

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 a  
6           judicial action or a trustee procedure to foreclose  
7           certain liens under specified conditions; revising when a  
8           lien is effective; renaming part III of chapter 721, F.S.,  
9           to conform to changes made by this act; amending s.  
10          721.81, F.S.; revising and providing legislative purposes  
11          of the part; amending s. 721.82 F.S.; revising and  
12          providing definitions; amending s. 721.83, F.S., relating  
13          to consolidation of foreclosure actions; clarifying  
14          application to judicial foreclosure actions; amending s.  
15          721.85, F.S., relating to service to notice address or on  
16          registered agent; conforming provisions to changes made by  
17          this act; creating s. 721.855, F.S.; establishing  
18          procedure for the trustee foreclosure of assessment liens;  
19          providing for the appointment of a trustee; providing  
20          recording requirements for such liens; providing  
21          procedures for the initiation of a trustee foreclosure  
22          procedure against a timeshare interest; providing  
23          procedures for an obligor's objection to the trustee  
24          foreclosure procedure; providing conditions to a trustee's  
25          exercise of power of sale; providing requirements for a  
26          notice of default and intent to sell; providing  
27          requirements for a notice of sale; providing requirements  
28          for the sale by auction of foreclosed encumbered timeshare

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

57 | 721.86, F.S.; providing for priority of application in  
 58 | case of conflict; conforming terminology to changes made  
 59 | by this act; amending s. 721.20, F.S.; revising exemptions  
 60 | from certain licensing requirements; providing an  
 61 | effective date.

62 |

63 | Be It Enacted by the Legislature of the State of Florida:

64 |

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

67 | 721.07 Public offering statement.—Prior to offering any  
 68 | timeshare plan, the developer must submit a filed public  
 69 | offering statement to the division for approval as prescribed by  
 70 | s. 721.03, s. 721.55, or this section. Until the division  
 71 | approves such filing, any contract regarding the sale of that  
 72 | timeshare plan is subject to cancellation by the purchaser  
 73 | pursuant to s. 721.10.

74 | (5) Every filed public offering statement for a timeshare  
 75 | plan which is not a multisite timeshare plan shall contain the  
 76 | information required by this subsection. The division is  
 77 | authorized to provide by rule the method by which a developer  
 78 | must provide such information to the division.

79 | (jj) The following statement in conspicuous type:

80 |

81 | The managing entity has a lien against each timeshare  
 82 | interest to secure the payment of assessments, ad  
 83 | valorem assessments, tax assessments, and special  
 84 | assessments. Your failure to make any required

85        payments may result in the judicial or trustee  
 86        foreclosure of an assessment lien and the loss of your  
 87        timeshare interest. If the managing entity initiates a  
 88        trustee procedure, you shall have the option to object  
 89        to the use of the trustee foreclosure procedure and  
 90        the managing entity may only proceed by filing a  
 91        judicial foreclosure action.

92  
 93        Section 2. Subsections (2) and (3) of section 721.16,  
 94 Florida Statutes, are amended to read:

95        721.16 Liens for overdue assessments; liens for labor  
 96 performed on, or materials furnished to, a timeshare unit.—

97        (2) The managing entity may bring a judicial ~~an~~ action in  
 98 its name to foreclose a lien under subsection (1) in the manner  
 99 a mortgage of real property is foreclosed and may also bring an  
 100 action to recover a money judgment for the unpaid assessments  
 101 without waiving any claim of lien. As an alternative to  
 102 initiating a judicial action, the managing entity may initiate a  
 103 trustee procedure to foreclose an assessment lien under s.  
 104 721.855.

105        (3) The lien is effective from the date of recording a  
 106 claim of lien in the official ~~public~~ records of the county or  
 107 counties in which the timeshare interest is ~~accommodations and~~  
 108 ~~facilities constituting the timeshare plan are~~ located. The  
 109 claim of lien shall state the name of the timeshare plan and  
 110 identify the timeshare interest for which the lien is effective,  
 111 state the name of the purchaser, state the assessment amount  
 112 due, and state the due dates. Notwithstanding any provision of

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113 s. 718.116(5) ~~(a)~~ or s. 719.108(4) to the contrary, the lien is  
 114 effective until satisfied or until 5 years have expired after  
 115 the date the claim of lien is recorded unless, within that time,  
 116 an action to enforce the lien is commenced pursuant to  
 117 subsection (2). A claim of lien for assessments may include only  
 118 assessments which are due when the claim is recorded. A claim of  
 119 lien shall be signed and acknowledged by an officer or agent of  
 120 the managing entity. Upon full payment, the person making the  
 121 payment is entitled to receive a satisfaction of the lien.

122 Section 3. Part III of chapter 721, Florida Statutes,  
 123 entitled "Foreclosure of Liens on Timeshare Estates," is renamed  
 124 "Foreclosure of Liens on Timeshare Interests."

125 Section 4. Section 721.81, Florida Statutes, is amended to  
 126 read:

127 721.81 Legislative purpose.—The purposes of this part are  
 128 to:

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

133 (2) Recognize that the economic health and efficient  
 134 operation of the vacation ownership industry are in part  
 135 dependent upon the availability of an efficient and economical  
 136 process for all timeshare interest foreclosures ~~foreclosure~~.

137 (3) Recognize the need to assist both owners' associations  
 138 and mortgagees by simplifying and expediting the process for the  
 139 judicial and trustee ~~of~~ foreclosure of assessment liens and  
 140 mortgage liens against timeshare interests ~~estates~~.

141           (4) Improve judicial economy and reduce court congestion  
 142 and the cost to taxpayers by establishing streamlined procedures  
 143 for the judicial and trustee foreclosure of assessment liens and  
 144 mortgage liens against timeshare interests ~~estates~~.

145           (5) Recognize that nearly all timeshare interest  
 146 foreclosures are uncontested.

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

151           (7) Recognize that the use of the trustee foreclosure  
 152 procedure established under ss. 721.855 and 721.856 shall have  
 153 the same force and effect as the use of the judicial foreclosure  
 154 procedure against a timeshare interest with respect to the  
 155 provisions of this chapter or any other applicable law. However,  
 156 obligors shall not be subject to a deficiency judgment even if  
 157 the proceeds from the sale of the timeshare interest are  
 158 insufficient to offset the amounts secured by the lien.

159           Section 5. Section 721.82, Florida Statutes, is amended to  
 160 read:

161           721.82 Definitions.—As used in this part, the term:

162           (1) "Amounts secured by the lien" means all amounts  
 163 secured by an assessment lien or mortgage lien, including, but  
 164 not limited to, all past due amounts, accrued interest, late  
 165 fees, taxes, advances for the payment of taxes, insurance and  
 166 maintenance of the timeshare interest, and any fees or costs  
 167 incurred by the lienholder or trustee, including any reasonable  
 168 attorney's fees, trustee's fees, and costs incurred in

169 | connection with the default.

170 |       (2)~~(1)~~ "Assessment lien" means:

171 |       (a) A lien for delinquent assessments as provided in ss.  
 172 | ~~721.16, 718.116, and 719.108,~~ and 721.16 ~~as to timeshare~~  
 173 | ~~condominiums;~~ or

174 |       (b) A lien for unpaid ad valorem assessments, tax  
 175 | assessments, ~~taxes~~ and special assessments as provided in s.  
 176 | 192.037(8).

177 |       (3)~~(2)~~ "Junior interestholder" means any person who has a  
 178 | lien or interest of record against a timeshare interest estate  
 179 | in the county or counties in which the timeshare interest estate  
 180 | is located, which is inferior to the mortgage lien or assessment  
 181 | lien being foreclosed under this part.

