

1 A bill to be entitled
2 An act relating to foreclosures; amending s. 721.07, F.S.;
3 providing lien disclosure requirements for filed public
4 offering statements for certain timeshare plans; amending
5 s. 721.13, F.S.; requiring officers, directors, and agents
6 of a timeshare owners' association to act in good faith;
7 providing for damages; providing exceptions; amending s.
8 721.16, F.S.; authorizing a managing entity to bring a
9 judicial action or a trustee procedure to foreclose
10 certain liens under specified conditions; revising when a
11 lien is effective; renaming part III of chapter 721, F.S.,
12 to conform to changes made by this act; amending s.
13 721.81, F.S.; revising and providing legislative purposes
14 of the part; amending s. 721.82 F.S.; revising and
15 providing definitions; amending s. 721.83, F.S., relating
16 to consolidation of foreclosure actions; clarifying
17 application to judicial foreclosure actions; amending s.
18 721.85, F.S., relating to service to notice address or on
19 registered agent; conforming provisions to changes made by
20 this act; creating s. 721.855, F.S.; establishing
21 procedure for the trustee foreclosure of assessment liens;
22 providing for the appointment of a trustee; providing
23 recording requirements for such liens; providing
24 procedures for the initiation of a trustee foreclosure
25 procedure against a timeshare interest; providing
26 procedures for an obligor's objection to the trustee
27 foreclosure procedure; providing conditions to a trustee's
28 exercise of power of sale; providing requirements for a

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

57 does not impair or otherwise affect the right to bring
 58 certain actions; providing for actions for failure to
 59 follow the trustee foreclosure procedure; amending s.
 60 721.86, F.S.; providing for priority of application in
 61 case of conflict; conforming terminology to changes made
 62 by this act; amending s. 721.20, F.S.; revising exemptions
 63 from certain licensing requirements; amending s. 727.113,
 64 F.S.; providing for calculation of deficiency judgments
 65 related to an assignment for the benefit of creditors when
 66 the property is abandoned to the mortgagee; providing
 67 applicability to pending cases; providing an effective
 68 date.

69

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

71

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

74 721.07 Public offering statement.—Prior to offering any
 75 timeshare plan, the developer must submit a filed public
 76 offering statement to the division for approval as prescribed by
 77 s. 721.03, s. 721.55, or this section. Until the division
 78 approves such filing, any contract regarding the sale of that
 79 timeshare plan is subject to cancellation by the purchaser
 80 pursuant to s. 721.10.

81 (5) Every filed public offering statement for a timeshare
 82 plan which is not a multisite timeshare plan shall contain the
 83 information required by this subsection. The division is
 84 authorized to provide by rule the method by which a developer

85 must provide such information to the division.

86 (jj) The following statement in conspicuous type:

87
 88 The managing entity has a lien against each timeshare
 89 interest to secure the payment of assessments, ad
 90 valorem assessments, tax assessments, and special
 91 assessments. Your failure to make any required
 92 payments may result in the judicial or trustee
 93 foreclosure of an assessment lien and the loss of your
 94 timeshare interest. If the managing entity initiates a
 95 trustee foreclosure procedure, you shall have the
 96 option to object to the use of the trustee foreclosure
 97 procedure and the managing entity may only proceed by
 98 filing a judicial foreclosure action.

99 Section 2. Subsection (13) is added to section 721.13,
 100 Florida Statutes, to read:

101 721.13 Management.—

102 (13) Notwithstanding any provisions of chapter 607,
 103 chapter 617, or chapter 718, an officer, director, or agent of
 104 an owners' association shall discharge his or her duties in good
 105 faith, with the care an ordinarily prudent person in a like
 106 position would exercise under similar circumstances, and in a
 107 manner he or she reasonably believes to be in the interests of
 108 the owners' association. An officer, director, or agent of an
 109 owners' association shall be exempt from liability for monetary
 110 damages in the same manner as provided in s. 617.0834 unless
 111 such officer, director, or agent breached or failed to perform
 112 his or her duties and the breach of, or failure to perform, his

113 or her duties constitutes a violation of criminal law as
 114 provided in s. 617.0834; constitutes a transaction from which
 115 the officer or director derived an improper personal benefit,
 116 either directly or indirectly; or constitutes recklessness or an
 117 act or omission that was in bad faith, with malicious purpose,
 118 or in a manner exhibiting wanton and willful disregard of human
 119 rights, safety, or property.

