objection
 356 authorized in paragraph (a) to the trustee more than 30 calendar
 357 days after the notice of default and intent to sell is deemed
 358 perfected under subsection (5), the lienholder is entitled to
 359 collect from the obligor in a judicial foreclosure procedure all
 360 of the costs incurred in the nonjudicial foreclosure procedure.

361 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
 362 trustee may sell an encumbered timeshare interest foreclosed

363 under this section if:

364 (a) The trustee has received the affidavit from the
 365 lienholder under paragraph (2) (c);

366 (b) The trustee has not received a written objection to
 367 the use of the nonjudicial foreclosure procedure under
 368 subsection (3);

369 (c) There is no lis pendens recorded and pending against
 370 the same timeshare interest and the trustee has not been served
 371 notice of the filing of any action to enjoin the nonjudicial
 372 foreclosure sale;

373 (d) The trustee has provided written notice of default and
 374 intent to sell as required by subsection (5) and a period of at
 375 least 30 calendar days has elapsed after such notice is deemed
 376 perfected under subsection (5); and

377 (e) The notice of sale required by subsection (6) has been
 378 recorded in the public records of the county or counties in
 379 which the timeshare interest is located.

380 (5) NOTICE OF DEFAULT AND INTENT TO SELL.-

381 (a) In any foreclosure proceeding under this section, the
 382 trustee is required to notify the obligor of the proceeding by
 383 sending the obligor a written notice of default and intent to
 384 sell to the notice address of the obligor by certified or
 385 registered mail, return receipt requested, or by a permitted
 386 delivery service, return receipt requested, as follows:

387 1. The notice of default and intent to sell shall identify
 388 the obligor, the notice address of the obligor, the legal
 389 description of the timeshare interest, the nature of the
 390 default, the amounts secured by the lien, and a per diem amount

391 to account for further accrual of the amounts secured by the
 392 lien and shall state the method by which the obligor may cure
 393 the default.

394 2. The notice of default and intent to sell shall include
 395 an objection form with which the obligor can object to the use
 396 of the nonjudicial procedure by signing and returning the
 397 objection form to the trustee. The objection form shall identify
 398 the obligor, the notice address of the obligor, the timeshare
 399 interest, and the return address of the trustee and shall state:
 400 "The undersigned obligor exercises the obligor's right to object
 401 to the use of the nonjudicial foreclosure procedure contained in
 402 section 721.855, Florida Statutes."

403 3. The notice of default and intent to sell shall also
 404 contain a statement in substantially the following form:

406 If you fail to cure the default as set forth in this
 407 notice or take other appropriate action with regard to
 408 this foreclosure matter, you risk losing ownership of
 409 your timeshare interest through the nonjudicial
 410 foreclosure procedure established in section 721.855,
 411 Florida Statutes. You may choose to sign and send to
 412 the trustee the enclosed objection form, exercising
 413 your right to object to the use of the nonjudicial
 414 procedure. If you do not object to the use of the
 415 nonjudicial foreclosure procedure, you shall not be
 416 subject to a deficiency judgment even if the proceeds
 417 from the sale of your timeshare interest are
 418 insufficient to offset the amounts secured by the

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419 lien, which may include all past due amounts, accrued
420 interest, late fees, taxes, advances for the payment
421 of taxes, insurance and maintenance of the timeshare
422 interest, and any fees or costs incurred by the
423 lienholder or trustee, including any reasonable
424 attorney's fees, trustee's fees, and costs incurred in
425 connection with the default. Upon the trustee's
426 receipt of your signed objection form, the foreclosure
427 of the lien with respect to the default specified in
428 this notice shall be subject to the judicial
429 foreclosure procedure only. You have the right to cure
430 your default in the manner set forth in this notice at
431 any time before the trustee's sale of your timeshare
432 interest. If you object to the use of the nonjudicial
433 foreclosure procedure, you may be subject to a
434 deficiency judgment under any subsequent judicial
435 foreclosure action. In addition, if you deliver your
436 written objection to the trustee more than 30 calendar
437 days after the notice of default and intent to sell
438 has been delivered, the lienholder is entitled to
439 collect from you in a judicial foreclosure procedure
440 all of the costs incurred in the nonjudicial
441 foreclosure procedure.

442
443 4. The trustee shall also mail a copy of the notice of
444 default and intent to sell, without the objection form, to the
445 notice address of any junior interestholder by certified or
446 registered mail, return receipt requested, or by a permitted

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447 delivery service, return receipt requested.

448 5. Notice under this paragraph is considered perfected
449 upon the trustee receiving the return receipt bearing the
450 signature of the obligor.

451 (b) If a signed return receipt from the certified or
452 registered mail or the permitted delivery service is received by
453 the trustee within 30 calendar days after the trustee sent the
454 notice under paragraph (a), but the trustee cannot ascertain
455 from the receipt that the obligor is the person who signed the
456 receipt, the trustee shall send a second notice in the form
457 required under paragraph (a) to the notice address of the
458 obligor by certified or registered mail, return receipt
459 requested, or by a permitted delivery service, return receipt
460 requested. Notice under this paragraph is considered perfected
461 upon the trustee receiving the return receipt for the second
462 notice bearing the signature of the obligor. Unless the trustee
463 receives a signed return receipt from the certified or
464 registered mail or the permitted delivery service for the second
465 notice within 30 calendar days after the trustee sent the notice
466 under this paragraph and the trustee can ascertain from the
467 receipt that the obligor is the person who signed the receipt,
468 the trustee shall perfect service in the manner set forth in
469 either paragraph (c) or paragraph (d).