182 |       (4)~~(3)~~ "Lienholder" means a holder of an assessment lien  
 183 | or a holder of a mortgage lien, as applicable. A receiver  
 184 | appointed under s. 721.26 is a lienholder for purposes of  
 185 | foreclosure of assessment liens under this part.

186 |       (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.  
 187 | 697.01.

188 |       (6)~~(5)~~ "Mortgage lien" means a security interest in a  
 189 | timeshare interest estate created by a mortgage encumbering the  
 190 | timeshare interest estate.

191 |       (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

192 |       (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien  
 193 | or a person who has assumed the obligation secured by a mortgage  
 194 | lien.

195 |       (9)~~(8)~~ "Notice address" means:

196 |       (a) As to an assessment lien, the address of the ~~current~~

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197 owner of a timeshare interest ~~estate~~ as reflected by the books  
 198 and records of the timeshare plan under ss. 721.13(4) and  
 199 721.15(7).

200 (b) As to a mortgage lien:

201 1. The address of the mortgagor as set forth in the  
 202 mortgage, the promissory note or a separate document executed by  
 203 the mortgagor at the time the mortgage lien was created, or the  
 204 most current address of the mortgagor according to the records  
 205 of the mortgagee; and

206 2. If the ~~current~~ owner of the timeshare interest ~~estate~~  
 207 is different from the mortgagor, the address of the ~~current~~  
 208 owner of the timeshare interest ~~estate~~ as reflected by the books  
 209 and records of the mortgagee.

210 (c) As to a junior interestholder, the address as set  
 211 forth in the recorded instrument creating the junior lien  
 212 ~~interest~~ or interest lien, or in any recorded amendment  
 213 ~~supplement~~ thereto changing the address, or in any written  
 214 notification by the junior interestholder to the foreclosing  
 215 lienholder changing the ~~of such change in~~ address.

216 ~~(10)-(9)~~ "Obligor" means the mortgagor, the person subject  
 217 to an assessment lien, or the record owner of the timeshare  
 218 interest ~~estate~~.

219 (11) "Permitted delivery service" means any nationally  
 220 recognized common carrier delivery service or international  
 221 airmail service that allows for return receipt service.

222 ~~(12)-(10)~~ "Registered agent" means an agent duly appointed  
 223 by the obligor under s. 721.84 for the purpose of accepting all  
 224 notices and service of process under this part. A registered



225 agent may be an individual resident in this state whose business  
 226 office qualifies as a registered office, or a domestic or  
 227 foreign corporation or a not-for-profit corporation as defined  
 228 in chapter 617 authorized to transact business or to conduct its  
 229 affairs in this state, whose business office qualifies as a  
 230 registered office. A registered agent for any obligor may not be  
 231 the lienholder or the attorney for the lienholder.

232 (13)~~(11)~~ "Registered office" means the street address of  
 233 the business office of the registered agent appointed under s.  
 234 721.84, located in this state.

235 (14) "Trustee" means an attorney who is a member in good  
 236 standing of The Florida Bar or that attorney's law firm, or a  
 237 title insurer authorized to transact business in this state  
 238 under s. 624.401, appointed as trustee or as substitute trustee  
 239 in accordance with s. 721.855 or s. 721.856. A receiver  
 240 appointed under s. 721.26 may act as a trustee under s. 721.855.  
 241 A trustee must be independent as defined in s. 721.05(20).

242 Section 6. Section 721.83, Florida Statutes, is amended to  
 243 read:

244 721.83 Consolidation of judicial foreclosure actions.—

245 (1) A complaint in a foreclosure proceeding involving  
 246 timeshare interests ~~estates~~ may join in the same action multiple  
 247 defendant obligors and junior interestholders of separate  
 248 timeshare interests ~~estates~~, provided:

249 (a) The foreclosure proceeding involves a single timeshare  
 250 property.

251 (b) The foreclosure proceeding is filed by a single  
 252 plaintiff.

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

256 (d) The nature of the defaults alleged is the same for  
 257 each defendant.

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

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

265 (3) A consolidated timeshare foreclosure action shall be  
 266 considered a single action, suit, or proceeding for the payment  
 267 of filing fees and service charges pursuant to general law. In  
 268 addition to the payment of such filing fees and service charges,  
 269 an additional filing fee of up to \$10 for each timeshare  
 270 interest ~~estate~~ joined in that action shall be paid to the clerk  
 271 of court.

272 Section 7. Section 721.85, Florida Statutes, is amended to  
 273 read:

274 721.85 Service to notice address or on registered agent.—

275 (1) Service of process for a foreclosure proceeding  
 276 involving a timeshare interest ~~estate~~ may be made by any means  
 277 recognized by law. In addition, substituted service on an  
 278 obligor ~~a party~~ who has appointed a registered agent under s.  
 279 721.84 may be made on such registered agent at the registered  
 280 office. Also, when using s. 48.194 where in rem or quasi in rem

281 relief only is sought, such service of process provisions are  
 282 modified in connection with a foreclosure proceeding against a  
 283 timeshare interest estate to provide that:

284 (a) Such service of process may be made on any person  
 285 whether the person is located inside or outside this state, by  
 286 certified mail, or registered mail, or permitted delivery  
 287 service, return receipt requested, addressed to the person to be  
 288 served at the notice address, or on the person's party's  
 289 registered agent duly appointed under s. 721.84, at the  
 290 registered office; and

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

294 (2) The current owner and the mortgagor of a timeshare  
 295 interest estate must promptly notify the owners' association and  
 296 the mortgagee of any change of address.

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

300 Section 8. Section 721.855, Florida Statutes, is created  
 301 to read:

302 721.855 Procedure for the trustee foreclosure of  
 303 assessment liens.—The provisions of this section establish a  
 304 trustee foreclosure procedure for assessment liens.

305 (1) APPOINTMENT OF TRUSTEE.—

306 (a) A trustee or a substitute trustee may be appointed by  
 307 a lienholder at any time by recording a notice of appointment of  
 308 trustee or notice of substitution of trustee in the official

309 records of the county or counties in which the timeshare  
 310 interest is located. A lienholder may appoint multiple trustees  
 311 in a single appointment, and any appointed trustee may be used  
 312 by the lienholder regarding the trustee foreclosure of any  
 313 assessment lien under any timeshare plan for which the trustee  
 314 is appointed.

315 (b) The recorded notice of appointment of trustee or  
 316 notice of substitution of trustee shall contain the name and  
 317 address of the trustee or substitute trustee, the name and  
 318 address of the lienholder, and the name and address of the  
 319 timeshare plan.

320 (2) INITIATING THE USE OF A TRUSTEE FORECLOSURE  
 321 PROCEDURE.—

322 (a) Before initiating the trustee foreclosure procedure  
 323 against any timeshare interest in a given timeshare plan, the  
 324 managing entity shall inform owners of timeshare interests in  
 325 the timeshare plan in writing that the managing entity has the  
 326 right to elect to use the trustee foreclosure procedure with  
 327 respect to foreclosure of assessment liens as established in  
 328 this section. The managing entity shall be deemed to have  
 329 complied with the requirements of this paragraph if the owners  
 330 of timeshare interests in the given timeshare plan are informed  
 331 by mail sent to each owner's notice address, in the notice of an  
 332 annual or special meeting of the owners, by posting on the  
 333 website of the applicable timeshare plan, or by any owner  
 334 communication used by the managing entity.