120 Section 3. Subsections (2) and (3) of section 721.16,
 121 Florida Statutes, are amended to read:

122 721.16 Liens for overdue assessments; liens for labor
 123 performed on, or materials furnished to, a timeshare unit.—

124 (2) The managing entity may bring a judicial ~~an~~ action in
 125 its name to foreclose a lien under subsection (1) in the manner
 126 a mortgage of real property is foreclosed and may also bring an
 127 action to recover a money judgment for the unpaid assessments
 128 without waiving any claim of lien. As an alternative to
 129 initiating a judicial action, the managing entity may initiate a
 130 trustee procedure to foreclose an assessment lien under s.
 131 721.855.

132 (3) The lien is effective from the date of recording a
 133 claim of lien in the official ~~public~~ records of the county or
 134 counties in which the timeshare interest is ~~accommodations and~~
 135 ~~facilities constituting the timeshare plan~~ are located. The
 136 claim of lien shall state the name of the timeshare plan and
 137 identify the timeshare interest for which the lien is effective,
 138 state the name of the purchaser, state the assessment amount
 139 due, and state the due dates. Notwithstanding any provision of
 140 s. 718.116(5) ~~(a)~~ or s. 719.108(4) to the contrary, the lien is

141 effective until satisfied or until 5 years have expired after
 142 the date the claim of lien is recorded unless, within that time,
 143 an action to enforce the lien is commenced pursuant to
 144 subsection (2). A claim of lien for assessments may include only
 145 assessments which are due when the claim is recorded. A claim of
 146 lien shall be signed and acknowledged by an officer or agent of
 147 the managing entity. Upon full payment, the person making the
 148 payment is entitled to receive a satisfaction of the lien.

149 Section 4. Part III of chapter 721, Florida Statutes,
 150 entitled "Foreclosure of Liens on Timeshare Estates," is renamed
 151 "Foreclosure of Liens on Timeshare Interests."

152 Section 5. Section 721.81, Florida Statutes, is amended to
 153 read:

154 721.81 Legislative purpose.—The purposes of this part are
 155 to:

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

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

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

168 (4) Improve judicial economy and reduce court congestion

169 and the cost to taxpayers by establishing streamlined procedures
 170 for the judicial and trustee foreclosure of assessment liens and
 171 mortgage liens against timeshare interests ~~estates~~.

172 (5) Recognize that nearly all timeshare interest
 173 foreclosures are uncontested.

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

178 (7) Recognize that the use of the trustee foreclosure
 179 procedure established under ss. 721.855 and 721.856 shall have
 180 the same force and effect as the use of the judicial foreclosure
 181 procedure against a timeshare interest with respect to the
 182 provisions of this chapter or any other applicable law. However,
 183 obligors shall not be subject to a deficiency judgment even if
 184 the proceeds from the sale of the timeshare interest are
 185 insufficient to offset the amounts secured by the lien.

186 Section 6. Section 721.82, Florida Statutes, is amended to
 187 read:

188 721.82 Definitions.—As used in this part, the term:

189 (1) "Amounts secured by the lien" means all amounts
 190 secured by an assessment lien or mortgage lien, including, but
 191 not limited to, all past due amounts, accrued interest, late
 192 fees, taxes, advances for the payment of taxes, insurance and
 193 maintenance of the timeshare interest, and any fees or costs
 194 incurred by the lienholder or trustee, including any reasonable
 195 attorney's fees, trustee's fees, and costs incurred in
 196 connection with the default.

CS/CS/HB 1411

2010

197 (2)~~(1)~~ "Assessment lien" means:

198 (a) A lien for delinquent assessments as provided in ss.
 199 ~~721.16, 718.116, and 719.108,~~ and 721.16 ~~as to timeshare~~
 200 ~~econdominiums;~~ or

201 (b) A lien for unpaid ad valorem assessments, tax
 202 assessments, ~~taxes~~ and special assessments as provided in s.
 203 192.037(8).

204 (3)~~(2)~~ "Junior interestholder" means any person who has a
 205 lien or interest of record against a timeshare interest estate
 206 in the county or counties in which the timeshare interest estate
 207 is located, which is inferior to the mortgage lien or assessment
 208 lien being foreclosed under this part.