470 (c) If a signed return receipt from the certified or
471 registered mail or the permitted delivery service is not
472 received by the trustee within 30 calendar days after the
473 trustee sent the notice under paragraph (a) or the second notice
474 under paragraph (b), if applicable, the trustee shall mail a

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475 copy of the notice required by paragraph (a) by first class
476 mail, postage prepaid, to the notice address of the person with
477 the return address of the trustee on the envelope. Notice under
478 this paragraph is considered perfected upon the mailing of the
479 copy of the notice to the person.

480 (d)1. If the notice required by paragraph (a) or the
481 second notice required by paragraph (b), if applicable, is
482 returned as undeliverable within 30 calendar days after the
483 trustee sent the notice and if by a diligent search and inquiry
484 the trustee cannot obtain a different address for the obligor or
485 junior interestholder, the trustee may perfect notice against
486 that person by publication in a newspaper of general circulation
487 in the county or counties in which the timeshare interest is
488 located. The notice shall appear at least once a week for 2
489 consecutive weeks. The trustee may group an unlimited number of
490 notices in the same publication, provided that all of the
491 notices pertain to the same timeshare plan. Notice under this
492 subparagraph is considered perfected upon publication as
493 required in this subparagraph.

494 2. If the trustee's diligent search and inquiry produces
495 an address different from the notice address, the trustee shall
496 mail a copy of the notice by first class mail, postage prepaid,
497 to the new address with the return address of the trustee on the
498 envelope. Notice under this subparagraph is considered perfected
499 upon the mailing of the copy of the notice to the new address.

500 (e) If notice is perfected under paragraph (a) or
501 paragraph (b), the trustee shall execute an affidavit in
502 recordable form setting forth the manner in which notice was

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503 perfected and attach the affidavit to the certificate of
504 compliance set forth in subsection (7). The affidavit shall
505 state the nature of the notice, the date on which the notice was
506 mailed, the name and address on the envelope containing the
507 notice, the manner in which the notice was mailed, and the basis
508 for that knowledge. The signed return receipt from the certified
509 or registered mail or the permitted delivery service shall be
510 attached to the affidavit.

511 (f) If notice is perfected under paragraph (c), the
512 trustee shall execute an affidavit in recordable form setting
513 forth the manner in which notice was perfected and attach the
514 affidavit to the certificate of compliance set forth in
515 subsection (7). The affidavit shall state the nature of the
516 notice, the date on which the notice was mailed, the name and
517 address on the envelope containing the notice, the manner in
518 which the notice was mailed, the fact that a signed receipt from
519 the certified or registered mail or the permitted delivery
520 service was not timely received, the date on which a copy of the
521 notice was mailed again by first class mail with the return
522 address of the trustee on the envelope, and the name and address
523 on the envelope containing the notice. The envelopes from the
524 attempts to mail notice, if available, shall also be attached to
525 the affidavit.

526 (g) If notice is perfected by publication under paragraph
527 (d), the trustee shall execute an affidavit in recordable form
528 setting forth the manner in which notice was perfected and
529 attach the affidavit to the certificate of compliance set forth
530 in subsection (7). The affidavit shall include all the

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531 information contained in paragraph (f) and shall also state that
 532 the notice was perfected by publication after diligent search
 533 and inquiry was made for the current address for the obligor.
 534 The returned envelope from the attempt to mail notice of the
 535 publication, if available, shall be attached to the affidavit.
 536 No other action of the trustee is necessary to perfect notice.

537 (6) NOTICE OF SALE.—

538 (a) The notice of sale shall set forth:

- 539 1. The name and notice addresses of the obligor and any
 540 junior interestholder.
 541 2. The legal description of the timeshare interest.
 542 3. The name and address of the trustee.
 543 4. A description of the default that is the basis for the
 544 foreclosure.
 545 5. The official records book and page numbers where the
 546 claim of lien is recorded.
 547 6. The amounts secured by the lien and a per diem amount
 548 to account for further accrual of the amounts secured by the
 549 lien.
 550 7. The date, location, and starting time of the trustee's
 551 sale.
 552 8. The right of and the method by which the obligor may
 553 cure the default or the right of any junior interestholder to
 554 redeem its interest up to the date the trustee issues the
 555 certificate of sale in accordance with paragraph (8) (f).

556 (b) The trustee shall send a copy of the notice of sale on
 557 the date it is submitted for recording, by first class mail,

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558 postage prepaid, to the notice addresses of the obligor and any
559 junior interestholder.

560 (c) Subsequent to the date of recording of the notice of
561 sale, no notice is required to be given to any person claiming
562 an interest in the timeshare interest except as provided in this
563 section. The recording of the notice of sale has the same force
564 and effect as the filing of a lis pendens in a judicial
565 proceeding under s. 48.23.

566 (d)1. The trustee shall publish the notice of sale in a
567 newspaper of general circulation in the county or counties in
568 which the timeshare interest is located at least once a week for
569 2 consecutive weeks before the date of the sale. The last
570 publication shall occur at least 5 calendar days before the
571 sale.

572 2. The trustee may group an unlimited number of notices of
573 sale in the same publication, provided that all of the notices
574 of sale pertain to the same timeshare plan.

575 (7) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

576 (a) Within 3 business days after the trustee conducts a
577 sale, the trustee shall execute and acknowledge a certificate of
578 compliance and record it in the public records of the county or
579 counties in which the timeshare interest is located.

580 (b) In the certificate of compliance, the trustee shall:

581 1. Confirm delivery of the notice of default and intent to
582 sell and attach the affidavit required by subsection (5).