335 (b) Before initiating the trustee foreclosure procedure  
 336 against any timeshare interest, a claim of lien against the

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337 timeshare interest shall be recorded under s. 721.16 or, if  
338 applicable, s. 718.116 or s. 719.108, and the notice of the  
339 intent to file a lien shall be given under s. 718.121 for  
340 timeshare condominiums and s. 719.108 for timeshare  
341 cooperatives.

342 (c)1. In order to initiate a trustee foreclosure procedure  
343 against a timeshare interest, the lienholder shall deliver an  
344 affidavit to the trustee that identifies the obligor; the notice  
345 address of the obligor; the timeshare interest; the date that  
346 the notice of the intent to file a lien was given, if  
347 applicable; the official records book and page number where the  
348 claim of lien is recorded; and the name and notice address of  
349 any junior interestholder. The affidavit shall be accompanied by  
350 a title search of the timeshare interest identifying any junior  
351 interestholders of record, and the effective date of the title  
352 search must be within 60 calendar days before the date of the  
353 affidavit.

354 2. The affidavit shall also state the facts that establish  
355 that the obligor has defaulted in the obligation to make a  
356 payment under a specified provision of the timeshare instrument  
357 or applicable law.

358 3. The affidavit shall also specify the amounts secured by  
359 the lien as of the date of the affidavit and a per diem amount  
360 to account for further accrual of the amounts secured by the  
361 lien.

362 (3) OBLIGOR'S RIGHTS.-

363 (a) The obligor may object to the lienholder's use of the  
364 trustee foreclosure procedure for a specific default any time

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365 before the sale of the timeshare interest under subsection (7)  
366 by delivering a written objection to the trustee using the  
367 objection form provided for in subsection (5). If the trustee  
368 receives the written objection from the obligor, the trustee may  
369 not proceed with the trustee foreclosure procedure as to the  
370 default specified in the notice of default and intent to  
371 foreclose under subsection (5), and the lienholder may proceed  
372 thereafter only with a judicial foreclosure action as to that  
373 specified default.

374 (b) At any time before the trustee issues the certificate  
375 of sale under paragraph (7) (f), the obligor may cure the default  
376 and redeem the timeshare interest by paying the amounts secured  
377 by the lien in cash or certified funds to the trustee. After the  
378 trustee issues the certificate of sale, there is no right of  
379 redemption.

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

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

385 (b) The trustee has not received a written objection to  
386 the use of the trustee foreclosure procedure under paragraph  
387 (3) (a) and the timeshare interest was not redeemed under  
388 paragraph (3) (b);

389 (c) There is no lis pendens recorded and pending against  
390 the same timeshare interest and the trustee has not been served  
391 notice of the filing of any action to enjoin the trustee  
392 foreclosure sale;

393 (d) The trustee has provided written notice of default and  
 394 intent to foreclose as required under subsection (5) and a  
 395 period of at least 30 calendar days has elapsed after such  
 396 notice is deemed perfected under subsection (5); and

397 (e) The notice of sale required under subsection (6) has  
 398 been recorded in the official records of the county or counties  
 399 in which the timeshare interest is located.

400 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.-

401 (a) In any foreclosure proceeding under this section, the  
 402 trustee is required to notify the obligor of the proceeding by  
 403 sending the obligor a written notice of default and intent to  
 404 foreclose to the notice address of the obligor by certified  
 405 mail, registered mail, or permitted delivery service, return  
 406 receipt requested, and by first-class mail or permitted delivery  
 407 service, postage prepaid, as follows:

408 1. The notice of default and intent to foreclose shall  
 409 identify the obligor, the notice address of the obligor, the  
 410 legal description of the timeshare interest, the nature of the  
 411 default, the amounts secured by the lien, and a per diem amount  
 412 to account for further accrual of the amounts secured by the  
 413 lien and shall state the method by which the obligor may cure  
 414 the default, including the period of time after the date of the  
 415 notice of default and intent to foreclose within which the  
 416 obligor may cure the default.

417 2. The notice of default and intent to foreclose shall  
 418 include an objection form with which the obligor can object to  
 419 the use of the trustee foreclosure procedure by signing and  
 420 returning the objection form to the trustee. The objection form

421 shall identify the obligor, the notice address of the obligor,  
422 the timeshare interest, and the return address of the trustee  
423 and shall state: "The undersigned obligor exercises the  
424 obligor's right to object to the use of the trustee foreclosure  
425 procedure contained in section 721.855, Florida Statutes."

426 3. The notice of default and intent to foreclose shall  
427 also contain a statement in substantially the following form:

428  
429 If you fail to cure the default as set forth in this  
430 notice or take other appropriate action with regard to  
431 this foreclosure matter, you risk losing ownership of  
432 your timeshare interest through the trustee  
433 foreclosure procedure established in section 721.855,  
434 Florida Statutes. You may choose to sign and send to  
435 the trustee the enclosed objection form, exercising  
436 your right to object to the use of the trustee  
437 foreclosure procedure. Upon the trustee's receipt of  
438 your signed objection form, the foreclosure of the  
439 lien with respect to the default specified in this  
440 notice shall be subject to the judicial foreclosure  
441 procedure only. You have the right to cure your  
442 default in the manner set forth in this notice at any  
443 time before the trustee's sale of your timeshare  
444 interest. If you do not object to the use of the  
445 trustee foreclosure procedure, you will not be subject  
446 to a deficiency judgment even if the proceeds from the  
447 sale of your timeshare interest are insufficient to  
448 offset the amounts secured by the lien.



449  
450       4. The trustee shall also mail a copy of the notice of  
451 default and intent to foreclose, without the objection form, to  
452 the notice address of any junior interestholder by certified  
453 mail, registered mail, or permitted delivery service, return  
454 receipt requested, and by first-class mail or permitted delivery  
455 service, postage prepaid.

456       5. Notice under this paragraph is considered perfected  
457 upon the trustee receiving the return receipt bearing the  
458 signature of the obligor or junior interestholder, as  
459 applicable, within 30 calendar days after the trustee sent the  
460 notice under this paragraph. Notice under this paragraph is not  
461 perfected if the notice is returned as undeliverable within 30  
462 calendar days after the trustee sent the notice, if the trustee  
463 cannot ascertain from the receipt that the obligor or junior  
464 interestholder, as applicable, is the person who signed the  
465 receipt, or if the receipt from the obligor or junior  
466 interestholder, as applicable, is returned or refused within 30  
467 calendar days after the trustee sent the notice.

468       (b) If the notice required by paragraph (a) is returned as  
469 undeliverable within 30 calendar days after the trustee sent the  
470 notice, the trustee shall perform a diligent search and inquiry  
471 to obtain a different address for the obligor or junior  
472 interestholder. For purposes of this paragraph, any address  
473 known and used by the lienholder for sending regular mailings or  
474 other communications from the lienholder to the obligor or  
475 junior interestholder, as applicable, shall be included with  
476 other addresses produced from the diligent search and inquiry,

477 if any.

478 1. If the trustee's diligent search and inquiry produces  
479 an address different from the notice address, the trustee shall  
480 mail a copy of the notice by certified mail, registered mail, or  
481 permitted delivery service, return receipt requested, and by  
482 first-class mail or permitted delivery service, postage prepaid,  
483 to the new address. Notice under this subparagraph is considered  
484 perfected upon the trustee receiving the return receipt bearing  
485 the signature of the obligor or junior interestholder, as  
486 applicable, within 30 calendar days after the trustee sent the  
487 notice under this subparagraph. Notice under this subparagraph  
488 is not perfected if the trustee cannot ascertain from the  
489 receipt that the obligor or junior interestholder, as  
490 applicable, is the person who signed the receipt or the receipt  
491 from the obligor or junior interestholder, as applicable, is  
492 returned refused. If the trustee does not perfect notice under  
493 this subparagraph, the trustee shall perfect service in the  
494 manner set forth in paragraph (c).