209 (4)~~(3)~~ "Lienholder" means a holder of an assessment lien
 210 or a holder of a mortgage lien, as applicable. A receiver
 211 appointed under s. 721.26 is a lienholder for purposes of
 212 foreclosure of assessment liens under this part.

213 (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.
 214 697.01.

215 (6)~~(5)~~ "Mortgage lien" means a security interest in a
 216 timeshare interest estate created by a mortgage encumbering the
 217 timeshare interest estate.

218 (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

219 (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien
 220 or a person who has assumed the obligation secured by a mortgage
 221 lien.

222 (9)~~(8)~~ "Notice address" means:

223 (a) As to an assessment lien, the address of the ~~current~~
 224 owner of a timeshare interest estate as reflected by the books

225 and records of the timeshare plan under ss. 721.13(4) and
 226 721.15(7).

227 (b) As to a mortgage lien:

228 1. The address of the mortgagor as set forth in the
 229 mortgage, the promissory note or a separate document executed by
 230 the mortgagor at the time the mortgage lien was created, or the
 231 most current address of the mortgagor according to the records
 232 of the mortgagee; and

233 2. If the ~~current~~ owner of the timeshare interest estate
 234 is different from the mortgagor, the address of the ~~current~~
 235 owner of the timeshare interest estate as reflected by the books
 236 and records of the mortgagee.

237 (c) As to a junior interestholder, the address as set
 238 forth in the recorded instrument creating the junior lien
 239 ~~interest~~ or interest lien, or in any recorded amendment
 240 ~~supplement~~ thereto changing the address, or in any written
 241 notification by the junior interestholder to the foreclosing
 242 lienholder changing the ~~of such change in~~ address.

243 ~~(10)-(9)~~ (10) "Obligor" means the mortgagor, the person subject
 244 to an assessment lien, or the record owner of the timeshare
 245 interest estate.

246 (11) "Permitted delivery service" means any nationally
 247 recognized common carrier delivery service or international
 248 airmail service that allows for return receipt service.

249 ~~(12)-(10)~~ (12) "Registered agent" means an agent duly appointed
 250 by the obligor under s. 721.84 for the purpose of accepting all
 251 notices and service of process under this part. A registered
 252 agent may be an individual resident in this state whose business

253 office qualifies as a registered office, or a domestic or
 254 foreign corporation or a not-for-profit corporation as defined
 255 in chapter 617 authorized to transact business or to conduct its
 256 affairs in this state, whose business office qualifies as a
 257 registered office. A registered agent for any obligor may not be
 258 the lienholder or the attorney for the lienholder.

259 (13)~~(11)~~ "Registered office" means the street address of
 260 the business office of the registered agent appointed under s.
 261 721.84, located in this state.

262 (14) "Trustee" means an attorney who is a member in good
 263 standing of The Florida Bar and who has been practicing law for
 264 at least 5 years or that attorney's law firm, or a title insurer
 265 authorized to transact business in this state under s. 624.401
 266 and who has been authorized to transact business for at least 5
 267 years, appointed as trustee or as substitute trustee in
 268 accordance with s. 721.855 or s. 721.856. A receiver appointed
 269 under s. 721.26 may act as a trustee under s. 721.855. A trustee
 270 must be independent as defined in s. 721.05(20).

271 Section 7. Section 721.83, Florida Statutes, is amended to
 272 read:

273 721.83 Consolidation of judicial foreclosure actions.—

274 (1) A complaint in a foreclosure proceeding involving
 275 timeshare interests ~~estates~~ may join in the same action multiple
 276 defendant obligors and junior interestholders of separate
 277 timeshare interests ~~estates~~, provided:

278 (a) The foreclosure proceeding involves a single timeshare
 279 property.

280 (b) The foreclosure proceeding is filed by a single

281 plaintiff.

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

285 (d) The nature of the defaults alleged is the same for
 286 each defendant.

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

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

294 (3) A consolidated timeshare foreclosure action shall be
 295 considered a single action, suit, or proceeding for the payment
 296 of filing fees and service charges pursuant to general law. In
 297 addition to the payment of such filing fees and service charges,
 298 an additional filing fee of up to \$10 for each timeshare
 299 interest ~~estate~~ joined in that action shall be paid to the clerk
 300 of court.