583 2. State that the default was not cured and the timeshare
584 interest was not redeemed, and state that the trustee did not
585 receive any written objection pursuant subsection (3).

586 3. Confirm that the notice of sale was published as
 587 required under paragraph (6) (d) and attach an affidavit of
 588 publication for the notice of sale.

589 4. Confirm that the notice of sale was mailed pursuant to
 590 paragraph (6) (b) together with a list of the parties to whom the
 591 notice of sale was mailed.

592 (c) In furtherance of the execution and recording of the
 593 certificate of compliance required under this subsection, the
 594 trustee is entitled to rely upon an affidavit or certification
 595 from the lienholder as to the facts and circumstances of default
 596 and failure to cure the default.

597 (8) MANNER OF SALE.—

598 (a) The sale of a timeshare interest by the trustee in a
 599 public auction shall be held in the county in which the
 600 timeshare interest is located, on the date, location, and
 601 starting time designated in the notice of sale, which shall be
 602 after 9:00 a.m. but before 4:00 p.m. on a business day not less
 603 than 30 calendar days after the recording of the notice of sale.
 604 The trustee's sale may occur online at a specific website on the
 605 Internet or in any other manner used by the clerk of the court
 606 for a judicial foreclosure sales procedure in the county or
 607 counties in which the timeshare interest is located.

608 (b) The trustee shall conduct the sale and act as the
 609 auctioneer.

610 (c) The lienholder and any person other than the trustee
 611 may bid at the sale. In lieu of participating in the sale, the
 612 lienholder may send the trustee written bidding instructions
 613 that the trustee shall announce as appropriate during the sale.

614 (d) The trustee may postpone the sale from time to time.
 615 In such case, notice of postponement must be given by the
 616 trustee at the date, time, and location contained in the notice
 617 of sale. The notice of sale for the postponed sale shall be
 618 mailed pursuant to paragraph (6) (b), recorded pursuant to
 619 paragraph (4) (e), and published pursuant to paragraph (6) (d).
 620 The effective date of the initial notice of sale for purposes of
 621 paragraph (4) (b) is not affected by a postponed sale.

622 (e) The highest bidder of the timeshare interest shall pay
 623 the price bid to the trustee in cash or certified funds on the
 624 day of the sale. If the lienholder is the highest bidder, the
 625 lienholder shall receive a credit up to the amount set forth in
 626 the notice of sale as required by subparagraph (6) (a) 6.

627 (f) On the date of the sale and upon receipt of the cash
 628 or certified funds due from the highest bidder, the trustee
 629 shall issue to the highest bidder a certificate of sale stating
 630 that a foreclosure conforming to the requirements of this
 631 section has occurred, including the time, location, and date of
 632 the sale, that the timeshare interest was sold, the amounts
 633 secured by the lien, and the amount of the highest bid. A copy
 634 of the certificate of sale shall be mailed by certified or
 635 registered mail, return receipt requested, or by a permitted
 636 delivery service, return receipt requested, to all persons
 637 entitled to receive a notice of sale under subsection (6).

638 (9) EFFECT OF TRUSTEE'S SALE.—

639 (a) A sale conducted under subsection (8) forecloses and
 640 terminates all interests of any person to whom notice is given
 641 under paragraph (4) (d) and paragraph (6) (b), and of any other

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642 person claiming by, through, or under any such person, in the
643 affected timeshare interest. The assessment lien does not merge
644 into the trustee's deed to any extent that a subsequent judicial
645 foreclosure or reforeclosure of the assessment lien becomes
646 necessary or required. A failure to give notice to any person
647 entitled to notice does not affect the validity of the sale as
648 to the interests of any person properly notified. A person
649 entitled to notice but not given notice has the rights of a
650 person not made a defendant in a judicial foreclosure.

651 (b) A lienholder may conduct a subsequent foreclosure of a
652 timeshare interest to correct any failure to meet the
653 requirements of this section before the issuance of a
654 certificate of sale under paragraph (8)(f).

655 (c) On the issuance of a certificate of sale under
656 paragraph (8)(f), all rights of redemption that have been
657 foreclosed under this section shall terminate.

658 (d) A sale conducted under subsection (8) extinguishes the
659 assessment lien and the obligor's liability for all amounts
660 secured by the lien. The lienholder has no right to any
661 deficiency judgment against the obligor after a sale of the
662 obligor's timeshare interest under this section.

663 (e) The issuance and recording of the trustee's deed is
664 presumed valid and may be relied upon by third parties without
665 actual knowledge of irregularities in the sale.

666 (10) TRUSTEE'S DEED.—

667 (a) The trustee's deed shall include the name and address
668 of the trustee, the name and address of the highest bidder, the
669 name of the former owner, a legal description of the timeshare

670 interest, and the name and address of the preparer of the
 671 trustee's deed. The trustee's deed shall recite that the
 672 certificate of compliance was recorded, and shall contain no
 673 warranties of title from the trustee.

674 (b) Ten calendar days after a sale, absent the prior
 675 filing and service on the trustee of a judicial action to enjoin
 676 issuance of the trustee's deed to the timeshare interest, the
 677 trustee shall:

- 678 1. Issue a trustee's deed to the highest bidder.
- 679 2. Record the trustee's deed in the public records of the
 680 county or counties in which the timeshare interest is located.

681 (c)1. The certificate of compliance and trustee's deed
 682 together are presumptive evidence of the truth of the matters
 683 set forth in them, and no action to set aside the sale and void
 684 the trustee's deed may be filed or otherwise pursued against any
 685 person acquiring the timeshare interest for value, including any
 686 subsequent mortgagee or buyer.