495 2. If the trustee's diligent search and inquiry does not  
496 locate a different address for the obligor or junior  
497 interestholder, as applicable, the trustee may perfect notice  
498 against that person under paragraph (c).

499 (c) If the notice is not perfected under subparagraph  
500 (a)5., and such notice was not returned as undeliverable, or if  
501 the notice was not perfected under subparagraph (b)1. or  
502 subparagraph (b)2., the trustee may perfect notice by  
503 publication in a newspaper of general circulation in the county  
504 or counties in which the timeshare interest is located. The

505 notice shall appear at least once a week for 2 consecutive  
506 weeks. The trustee may group an unlimited number of notices in  
507 the same publication, if all of the notices pertain to the same  
508 timeshare plan. Notice under this paragraph is considered  
509 perfected upon publication as required in this paragraph.

510 (d) If notice is perfected under subparagraph (a)5., the  
511 trustee shall execute an affidavit in recordable form setting  
512 forth the manner in which notice was perfected and attach the  
513 affidavit to the certificate of compliance set forth in  
514 subsection (9). The affidavit shall state the nature of the  
515 notice, the date on which the notice was mailed, the name and  
516 address on the envelope containing the notice, the manner in  
517 which the notice was mailed, and the basis for that knowledge.

518 (e) If notice is perfected under subparagraph (b)1., the  
519 trustee shall execute an affidavit in recordable form setting  
520 forth the manner in which notice was perfected and attach the  
521 affidavit to the certificate of compliance set forth in  
522 subsection (9). The affidavit shall state the nature of the  
523 notice, the dates on which the notice was mailed, the name and  
524 addresses on the envelopes containing the notice, the manner in  
525 which the notices were mailed, the fact that a signed receipt  
526 from the certified mail, registered mail, or permitted delivery  
527 service was not timely received, and the name and address on the  
528 envelopes containing the notice.

529 (f) If notice is perfected by publication under paragraph  
530 (c), the trustee shall execute an affidavit in recordable form  
531 setting forth the manner in which notice was perfected and  
532 attach the affidavit to the certificate of compliance set forth

533 in subsection (9). The affidavit shall include all the  
534 information contained in either paragraph (d) or paragraph (e),  
535 as applicable, shall state that the notice was perfected by  
536 publication after diligent search and inquiry was made for the  
537 current address for the person, and shall include a statement  
538 that notice was perfected by publication, and shall set forth  
539 the information required by s. 49.041 in the case of a natural  
540 person or s. 49.051 in the case of a corporation, whichever is  
541 applicable. No other action of the trustee is necessary to  
542 perfect notice.

543 (6) NOTICE OF SALE.—

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

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

561 certificate of sale in accordance with paragraph (7) (f).

562 (b) The trustee shall send a copy of the notice of sale  
563 within 3 business days after the date it is submitted for  
564 recording, by first-class mail or permitted delivery service,  
565 postage prepaid, to the notice addresses of the obligor and any  
566 junior interestholder.

567 (c) After the date of recording of the notice of sale,  
568 notice is not required to be given to any person claiming an  
569 interest in the timeshare interest except as provided in this  
570 section. The recording of the notice of sale has the same force  
571 and effect as the filing of a lis pendens in a judicial  
572 proceeding under s. 48.23.

573 (d)1. The trustee shall publish the notice of sale in a  
574 newspaper of general circulation in the county or counties in  
575 which the timeshare interest is located at least once a week for  
576 2 consecutive weeks before the date of the sale. The last  
577 publication shall occur at least 5 calendar days before the  
578 sale.

579 2. The trustee may group an unlimited number of notices of  
580 sale in the same publication, if all of the notices of sale  
581 pertain to the same timeshare plan.

582 (7) MANNER OF SALE.—

583 (a) The sale of a timeshare interest by the trustee in a  
584 public auction shall be held in the county in which the  
585 timeshare interest is located, on the date, location, and  
586 starting time designated in the notice of sale, which shall be  
587 after 9:00 a.m. but before 4:00 p.m. on a business day not less  
588 than 30 calendar days after the recording of the notice of sale.

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589 The trustee's sale may occur online at a specific website on the  
590 Internet or in any other manner used by the clerk of the court  
591 for a judicial foreclosure sales procedure in the county or  
592 counties in which the timeshare interest is located.

593 (b) The trustee shall conduct the sale and act as the  
594 auctioneer.

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

599 (d) The trustee may postpone the sale from time to time.  
600 In such case, notice of postponement must be given by the  
601 trustee at the date, time, and location contained in the notice  
602 of sale. The notice of sale for the postponed sale shall be  
603 mailed under paragraph (6) (b), recorded under paragraph (4) (e),  
604 and published under paragraph (6) (d). The effective date of the  
605 initial notice of sale under paragraph (6) (b) is not affected by  
606 a postponed sale.

607 (e) The highest bidder of the timeshare interest shall pay  
608 the price bid to the trustee in cash or certified funds on the  
609 day of the sale. If the lienholder is the highest bidder, the  
610 lienholder shall receive a credit up to the amount set forth in  
611 the notice of sale as required under subparagraph (6) (a) 6.

612 (f) On the date of the sale and upon receipt of the cash  
613 or certified funds due from the highest bidder, the trustee  
614 shall issue to the highest bidder a certificate of sale stating  
615 that a foreclosure conforming to the requirements of this  
616 section has occurred, including the time, location, and date of

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617 the sale, that the timeshare interest was sold, the amounts  
618 secured by the lien, and the amount of the highest bid. A copy  
619 of the certificate of sale shall be mailed by certified mail,  
620 registered mail, or permitted delivery service, return receipt  
621 requested, to all persons entitled to receive a notice of sale  
622 under subsection (6).

623 (g) Before a sale conducted under this subsection, a  
624 junior interestholder may pursue adjudication by court, by  
625 interpleader, or in any other authorized manner respecting any  
626 matter that is disputed by the junior interestholder.

627 (8) EFFECT OF TRUSTEE'S SALE.—

628 (a) A sale conducted under subsection (7) forecloses and  
629 terminates all interests of any person to whom notice is given  
630 under paragraph (4) (d) and paragraph (6) (b), and of any other  
631 person claiming interests by, through, or under any such person,  
632 in the affected timeshare interest. A failure to give notice to  
633 any person entitled to notice does not affect the validity of  
634 the sale as to the interests of any person properly notified. A  
635 person entitled to notice but not given notice has the rights of  
636 a person not made a defendant in a judicial foreclosure.

637 (b) On the issuance of a certificate of sale under  
638 paragraph (7) (f), all rights of redemption that have been  
639 foreclosed under this section shall terminate.

640 (c) A sale conducted under subsection (7) releases the  
641 obligor's liability for all amounts secured by the lien. The  
642 lienholder has no right to any deficiency judgment against the  
643 obligor after a sale of the obligor's timeshare interest under  
644 this section.