687 2. The trustee's deed conveys to the highest bidder all
 688 rights, title, and interest in the timeshare interest that the
 689 former owner had, or had the power to convey, at the time of the
 690 recording of the claim of lien, together with all rights, title,
 691 and interest that the former owner or his or her successors in
 692 interest acquired after the recording of the claim of lien.

693 3. The issuance and recording of a trustee's deed shall
 694 have the same force and effect as the issuance and recording of
 695 a certificate of title by the clerk of the court in a judicial
 696 foreclosure action.

697 (11) DISPOSITION OF PROCEEDS OF SALE.—

698 (a) The trustee shall apply the proceeds of the sale as
 699 follows:

700 1. To the expenses of the sale, including compensation of
 701 the trustee.

702 2. To the amount owed and set forth in the notice as
 703 required in subparagraph (6) (a) 6.

704 3. If there are junior interestholders, the trustee may
 705 file an action in interpleader, pay the surplus to a court of
 706 competent jurisdiction, name the competing junior
 707 interestholders, and ask the court to determine the proper
 708 distribution of the surplus. In any interpleader action, the
 709 trustee shall recover reasonable attorney's fees and costs.

710 4. If there are no junior interestholders, or if all
 711 junior interestholders have been paid, any surplus shall be paid
 712 to the former owner. If the trustee is unable to locate the
 713 former owner 1 year after the sale, the surplus, if any, shall
 714 be deposited with the Chief Financial Officer pursuant to
 715 chapter 717.

716 (b) In disposing of the proceeds of the sale, the trustee
 717 may rely on the information provided in the affidavit of the
 718 lienholder under paragraph (2) (c) and, in the event of a dispute
 719 or uncertainty over such claims, the trustee has the discretion
 720 to submit the matter to adjudication by court, by interpleader,
 721 or otherwise and shall recover reasonable attorney's fees and
 722 costs.

723 (12) JUDICIAL FORECLOSURE ACTIONS.—The nonjudicial
 724 foreclosure procedure established in this section does not
 725 impair or otherwise affect the lienholder's continuing right to

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726 bring a judicial foreclosure action, in lieu of using the
727 nonjudicial foreclosure procedure, with respect to any
728 assessment lien.

729 (13) APPLICATION.—This section applies to any default
730 giving rise to the imposition of an assessment lien which occurs
731 after the effective date of this section. An amendment to a
732 timeshare instrument is not required to permit a managing entity
733 lienholder to use the nonjudicial foreclosure procedures of this
734 section. If a timeshare instrument contains any provision that
735 prevents the use of nonjudicial foreclosure procedures, an
736 amendment to the timeshare instrument permitting the use of the
737 nonjudicial foreclosure procedure set forth in this section may
738 be adopted by a majority of those present and voting at a duly
739 called meeting of the owners' association at which at least 15
740 percent of the voting interests are present in person or by
741 proxy.

742 (14) ACTIONS FOR FAILURE TO FOLLOW THE NONJUDICIAL
743 FORECLOSURE PROCEDURE.—An action for actual damages for a
744 material violation of this section may be brought by an obligor
745 against the lienholder for the failure to follow the nonjudicial
746 foreclosure procedure contained in this section.

747 Section 9. Section 721.856, Florida Statutes, is created
748 to read:

749 721.856 Procedure for the nonjudicial foreclosure of
750 mortgage liens.—The provisions of this section establish a
751 nonjudicial foreclosure procedure for mortgage liens.

752 (1) APPOINTMENT OF TRUSTEE.—

753 (a) A trustee or a substitute trustee may be appointed by

754 a lienholder at any time by recording a notice of appointment of
 755 trustee or notice of substitution of trustee in the public
 756 records of the county or counties in which the timeshare
 757 interest is located. A lienholder may appoint multiple trustees
 758 in a single appointment, and any appointed trustee may be used
 759 by the lienholder regarding the nonjudicial foreclosure of any
 760 mortgage lien.

761 (b) The recorded notice of appointment of trustee or
 762 notice of substitution of trustee shall contain the name and
 763 address of the trustee or substitute trustee, the name and
 764 address of the lienholder, and the name and address of the
 765 timeshare plan.

766 (c) The lienholder shall maintain a list of all trustees
 767 and substitute trustees appointed by the lienholder and shall
 768 provide an obligor with verification that a particular person is
 769 an appointed trustee or substitute trustee within 3 business
 770 days after receipt of a written request for such verification
 771 from the obligor.

772 (2) INITIATING THE NONJUDICIAL FORECLOSURE OF MORTGAGE
 773 LIENS.—

774 (a) Before initiating the nonjudicial foreclosure against
 775 a timeshare interest, the mortgage, or an amendment to a
 776 mortgage executed by the obligor before the effective date of
 777 this section, must contain a statement in substantially the
 778 following form:

780 If the mortgagor fails to make timely payments under
 781 the obligation secured by this mortgage, or is

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782 otherwise deemed in uncured default of this mortgage,
783 the lien against the mortgagor's timeshare interest
784 created by this mortgage may be foreclosed in
785 accordance with either a judicial foreclosure
786 procedure or a nonjudicial procedure and may result in
787 the loss of your timeshare interest. If the mortgagee
788 initiates a nonjudicial foreclosure procedure, the
789 mortgagor shall have the option to object and the
790 mortgagee may proceed only by filing a judicial
791 foreclosure action.

792
793 (b)1. In order to initiate a nonjudicial foreclosure
794 procedure against a timeshare interest, the lienholder shall
795 deliver an affidavit to the trustee that identifies the obligor,
796 the notice address of the obligor, the timeshare interest, the
797 official records book and page number where the mortgage is
798 recorded, and the name and notice address of any junior
799 interestholder. The affidavit shall be accompanied by a title
800 search of the timeshare interest identifying any junior
801 interestholders of record, and the title search must be
802 performed within 60 calendar days before the date of the
803 affidavit.

804 2. The affidavit shall also state that the obligor has
805 defaulted in the obligation to make a payment under a specified
806 provision of the mortgage or is otherwise deemed in uncured
807 default under a specified provision of the mortgage.

808 3. The affidavit shall also specify the amounts secured by
809 the lien as of the date of the affidavit and a per diem amount

810 to account for further accrual of the amounts secured by the
 811 lien.

812 (3) OBLIGOR'S RIGHT TO OBJECT TO USE OF THE NONJUDICIAL
 813 FORECLOSURE PROCEDURE.—

814 (a) The obligor may object to the lienholder's use of the
 815 nonjudicial foreclosure procedure for a specific default at any
 816 time before the sale of the timeshare interest under subsection
 817 (8) by delivering a written objection to the trustee using the
 818 objection form provided for in subsection (5). If the trustee
 819 receives the written objection from the obligor, the trustee may
 820 not proceed with the nonjudicial foreclosure procedure as to the
 821 default specified in the notice of default and intent to sell
 822 under subsection (5), and the lienholder may proceed thereafter
 823 only with a judicial foreclosure action as to that specified
 824 default.

825 (b) If the obligor delivers the written objection
 826 authorized in paragraph (a) to the trustee more than 30 calendar
 827 days after the notice of default and intent to sell is deemed
 828 perfected under subsection (5), the lienholder is entitled to
 829 collect from the obligor in a judicial foreclosure procedure all
 830 of the costs incurred in the nonjudicial foreclosure procedure.

831 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
 832 trustee may sell an encumbered timeshare interest foreclosed
 833 under this section if:

834 (a) The trustee has received the affidavit from the
 835 lienholder under paragraph (2) (c);

836 (b) The trustee has not received a written objection to
 837 the use of the nonjudicial foreclosure procedure under

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838 subsection (3);

839 (c) There is no lis pendens recorded and pending against
840 the same timeshare interest, and the trustee has not been served
841 notice of the filing of any action to enjoin the nonjudicial
842 foreclosure sale;

843 (d) The trustee is in possession of the original
844 promissory note executed by the mortgagor and secured by the
845 mortgage lien;

846 (e) The trustee has provided written notice of default and
847 intent to sell as required by subsection (5) and a period of at
848 least 30 calendar days has elapsed after such notice is deemed
849 perfected under subsection (5); and

850 (f) The notice of sale required by subsection (6) has been
851 recorded in the public records of the county in which the
852 mortgage was recorded.

853 (5) NOTICE OF DEFAULT AND INTENT TO SELL.-

854 (a) In any foreclosure proceeding under this section, the
855 trustee is required to notify the obligor of the proceeding by
856 sending the obligor a written notice of default and intent to
857 sell to the notice address of the obligor by certified or
858 registered mail, return receipt requested, or by a permitted
859 delivery service, return receipt requested, as follows:

860 1. The notice of default and intent to sell shall identify
861 the obligor, the notice address of the obligor, the legal
862 description of the timeshare interest, the nature of the
863 default, the amounts secured by the lien, and a per diem amount
864 to account for further accrual of the amounts secured by the
865 lien and shall state the method by which the obligor may cure

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866 the default.

867 2. The notice of default and intent to sell shall include
868 an objection form with which the obligor can object to the use
869 of the nonjudicial procedure by signing and returning the
870 objection form to the trustee. The objection form shall identify
871 the obligor, the notice address of the obligor, the timeshare
872 interest, and the return address of the trustee and shall state:
873 "The undersigned obligor exercises the obligor's right to object
874 to the use of the nonjudicial foreclosure procedure contained in
875 section 721.856, Florida Statutes."

876 3. The notice of default and intent to sell shall also
877 contain a statement in substantially the following form:

878
879 If you fail to cure the default as set forth in this
880 notice or take other appropriate action with regard to
881 this foreclosure matter, you risk losing ownership of
882 your timeshare interest through the nonjudicial
883 foreclosure procedure established in section 721.856,
884 Florida Statutes. You may choose to sign and send to
885 the trustee the enclosed objection form, exercising
886 your right to object to the use of the nonjudicial
887 procedure. If you do not object to the use of the
888 nonjudicial foreclosure procedure, you shall not be
889 subject to a deficiency judgment even if the proceeds
890 from the sale of your timeshare interest are
891 insufficient to offset the amounts secured by the
892 lien, which may include all past due amounts, accrued
893 interest, late fees, taxes, advances for the payment

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894 of taxes, insurance, and maintenance of the timeshare
895 interest, and any fees or costs incurred by the
896 lienholder or trustee, including any reasonable
897 attorney's fees, trustee's fees and costs incurred in
898 connection with the default. Upon the trustee's
899 receipt of your signed objection form, the foreclosure
900 of the lien with respect to the default specified in
901 this notice shall be subject to the judicial
902 foreclosure procedure only. You have the right to cure
903 your default in the manner set forth in this notice at
904 any time before the trustee's sale of your timeshare
905 interest. If you object to the use of the nonjudicial
906 foreclosure procedure, you may be subject to a
907 deficiency judgment under any subsequent judicial
908 foreclosure action. In addition, if you deliver your
909 written objection to the trustee more than 30 calendar
910 days after the notice of default and intent to sell
911 has been delivered, the lienholder is entitled to
912 collect from you in a judicial foreclosure procedure
913 all of the costs incurred in the nonjudicial
914 foreclosure procedure.