645        (d) The issuance and recording of the trustee's deed is  
646 presumed valid and may be relied upon by third parties without  
647 actual knowledge of irregularities in the foreclosure  
648 proceedings. If for any reason there is an irregularity in the  
649 foreclosure proceedings, a purchaser becomes subrogated to all  
650 the rights of the lienholder to the indebtedness that it secured  
651 to the extent necessary to reforeclose the assessment lien in  
652 order to correct the irregularity and becomes entitled to an  
653 action de novo for the foreclosure of such assessment lien. Any  
654 subsequent reforeclosure required to correct an irregularity may  
655 be conducted under this section.

656        (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

657        (a) Within 10 calendar days after the trustee conducts a  
658 sale, the trustee shall execute and acknowledge a certificate of  
659 compliance that:

660            1. Confirms delivery of the notice of default and intent  
661 to foreclose and attaches the affidavit required under  
662 subsection (5).

663            2. States that the default was not cured, that the trustee  
664 did not receive any written objection under paragraph (3) (a),  
665 and that the timeshare interest was not redeemed under paragraph  
666 (3) (b).

667            3. Confirms that the notice of sale was published as  
668 required under paragraph (6) (d) and attaches an affidavit of  
669 publication for the notice of sale.

670            4. Confirms that the notice of sale was mailed under  
671 paragraph (6) (b) together with a list of the parties to whom the  
672 notice of sale was mailed.



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673 (b) In furtherance of the execution of the certificate of  
674 compliance required under this subsection, the trustee is  
675 entitled to rely upon an affidavit or certification from the  
676 lienholder as to the facts and circumstances of default and  
677 failure to cure the default.

678 (10) TRUSTEE'S DEED.-

679 (a) The trustee's deed shall include the name and address  
680 of the trustee, the name and address of the highest bidder, the  
681 name of the former owner, a legal description of the timeshare  
682 interest, and the name and address of the preparer of the  
683 trustee's deed. The trustee's deed shall recite that the  
684 certificate of compliance was recorded and shall contain no  
685 warranties of title from the trustee. The certificate of  
686 compliance shall be attached as an exhibit to the trustee's  
687 deed.

688 (b) Ten calendar days after a sale, absent the prior  
689 filing and service on the trustee of a judicial action to enjoin  
690 issuance of the trustee's deed to the timeshare interest, the  
691 trustee shall:

692 1. Issue a trustee's deed to the highest bidder.

693 2. Record the trustee's deed in the official records of  
694 the county or counties in which the timeshare interest is  
695 located.

696 (c)1. The certificate of compliance and trustee's deed  
697 together are presumptive evidence of the truth of the matters  
698 set forth in them, and an action to set aside the sale and void  
699 the trustee's deed may not be filed or otherwise pursued against  
700 any person acquiring the timeshare interest for value.

701           2. The trustee's deed conveys to the highest bidder all  
 702 rights, title, and interest in the timeshare interest that the  
 703 former owner had, or had the power to convey, at the time of the  
 704 recording of the claim of lien, together with all rights, title,  
 705 and interest that the former owner or his or her successors in  
 706 interest acquired after the recording of the claim of lien.

707           3. The issuance and recording of a trustee's deed shall  
 708 have the same force and effect as the issuance and recording of  
 709 a certificate of title by the clerk of the court in a judicial  
 710 foreclosure action.

711           (11) DISPOSITION OF PROCEEDS OF SALE.—

712           (a) The trustee shall apply the proceeds of the sale as  
 713 follows:

714           1. To the expenses of the sale, including compensation of  
 715 the trustee.

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

718           3. If there are junior interestholders, the trustee may  
 719 file an action in interpleader, pay the surplus to a court of  
 720 competent jurisdiction, name the competing junior  
 721 interestholders, and ask the court to determine the proper  
 722 distribution of the surplus. In any interpleader action, the  
 723 trustee shall recover reasonable attorney's fees and costs.

724           4. If there are no junior interestholders, or if all  
 725 junior interestholders have been paid, any surplus shall be paid  
 726 to the former owner. If the trustee is unable to locate the  
 727 former owner 1 year after the sale, the surplus, if any, shall  
 728 be deposited with the Chief Financial Officer under chapter 717.

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729 (b) In disposing of the proceeds of the sale, the trustee  
730 may rely on the information provided in the affidavit of the  
731 lienholder under paragraph (2)(c) and, in the event of a dispute  
732 or uncertainty over such claims, the trustee has the discretion  
733 to submit the matter to adjudication by court, by interpleader,  
734 or in any other authorized manner and shall recover reasonable  
735 attorney's fees and costs.

736 (12) TRUSTEE FORECLOSURE ACTIONS.—The trustee foreclosure  
737 procedure established in this section does not impair or  
738 otherwise affect the lienholder's continuing right to bring a  
739 judicial foreclosure action, in lieu of using the trustee  
740 foreclosure procedure, with respect to any assessment lien.

741 (13) APPLICATION.—This section applies to any default  
742 giving rise to the imposition of an assessment lien which occurs  
743 after the effective date of this section. An amendment to a  
744 timeshare instrument is not required to permit a managing entity  
745 lienholder to use the trustee foreclosure procedures of this  
746 section. If a timeshare instrument contains any provision that  
747 prevents the use of the trustee foreclosure procedures, an  
748 amendment to the timeshare instrument permitting the use of the  
749 trustee foreclosure procedure set forth in this section may be  
750 adopted by a majority of those present and voting at a duly  
751 called meeting of the owners' association at which at least 15  
752 percent of the voting interests are present in person or by  
753 proxy.

754 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE  
755 PROCEDURE.—An action for actual damages for a material violation  
756 of this section may be brought by an obligor against the

757 lienholder for the failure to follow the trustee foreclosure  
 758 procedure contained in this section.

759 Section 9. Section 721.856, Florida Statutes, is created  
 760 to read:

761 721.856 Procedure for the trustee foreclosure of mortgage  
 762 liens.—The provisions of this section establish a trustee  
 763 foreclosure procedure for mortgage liens.

764 (1) APPOINTMENT OF TRUSTEE.—

765 (a) A trustee or a substitute trustee may be appointed by  
 766 a lienholder at any time by recording a notice of appointment of  
 767 trustee or notice of substitution of trustee in the official  
 768 records of the county or counties in which the timeshare  
 769 interest is located. A lienholder may appoint multiple trustees  
 770 in a single appointment, and any appointed trustee may be used  
 771 by the lienholder regarding the trustee foreclosure of any  
 772 mortgage lien.

773 (b) The recorded notice of appointment of trustee or  
 774 notice of substitution of trustee shall contain the name and  
 775 address of the trustee or substitute trustee, the name and  
 776 address of the lienholder, and the name and address of the  
 777 timeshare plan.

778 (2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

779 (a) Before initiating the trustee foreclosure against a  
 780 timeshare interest, the mortgage, or an amendment to a mortgage  
 781 executed by the obligor before the effective date of this  
 782 section, must contain a statement in substantially the following  
 783 form:

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785 If the mortgagor fails to make timely payments under  
786 the obligation secured by this mortgage, or is  
787 otherwise deemed in uncured default of this mortgage,  
788 the lien against the mortgagor's timeshare interest  
789 created by this mortgage may be foreclosed in  
790 accordance with either a judicial foreclosure  
791 procedure or a trustee foreclosure procedure and may  
792 result in the loss of your timeshare interest. If the  
793 mortgagee initiates a trustee foreclosure procedure,  
794 the mortgagor shall have the option to object and the  
795 mortgagee may proceed only by filing a judicial  
796 foreclosure action.