915
916 4. The trustee shall also mail a copy of the notice of
917 default and intent to sell, without the objection form, to the
918 notice address of any junior interestholder by certified or
919 registered mail, return receipt requested, or by a permitted
920 delivery service, return receipt requested.

921 5. Notice under this paragraph is considered perfected

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922 upon the trustee receiving the return receipt bearing the
923 signature of the obligor.

924 (b) If a signed return receipt from the certified or
925 registered mail or the permitted delivery service is received by
926 the trustee within 30 calendar days after the trustee sent the
927 notice under paragraph (a), but the trustee cannot ascertain
928 from the receipt that the obligor is the person who signed the
929 receipt, the trustee shall send a second notice in the form
930 required under paragraph (a) to the notice address of the
931 obligor by certified or registered mail, return receipt
932 requested, or by a permitted delivery service, return receipt
933 requested. Notice under this paragraph is considered perfected
934 upon the trustee receiving the return receipt for the second
935 notice bearing the signature of the obligor. Unless the trustee
936 receives a signed return receipt from the certified or
937 registered mail or the permitted delivery service for the second
938 notice within 30 calendar days after the trustee sent the notice
939 under this paragraph and the trustee can ascertain from the
940 receipt that the obligor is the person who signed the receipt,
941 the trustee shall perfect service in the manner set forth in
942 either paragraph (c) or paragraph (d).

943 (c) If a signed return receipt from the certified or
944 registered mail or the permitted delivery service is not
945 received by the trustee within 30 calendar days after the
946 trustee sent the notice under paragraph (a) or the second notice
947 under paragraph (b), if applicable, the trustee shall mail a
948 copy of the notice required by paragraph (a) by first class
949 mail, postage prepaid, to the notice address of the person with

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950 the return address of the trustee on the envelope. Notice under
951 this paragraph is considered perfected upon the mailing of the
952 copy of the notice to the person.

953 (d)1. If the notice required by paragraph (a) or the
954 second notice required by paragraph (b), if applicable, is
955 returned as undeliverable within 30 calendar days after the
956 trustee sent the notice and if by a diligent search and inquiry
957 the trustee cannot obtain a different address for the obligor or
958 junior interestholder, the trustee may perfect notice against
959 that person by publication in a newspaper of general circulation
960 in the county or counties in which the timeshare interest is
961 located. The notice shall appear at least once a week for 2
962 consecutive weeks. The trustee may group an unlimited number of
963 notices in the same publication, provided that all of the
964 notices pertain to the same timeshare plan. Notice under this
965 subparagraph is considered perfected upon publication as
966 required in this subparagraph.

967 2. If the trustee's diligent search and inquiry produces
968 an address different from the notice address, the trustee shall
969 mail a copy of the notice by first class mail, postage prepaid,
970 to the new address with the return address of the trustee on the
971 envelope. Notice under this subparagraph is considered perfected
972 upon the mailing of the copy of the notice to the new address.

973 (e) If notice is perfected under paragraph (a) or
974 paragraph (b), the trustee shall execute an affidavit in
975 recordable form setting forth the manner in which notice was
976 perfected and attach the affidavit to the certificate of
977 compliance set forth in subsection (7). The affidavit shall

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978 state the nature of the notice, the date on which the notice was
979 mailed, the name and address on the envelope containing the
980 notice, the manner in which the notice was mailed, and the basis
981 for that knowledge. The signed return receipt from the certified
982 or registered mail or the permitted delivery service shall be
983 attached to the affidavit.

984 (f) If notice is perfected under paragraph (c), the
985 trustee shall execute an affidavit in recordable form setting
986 forth the manner in which notice was perfected and attach the
987 affidavit to the certificate of compliance set forth in
988 subsection (7). The affidavit shall state the nature of the
989 notice, the date on which the notice was mailed, the name and
990 address on the envelope containing the notice, the manner in
991 which the notice was mailed, the fact that a signed receipt from
992 the certified or registered mail or the permitted delivery
993 service was not timely received, the date on which a copy of the
994 notice was mailed again by first class mail with the return
995 address of the trustee on the envelope, and the name and address
996 on the envelope containing the notice. The envelopes from the
997 attempts to mail notice, if available, shall also be attached to
998 the affidavit.

999 (g) If notice is perfected by publication under paragraph
1000 (d), the trustee shall execute an affidavit in recordable form
1001 setting forth the manner in which notice was perfected and
1002 attach the affidavit to the certificate of compliance set forth
1003 in subsection (7). The affidavit shall include all the
1004 information contained in paragraph (f) and shall also state that
1005 the notice was perfected by publication after diligent search

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1006 and inquiry was made for the current address for the obligor.
 1007 The returned envelope from the attempt to mail notice of the
 1008 publication, if available, shall be attached to the affidavit.
 1009 No other action of the trustee is necessary to perfect notice.

1010 (6) NOTICE OF SALE.—

1011 (a) The notice of sale shall set forth:

1012 1. The name and notice addresses of the obligor and any
 1013 junior interestholder.

1014 2. The legal description of the timeshare interest.

1015 3. The name and address of the trustee.

1016 4. A description of the default that is the basis for the
 1017 foreclosure.

1018 5. The official records book and page numbers where the
 1019 mortgage is recorded.

1020 6. The amounts secured by the lien and a per diem amount
 1021 to account for further accrual of the amounts secured by the
 1022 lien.

1023 7. The date, location, and starting time of the trustee's
 1024 sale.