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

808 2. The affidavit shall also state the facts that establish  
809 that the obligor has defaulted in the obligation to make a  
810 payment under a specified provision of the mortgage or is  
811 otherwise deemed in uncured default under a specified provision  
812 of the mortgage.

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813 3. The affidavit shall also specify the amounts secured by  
814 the lien as of the date of the affidavit and a per diem amount  
815 to account for further accrual of the amounts secured by the  
816 lien.

817 (3) OBLIGOR'S RIGHTS.—

818 (a) The obligor may object to the lienholder's use of the  
819 trustee foreclosure procedure for a specific default any time  
820 before the sale of the timeshare interest under subsection (7)  
821 by delivering a written objection to the trustee using the  
822 objection form provided for in subsection (5). If the trustee  
823 receives the written objection from the obligor, the trustee may  
824 not proceed with the trustee foreclosure procedure as to the  
825 default specified in the notice of default and intent to  
826 foreclose under subsection (5), and the lienholder may proceed  
827 thereafter only with a judicial foreclosure action as to that  
828 specified default.

829 (b) At any time before the trustee issues the certificate  
830 of sale under paragraph (7) (f), the obligor may cure the default  
831 and redeem the timeshare interest by paying the amounts secured  
832 by the lien in cash or certified funds to the trustee. After the  
833 trustee issues the certificate of sale, there is no right of  
834 redemption.

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

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

840 (b) The trustee has not received a written objection to

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841 the use of the trustee foreclosure procedure under paragraph  
842 (3) (a) and the timeshare interest was not redeemed under  
843 paragraph (3) (b);

844 (c) There is no lis pendens recorded and pending against  
845 the same timeshare interest, and the trustee has not been served  
846 notice of the filing of any action to enjoin the trustee  
847 foreclosure sale;

848 (d) The trustee is in possession of the original  
849 promissory note executed by the mortgagor and secured by the  
850 mortgage lien;

851 (e) The trustee has provided written notice of default and  
852 intent to foreclose as required under subsection (5) and a  
853 period of at least 30 calendar days has elapsed after such  
854 notice is deemed perfected under subsection (5); and

855 (f) The notice of sale required under subsection (6) has  
856 been recorded in the official records of the county in which the  
857 mortgage was recorded.

858 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

859 (a) In any foreclosure proceeding under this section, the  
860 trustee is required to notify the obligor of the proceeding by  
861 sending the obligor a written notice of default and intent to  
862 foreclose to the notice address of the obligor by certified  
863 mail, registered mail, or permitted delivery service, return  
864 receipt requested, and by first-class mail or permitted delivery  
865 service, postage prepaid, as follows:

866 1. The notice of default and intent to foreclose shall  
867 identify the obligor, the notice address of the obligor, the  
868 legal description of the timeshare interest, the nature of the

869 default, the amounts secured by the lien, and a per diem amount  
870 to account for further accrual of the amounts secured by the  
871 lien and shall state the method by which the obligor may cure  
872 the default, including the period of time after the date of the  
873 notice of default and intent to foreclose within which the  
874 obligor may cure the default.

875 2. The notice of default and intent to foreclose shall  
876 include an objection form with which the obligor can object to  
877 the use of the trustee foreclosure procedure by signing and  
878 returning the objection form to the trustee. The objection form  
879 shall identify the obligor, the notice address of the obligor,  
880 the timeshare interest, and the return address of the trustee  
881 and shall state: "The undersigned obligor exercises the  
882 obligor's right to object to the use of the trustee foreclosure  
883 procedure contained in section 721.856, Florida Statutes."

884 3. The notice of default and intent to foreclose shall  
885 also contain a statement in substantially the following form:

886  
887 If you fail to cure the default as set forth in this  
888 notice or take other appropriate action with regard to  
889 this foreclosure matter, you risk losing ownership of  
890 your timeshare interest through the trustee  
891 foreclosure procedure established in section 721.856,  
892 Florida Statutes. You may choose to sign and send to  
893 the trustee the enclosed objection form, exercising  
894 your right to object to the use of the trustee  
895 foreclosure procedure. Upon the trustee's receipt of  
896 your signed objection form, the foreclosure of the



897 lien with respect to the default specified in this  
898 notice shall be subject to the judicial foreclosure  
899 procedure only. You have the right to cure your  
900 default in the manner set forth in this notice at any  
901 time before the trustee's sale of your timeshare  
902 interest. If you do not object to the use of the  
903 trustee foreclosure procedure, you will not be subject  
904 to a deficiency judgment even if the proceeds from the  
905 sale of your timeshare interest are insufficient to  
906 offset the amounts secured by the lien.

907  
908 4. The trustee shall also mail a copy of the notice of  
909 default and intent to foreclose, without the objection form, to  
910 the notice address of any junior interestholder by certified  
911 mail, registered mail, or permitted delivery service, return  
912 receipt requested, and by first-class mail or permitted delivery  
913 service, postage prepaid.

914 5. Notice under this paragraph is considered perfected  
915 upon the trustee receiving the return receipt bearing the  
916 signature of the obligor or junior interestholder, as  
917 applicable, within 30 calendar days after the trustee sent the  
918 notice under this paragraph. Notice under this paragraph is not  
919 perfected if the notice is returned as undeliverable within 30  
920 calendar days after the trustee sent the notice, if the trustee  
921 cannot ascertain from the receipt that the obligor or junior  
922 interestholder, as applicable, is the person who signed the  
923 receipt, or if the receipt from the obligor or junior  
924 interestholder, as applicable, is returned or refused within 30

925 calendar days after the trustee sent the notice.

926 (b) If the notice required by paragraph (a) is returned as  
 927 undeliverable within 30 calendar days after the trustee sent the  
 928 notice, the trustee shall perform a diligent search and inquiry  
 929 to obtain a different address for the obligor or junior  
 930 interestholder. For purposes of this paragraph, any address  
 931 known and used by the lienholder for sending regular mailings or  
 932 other communications from the lienholder to the obligor or  
 933 junior interestholder, as applicable, shall be included with  
 934 other addresses produced from the diligent search and inquiry,  
 935 if any.

936 1. If the trustee's diligent search and inquiry produces  
 937 an address different from the notice address, the trustee shall  
 938 mail a copy of the notice by certified mail, registered mail, or  
 939 permitted delivery service, return receipt requested, and by  
 940 first-class mail or permitted delivery service, postage prepaid,  
 941 to the new address. Notice under this subparagraph is considered  
 942 perfected upon the trustee receiving the return receipt bearing  
 943 the signature of the obligor or junior interestholder, as  
 944 applicable, within 30 calendar days after the trustee sent the  
 945 notice under this subparagraph. Notice under this subparagraph  
 946 is not perfected if the trustee cannot ascertain from the  
 947 receipt that the obligor or junior interestholder, as  
 948 applicable, is the person who signed the receipt or the receipt  
 949 from the obligor or junior interestholder, as applicable, is  
 950 returned refused. If the trustee does not perfect notice under  
 951 this subparagraph, the trustee shall perfect service in the  
 952 manner set forth in paragraph (c).

953 2. If the trustee's diligent search and inquiry does not  
954 locate a different address for the obligor or junior  
955 interestholder, as applicable, the trustee may perfect notice  
956 against that person under paragraph (c).

957 (c) If the notice is not perfected under subparagraph  
958 (a)5., and such notice was not returned as undeliverable, or if  
959 the notice was not perfected under subparagraph (b)1. or  
960 subparagraph (b)2., the trustee may perfect notice by  
961 publication in a newspaper of general circulation in the county  
962 or counties in which the timeshare interest is located. The  
963 notice shall appear at least once a week for 2 consecutive  
964 weeks. The trustee may group an unlimited number of notices in  
965 the same publication, if all of the notices pertain to the same  
966 timeshare plan. Notice under this paragraph is considered  
967 perfected upon publication as required in this paragraph.

968 (d) If notice is perfected under subparagraph (a)5., the  
969 trustee shall execute an affidavit in recordable form setting  
970 forth the manner in which notice was perfected and attach the  
971 affidavit to the certificate of compliance set forth in  
972 subsection (9). The affidavit shall state the nature of the  
973 notice, the date on which the notice was mailed, the name and  
974 address on the envelope containing the notice, the manner in  
975 which the notice was mailed, and the basis for that knowledge.

976 (e) If notice is perfected under subparagraph (b)1., the  
977 trustee shall execute an affidavit in recordable form setting  
978 forth the manner in which notice was perfected and attach the  
979 affidavit to the certificate of compliance set forth in  
980 subsection (9). The affidavit shall state the nature of the

981 notice, the dates on which the notice was mailed, the name and  
 982 addresses on the envelopes containing the notice, the manner in  
 983 which the notice was mailed, the fact that a signed receipt from  
 984 the certified mail, registered mail, or permitted delivery  
 985 service was not timely received, and the name and address on the  
 986 envelopes containing the notice.

987 (f) If notice is perfected under paragraph (c), the  
 988 trustee shall execute an affidavit in recordable form setting  
 989 forth the manner in which notice was perfected and attach the  
 990 affidavit to the certificate of compliance set forth in  
 991 subsection (9). The affidavit shall include all the information  
 992 contained in either paragraph (d) or paragraph (e), as  
 993 applicable, shall state that the notice was perfected by  
 994 publication after diligent search and inquiry was made for the  
 995 current address for the person, shall include a statement that  
 996 notice was perfected by publication, and shall set forth the  
 997 information required by s. 49.041 in the case of a natural  
 998 person or s. 49.051 in the case of a corporation, whichever is  
 999 applicable. No other action of the trustee is necessary to  
 1000 perfect notice.

1001 (6) NOTICE OF SALE.—

1002 (a) The notice of sale shall set forth:

- 1003 1. The name and notice addresses of the obligor and any  
 1004 junior interestholder.
- 1005 2. The legal description of the timeshare interest.
- 1006 3. The name and address of the trustee.
- 1007 4. A description of the default that is the basis for the  
 1008 foreclosure.

1009        5. The official records book and page numbers where the  
 1010 mortgage is recorded.

1011        6. The amounts secured by the lien and a per diem amount  
 1012 to account for further accrual of the amounts secured by the  
 1013 lien.

1014        7. The date, location, and starting time of the trustee's  
 1015 sale.

1016        8. The right of and the method by which the obligor may  
 1017 cure the default or the right of any junior interestholder to  
 1018 redeem its interest up to the date the trustee issues the  
 1019 certificate of sale in accordance with paragraph (7) (f).

1020        (b) The trustee shall send a copy of the notice of sale  
 1021 within 3 business days after the date it is submitted for  
 1022 recording, by first-class mail or permitted delivery service,  
 1023 postage prepaid, to the notice addresses of the obligor and any  
 1024 junior interestholder.

1025        (c) After the date of recording of the notice of sale,  
 1026 notice is not required to be given to any person claiming an  
 1027 interest in the timeshare interest except as provided in this  
 1028 section. The recording of the notice of sale has the same force  
 1029 and effect as the filing of a lis pendens in a judicial  
 1030 proceeding under s. 48.23.

1031        (d)1. The trustee shall publish the notice of sale in a  
 1032 newspaper of general circulation in the county or counties in  
 1033 which the timeshare interest is located at least once a week for  
 1034 2 consecutive weeks before the date of the sale. The last  
 1035 publication shall occur at least 5 calendar days before the  
 1036 sale.

1037           2. The trustee may group an unlimited number of notices of  
 1038 sale in the same publication, if all of the notices of sale  
 1039 pertain to the same timeshare plan.

1040           (7) MANNER OF SALE.—

1041           (a) The sale of a timeshare interest by the trustee in a  
 1042 public auction shall be held in the county in which the  
 1043 timeshare interest is located, on the date, location, and  
 1044 starting time designated in the notice of sale, which shall be  
 1045 after 9:00 a.m. but before 4:00 p.m. on a business day not less  
 1046 than 30 calendar days after the recording of the notice of sale.  
 1047 The trustee's sale may occur online at a specific website on the  
 1048 Internet or in any other manner used by the clerk of the court  
 1049 for a judicial foreclosure sales procedure in the county or  
 1050 counties in which the timeshare interest is located.

1051           (b) The trustee shall conduct the sale and act as the  
 1052 auctioneer.

1053           (c) The lienholder and any person other than the trustee  
 1054 may bid at the sale. In lieu of participating in the sale, the  
 1055 lienholder may send the trustee written bidding instructions  
 1056 that the trustee shall announce as appropriate during the sale.

1057           (d) The trustee may postpone the sale from time to time.  
 1058 In such case, notice of postponement must be given by the  
 1059 trustee at the date, time, and location contained in the notice  
 1060 of sale. The notice of sale for the postponed sale shall be  
 1061 mailed under paragraph (6) (b), recorded under paragraph (4) (f),  
 1062 and published under paragraph (6) (d). The effective date of the  
 1063 initial notice of sale under paragraph (6) (b) is not affected by  
 1064 a postponed sale.

1065 (e) The highest bidder of the timeshare interest shall pay  
 1066 the price bid to the trustee in cash or certified funds on the  
 1067 day of the sale. If the lienholder is the highest bidder, the  
 1068 lienholder shall receive a credit up to the amount set forth in  
 1069 the notice of sale as required under subparagraph (6) (a) 6.

1070 (f) On the date of the sale and upon receipt of the cash  
 1071 or certified funds due from the highest bidder, the trustee  
 1072 shall issue to the highest bidder a certificate of sale stating  
 1073 that a foreclosure conforming to the requirements of this  
 1074 section has occurred, including the time, location, and date of  
 1075 the sale, that the timeshare interest was sold, the amounts  
 1076 secured by the lien, and the amount of the highest bid. A copy  
 1077 of the certificate of sale shall be mailed by certified mail,  
 1078 registered mail, or permitted delivery service, return receipt  
 1079 requested, to all persons entitled to receive a notice of sale  
 1080 under subsection (6).

1081 (g) Before a sale conducted pursuant to this subsection, a  
 1082 junior interestholder may pursue adjudication by court, by  
 1083 interpleader, or in any other authorized manner respecting any  
 1084 matter that is disputed by the junior interestholder.

1085 (8) EFFECT OF TRUSTEE'S SALE.—

1086 (a) A sale conducted under subsection (7) forecloses and  
 1087 terminates all interests of any person to whom notice is given  
 1088 under paragraph (4) (e) and paragraph (6) (b), and of any other  
 1089 person claiming interests by, through, or under any such person,  
 1090 in the affected timeshare interest. A failure to give notice to  
 1091 any person entitled to notice does not affect the validity of  
 1092 the sale as to the interests of any person properly notified. A

1093 person entitled to notice but not given notice has the rights of  
 1094 a person not made a defendant in a judicial foreclosure.

1095 (b) On the issuance of a certificate of sale under  
 1096 paragraph (7) (f), all rights of redemption that have been  
 1097 foreclosed under this section shall terminate.