1025 8. The right of and the method by which the obligor may
 1026 cure the default or the right of any junior interestholder to
 1027 redeem its interest up to the date the trustee issues the
 1028 certificate of sale in accordance with paragraph (8) (f).

1029 (b) The trustee shall send a copy of the notice of sale on
 1030 the date it is submitted for recording, by first class mail,
 1031 postage prepaid, to the notice addresses of the obligor and any
 1032 junior interestholder.

1033 (c) Subsequent to the date of recording of the notice of

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1034 sale, no notice is required to be given to any person claiming
 1035 an interest in the timeshare interest except as provided in this
 1036 section. The recording of the notice of sale has the same force
 1037 and effect as the filing of a lis pendens in a judicial
 1038 proceeding under s. 48.23.

1039 (d)1. The trustee shall publish the notice of sale in a
 1040 newspaper of general circulation in the county or counties in
 1041 which the timeshare interest is located at least once a week for
 1042 two consecutive weeks before the date of the sale. The last
 1043 publication shall occur at least 5 calendar days before the
 1044 sale.

1045 2. The trustee may group an unlimited number of notices of
 1046 sale in the same publication, provided that all of the notices
 1047 of sale pertain to the same timeshare plan.

1048 (7) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1049 (a) Within 3 business days after the trustee conducts a
 1050 sale, the trustee shall execute and acknowledge a certificate of
 1051 compliance and record it in the public records of the county or
 1052 counties in which the timeshare interest is located.

1053 (b) In the certificate of compliance, the trustee shall:

1054 1. Confirm delivery of the notice of default and intent to
 1055 sell and attach the affidavit required by subsection (5).

1056 2. State that the default was not cured and the timeshare
 1057 interest was not redeemed, and state that the trustee did not
 1058 receive any written objection pursuant subsection (3).

1059 3. State that the trustee is in possession of the original
 1060 promissory note executed by the mortgagor and secured by the
 1061 mortgage lien.

1062 4. Confirm that the notice of sale was published as
 1063 required under (6) (d) and attach an affidavit of publication for
 1064 the notice of sale.

1065 5. Confirm that the notice of sale was mailed pursuant to
 1066 paragraph (6) (b) together with a list of the parties to whom the
 1067 notice of sale was mailed.

1068 (c) In furtherance of the execution and recording of the
 1069 certificate of compliance required under this subsection, the
 1070 trustee is entitled to rely upon an affidavit or certification
 1071 from the lienholder as to the facts and circumstances of default
 1072 and failure to cure the default.

1073 (8) MANNER OF SALE.—

1074 (a) The sale of a timeshare interest by the trustee in a
 1075 public auction shall be held in the county in which the
 1076 timeshare interest is located, on the date, location, and
 1077 starting time designated in the notice of sale, which shall be
 1078 after 9:00 a.m. but before 4:00 p.m. on a business day not less
 1079 than 30 calendar days after the recording of the notice of sale.
 1080 The trustee's sale may occur online at a specific website on the
 1081 Internet or in any other manner used by the clerk of the court
 1082 for a judicial foreclosure sales procedure in the county or
 1083 counties in which the timeshare interest is located.

1084 (b) The trustee shall conduct the sale and act as the
 1085 auctioneer.

1086 (c) The lienholder and any person other than the trustee
 1087 may bid at the sale. In lieu of participating in the sale, the
 1088 lienholder may send the trustee written bidding instructions
 1089 that the trustee shall announce as appropriate during the sale.

1090 (d) The trustee may postpone the sale from time to time.
 1091 In such case, notice of postponement must be given by the
 1092 trustee at the date, time, and location contained in the notice
 1093 of sale. The notice of sale for the postponed sale shall be
 1094 mailed pursuant to paragraph (6) (b), recorded pursuant to
 1095 paragraph (4) (f), and published pursuant to paragraph (6) (d).
 1096 The effective date of the initial notice of sale for purposes of
 1097 paragraph (4) (b) is not affected by a postponed sale.

1098 (e) The highest bidder of the timeshare interest shall pay
 1099 the price bid to the trustee in cash or certified funds on the
 1100 day of the sale. If the lienholder is the highest bidder, the
 1101 lienholder shall receive a credit up to the amount set forth in
 1102 the notice of sale as required by subparagraph (6) (a) 6.

1103 (f) On the date of the sale and upon receipt of the cash
 1104 or certified funds due from the highest bidder, the trustee
 1105 shall issue to the highest bidder a certificate of sale stating
 1106 that a foreclosure conforming to the requirements of this
 1107 section has occurred, including the time, location, and date of
 1108 the sale, that the timeshare interest was sold, the amounts
 1109 secured by the lien, and the amount of the highest bid. A copy
 1110 of the certificate of sale shall be mailed by certified or
 1111 registered mail, return receipt requested, or by a permitted
 1112 delivery service, return receipt requested, to all persons
 1113 entitled to receive a notice of sale under subsection (6).

1114 (9) EFFECT OF TRUSTEE'S SALE.—

1115 (a) A sale conducted under subsection (8) forecloses and
 1116 terminates all interests of any person to whom notice is given
 1117 under paragraph (4) (e) and paragraph (6) (b), and of any other

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1118 person claiming by, through, or under any such person, in the
 1119 affected timeshare interest. The mortgage lien does not merge
 1120 into the trustee's deed to any extent that a subsequent judicial
 1121 foreclosure or reforeclosure of the mortgage lien becomes
 1122 necessary or required. A failure to give notice to any person
 1123 entitled to notice does not affect the validity of the sale as
 1124 to the interests of any person properly notified. A person
 1125 entitled to notice but not given notice has the rights of a
 1126 person not made a defendant in a judicial foreclosure. Any
 1127 subsequent foreclosure required by failure to notify a party
 1128 under paragraph (6) (b) may be conducted under this section.

1129 (b) A lienholder may conduct a subsequent foreclosure of a
 1130 timeshare interest to correct any failure to meet the
 1131 requirements of this section before the issuance of a
 1132 certificate of sale under paragraph (8) (f).

1133 (c) On the issuance of a certificate of sale under
 1134 paragraph (8) (f), all rights of redemption that have been
 1135 foreclosed under this section shall terminate.

1136 (d) A sale conducted under subsection (8) extinguishes the
 1137 lien and the obligor's liability for all amounts secured by the
 1138 lien. The lienholder has no right to any deficiency judgment
 1139 against the obligor after a sale of the obligor's timeshare
 1140 interest under this section.

1141 (e) The issuance and recording of the trustee's deed is
 1142 presumed valid and may be relied upon by third parties without
 1143 actual knowledge of irregularities in the sale.

1144 (10) TRUSTEE'S DEED.—

1145 (a) The trustee's deed shall include the name and address

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1146 of the trustee, the name and address of the highest bidder, the
1147 name of the former owner, a legal description of the timeshare
1148 interest, and the name and address of the preparer of the
1149 trustee's deed. The trustee's deed shall recite that the
1150 certificate of compliance was recorded, and shall contain no
1151 warranties of title from the trustee.

1152 (b) Ten calendar days after a sale, absent the prior
1153 filing and service on the trustee of a judicial action to enjoin
1154 issuance of the trustee's deed to the timeshare interest, the
1155 trustee shall:

1156 1. Cancel the original promissory note executed by the
1157 mortgagor and secured by the mortgage lien.

1158 2. Issue a trustee's deed to the highest bidder.

1159 3. Record the trustee's deed in the public records of the
1160 county or counties in which the timeshare interest is located.

1161 (c)1. The certificate of compliance and trustee's deed
1162 together are presumptive evidence of the truth of the matters
1163 set forth in them, and no action to set aside the sale and void
1164 the trustee's deed may be filed or otherwise pursued against any
1165 person acquiring the timeshare interest for value, including any
1166 subsequent mortgagee or buyer.

1167 2. The trustee's deed conveys to the highest bidder all
1168 rights, title, and interest in the timeshare interest that the
1169 former owner had, or had the power to convey, at the time of the
1170 execution of the mortgage, together with all rights, title, and
1171 interest that the former owner or his or her successors in
1172 interest acquired after the execution of the mortgage.

1173 3. The issuance and recording of a trustee's deed shall

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1174 have the same force and effect as the issuance and recording of
 1175 a certificate of title by the clerk of the court in a judicial
 1176 foreclosure action.

1177 (11) DISPOSITION OF PROCEEDS OF SALE.—

1178 (a) The trustee shall apply the proceeds of the sale as
 1179 follows:

1180 1. To the expenses of the sale, including compensation of
 1181 the trustee.

1182 2. To the amount owed and set forth in the notice as
 1183 required in subparagraph (6) (a) 6.

1184 3. If there are junior interestholders, the trustee may
 1185 file an action in interpleader, pay the surplus to a court of
 1186 competent jurisdiction, name the competing junior
 1187 interestholders, and ask the court to determine the proper
 1188 distribution of the surplus. In any interpleader action, the
 1189 trustee shall recover reasonable attorney's fees and costs.

1190 4. If there are no junior interestholders, or if all
 1191 junior interestholders have been paid, any surplus shall be paid
 1192 to the former owner. If the trustee is unable to locate the
 1193 former owner 1 year after the sale, the surplus, if any, shall
 1194 be deposited with the Chief Financial Officer pursuant to
 1195 chapter 717.

1196 (b) In disposing of the proceeds of the sale, the trustee
 1197 may rely on the information provided in the affidavit of the
 1198 lienholder under paragraph (2) (c) and, in the event of a dispute
 1199 or uncertainty over such claims, the trustee has the discretion
 1200 to submit the matter to adjudication by court, by interpleader,
 1201 or otherwise and shall recover reasonable attorney's fees and

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1202 costs.

1203 (12) JUDICIAL FORECLOSURE ACTIONS.—The nonjudicial
 1204 foreclosure procedure established in this section does not
 1205 impair or otherwise affect the lienholder's continuing right to
 1206 bring a judicial foreclosure action, in lieu of using the
 1207 nonjudicial foreclosure procedure, with respect to any mortgage
 1208 lien.

1209 (13) ACTIONS FOR FAILURE TO FOLLOW THE NONJUDICIAL
 1210 FORECLOSURE PROCEDURE.—An action for actual damages for a
 1211 material violation of this section may be brought by an obligor
 1212 against the lienholder for the failure to follow the nonjudicial
 1213 foreclosure procedure contained in this section.

1214 Section 10. Subsection (1) of section 721.86, Florida
 1215 Statutes, is amended to read:

1216 721.86 Miscellaneous provisions.—

1217 (1) In the event of a conflict between the provisions of
 1218 this part and the other provisions of this chapter, chapter 702,
 1219 or other applicable law, the provisions of this part shall
 1220 prevail ~~The procedures in this part must be given effect in the~~
 1221 ~~context of any foreclosure proceedings against timeshare estates~~
 1222 ~~governed by this chapter, chapter 702, chapter 718, or chapter~~
 1223 ~~719.~~

1224 Section 11. This act shall take effect upon becoming a
 1225 law.