1098 (c) A sale conducted under subsection (7) releases the  
 1099 obligor's liability for all amounts secured by the lien. The  
 1100 lienholder has no right to any deficiency judgment against the  
 1101 obligor after a sale of the obligor's timeshare interest under  
 1102 this section.

1103 (d) The issuance and recording of the trustee's deed is  
 1104 presumed valid and may be relied upon by third parties without  
 1105 actual knowledge of any irregularities in the foreclosure  
 1106 proceedings. If for any reason there is an irregularity in the  
 1107 foreclosure proceedings, a purchaser becomes subrogated to all  
 1108 the rights of the lienholder to the indebtedness that it secured  
 1109 to the extent necessary to reforeclose the mortgage lien in  
 1110 order to correct the irregularity and becomes entitled to an  
 1111 action de novo for the foreclosure of such mortgage lien. Any  
 1112 subsequent reforeclosure required to correct an irregularity may  
 1113 be conducted under this section.

1114 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1115 (a) Within 10 calendar days after the trustee conducts a  
 1116 sale, the trustee shall execute and acknowledge a certificate of  
 1117 compliance which:

- 1118 1. Confirms delivery of the notice of default and intent  
 1119 to foreclose and attaches the affidavit required under  
 1120 subsection (5).



1121        2. States that the default was not cured, that the trustee  
 1122 did not receive any written objection under paragraph (3) (a),  
 1123 and that the timeshare interest was not redeemed under paragraph  
 1124 (3) (b).

1125        3. States that the trustee is in possession of the  
 1126 original promissory note executed by the mortgagor and secured  
 1127 by the mortgage lien.

1128        4. Confirms that the notice of sale was published as  
 1129 required under paragraph (6) (d) and attaches an affidavit of  
 1130 publication for the notice of sale.

1131        5. Confirms that the notice of sale was mailed under  
 1132 paragraph (6) (b) together with a list of the parties to whom the  
 1133 notice of sale was mailed.

1134        (b) In furtherance of the execution of the certificate of  
 1135 compliance required under this subsection, the trustee is  
 1136 entitled to rely upon an affidavit or certification from the  
 1137 lienholder as to the facts and circumstances of default and  
 1138 failure to cure the default.

1139        (10) TRUSTEE'S DEED.-

1140        (a) The trustee's deed shall include the name and address  
 1141 of the trustee, the name and address of the highest bidder, the  
 1142 name of the former owner, a legal description of the timeshare  
 1143 interest, and the name and address of the preparer of the  
 1144 trustee's deed. The trustee's deed shall recite that the  
 1145 certificate of compliance was recorded and shall contain no  
 1146 warranties of title from the trustee. The certificate of  
 1147 compliance shall be attached as an exhibit to the trustee's  
 1148 deed.

1149           (b) Ten calendar days after a sale, absent the prior  
 1150 filing and service on the trustee of a judicial action to enjoin  
 1151 issuance of the trustee's deed to the timeshare interest, the  
 1152 trustee shall:

1153           1. Cancel the original promissory note executed by the  
 1154 mortgagor and secured by the mortgage lien.

1155           2. Issue a trustee's deed to the highest bidder.

1156           3. Record the trustee's deed in the official records of  
 1157 the county or counties in which the timeshare interest is  
 1158 located.

1159           (c)1. The certificate of compliance and trustee's deed  
 1160 together are presumptive evidence of the truth of the matters  
 1161 set forth in them, and an action to set aside the sale and void  
 1162 the trustee's deed may not be filed or otherwise pursued against  
 1163 any person acquiring the timeshare interest for value.

1164           2. The trustee's deed conveys to the highest bidder all  
 1165 rights, title, and interest in the timeshare interest that the  
 1166 former owner had, or had the power to convey, together with all  
 1167 rights, title, and interest that the former owner or his or her  
 1168 successors in interest acquired after the execution of the  
 1169 mortgage.

1170           3. The issuance and recording of a trustee's deed shall  
 1171 have the same force and effect as the issuance and recording of  
 1172 a certificate of title by the clerk of the court in a judicial  
 1173 foreclosure action.

1174           (11) DISPOSITION OF PROCEEDS OF SALE.-

1175           (a) The trustee shall apply the proceeds of the sale as  
 1176 follows:

1177 1. To the expenses of the sale, including compensation of  
 1178 the trustee.

1179 2. To the amount owed and set forth in the notice as  
 1180 required under subparagraph (6) (a) 6.

1181 3. If there are junior interestholders, the trustee may  
 1182 file an action in interpleader, pay the surplus to a court of  
 1183 competent jurisdiction, name the competing junior  
 1184 interestholders, and ask the court to determine the proper  
 1185 distribution of the surplus. In any interpleader action, the  
 1186 trustee shall recover reasonable attorney's fees and costs.

1187 4. If there are no junior interestholders, or if all  
 1188 junior interestholders have been paid, any surplus shall be paid  
 1189 to the former owner. If the trustee is unable to locate the  
 1190 former owner 1 year after the sale, the surplus, if any, shall  
 1191 be deposited with the Chief Financial Officer under chapter 717.

1192 (b) In disposing of the proceeds of the sale, the trustee  
 1193 may rely on the information provided in the affidavit of the  
 1194 lienholder under paragraph (2) (c) and, in the event of a dispute  
 1195 or uncertainty over such claims, the trustee has the discretion  
 1196 to submit the matter to adjudication by court, by interpleader,  
 1197 or in any other authorized manner and shall recover reasonable  
 1198 attorney's fees and costs.

1199 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure  
 1200 procedure established in this section does not impair or  
 1201 otherwise affect the lienholder's continuing right to bring a  
 1202 judicial foreclosure action, in lieu of using the trustee  
 1203 foreclosure procedure, with respect to any mortgage lien.

1204 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE

1205 PROCEDURE.—An action for actual damages for a material violation  
 1206 of this section may be brought by an obligor against the  
 1207 lienholder for the failure to follow the trustee foreclosure  
 1208 procedure contained in this section.

1209 Section 10. Subsections (1) and (4) of section 721.86,  
 1210 Florida Statutes, are amended to read:

1211 721.86 Miscellaneous provisions.—

1212 (1) In the event of a conflict between the provisions of  
 1213 this part and the other provisions of this chapter, chapter 702,  
 1214 or other applicable law, the provisions of this part shall  
 1215 prevail. The procedures in this part must be given effect in the  
 1216 context of any foreclosure proceedings against timeshare  
 1217 interests ~~estates~~ governed by this chapter, chapter 702, chapter  
 1218 718, or chapter 719.

1219 (4) In addition to assessment liens and mortgage liens  
 1220 arising after the effective date of this part, except as  
 1221 provided in s. 721.855(13), the provisions of this part apply to  
 1222 all assessment liens and mortgage liens existing prior to the  
 1223 effective date of this act regarding which a foreclosure  
 1224 proceeding has not yet commenced.

1225 Section 11. Subsection (2) of section 721.20, Florida  
 1226 Statutes, is amended to read:

1227 721.20 Licensing requirements; suspension or revocation of  
 1228 license; exceptions to applicability; collection of advance fees  
 1229 for listings unlawful.—

1230 (2) Solicitors who engage only in the solicitation of  
 1231 prospective purchasers and any purchaser who refers no more than  
 1232 20 people to a developer or managing entity per year or who

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1233 otherwise provides testimonials on behalf of a developer or  
1234 managing entity are exempt from the provisions of chapter 475.  
1235 Section 12. This act shall take effect upon becoming a  
1236 law.