301 Section 8. Section 721.85, Florida Statutes, is amended to
 302 read:

303 721.85 Service to notice address or on registered agent.—

304 (1) Service of process for a foreclosure proceeding
 305 involving a timeshare interest ~~estate~~ may be made by any means
 306 recognized by law. In addition, substituted service on an
 307 obligor ~~a party~~ who has appointed a registered agent under s.
 308 721.84 may be made on such registered agent at the registered

309 office. Also, when using s. 48.194 where in rem or quasi in rem
 310 relief only is sought, such service of process provisions are
 311 modified in connection with a foreclosure proceeding against a
 312 timeshare interest estate to provide that:

313 (a) Such service of process may be made on any person
 314 whether the person is located inside or outside this state, by
 315 certified mail, ~~or~~ registered mail, or permitted delivery
 316 service, return receipt requested, addressed to the person to be
 317 served at the notice address, or on the person's ~~party's~~
 318 registered agent duly appointed under s. 721.84, at the
 319 registered office; and

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

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

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

329 Section 9. Section 721.855, Florida Statutes, is created
 330 to read:

331 721.855 Procedure for the trustee foreclosure of
 332 assessment liens.—The provisions of this section establish a
 333 trustee foreclosure procedure for assessment liens.

334 (1) APPOINTMENT OF TRUSTEE.—

335 (a) A trustee or a substitute trustee may be appointed by
 336 a lienholder at any time by recording a notice of appointment of

CS/CS/HB 1411

2010

337 trustee or notice of substitution of trustee in the official
338 records of the county or counties in which the timeshare
339 interest is located. A lienholder may appoint multiple trustees
340 in a single appointment, and any appointed trustee may be used
341 by the lienholder regarding the trustee foreclosure of any
342 assessment lien under any timeshare plan for which the trustee
343 is appointed.

344 (b) A trustee shall use good faith, skill, care, and
345 diligence in discharging all of the trustee duties under this
346 section and shall deal honestly and fairly with all parties.

347 (c) The recorded notice of appointment of trustee or
348 notice of substitution of trustee shall contain the name and
349 address of the trustee or substitute trustee, the name and
350 address of the lienholder, and the name and address of the
351 timeshare plan.

352 (2) INITIATING THE USE OF A TRUSTEE FORECLOSURE
353 PROCEDURE.—

354 (a) Before initiating the trustee foreclosure procedure
355 against any timeshare interest in a given timeshare plan:

356 1. If a timeshare instrument contains any provision
357 specifically prohibiting the use of the trustee foreclosure
358 procedure, or if the managing entity otherwise determines that
359 the timeshare instrument should be amended to specifically
360 provide for the use of the trustee foreclosure procedure, an
361 amendment to the timeshare instrument permitting the use of the
362 trustee foreclosure procedure set forth in this section must be
363 adopted and recorded prior to the use of the trustee foreclosure
364 procedure. Such amendment to the timeshare instrument shall

365 contain a statement in substantially the following form and may
366 be adopted by a majority of those present and voting at a duly
367 called meeting of the owners' association at which at least 15
368 percent of the voting interest are present in person or by
369 proxy:

370
371 If a timeshare owner fails to make timely payments of
372 timeshare plan common expenses, ad valorem taxes, or
373 special assessments, an assessment lien against the
374 timeshare owner's timeshare interest may be foreclosed
375 in accordance with a judicial foreclosure procedure or
376 a trustee foreclosure procedure, either of which may
377 result in the loss of the timeshare owner's timeshare
378 interest. If the managing entity initiates a trustee
379 foreclosure procedure, the timeshare owner shall have
380 the option to object pursuant to Florida law, and in
381 such event the managing entity may thereafter proceed
382 only by filing a judicial foreclosure action.

383
384 2. The managing entity shall inform owners of timeshare
385 interests in the timeshare plan in writing that the managing
386 entity has the right to elect to use the trustee foreclosure
387 procedure with respect to foreclosure of assessment liens as
388 established in this section. The managing entity shall be deemed
389 to have complied with the requirements of this subparagraph if
390 the owners of timeshare interests in the given timeshare plan
391 are informed by mail sent to each owner's notice address, in the
392 notice of an annual or special meeting of the owners, by posting

393 on the website of the applicable timeshare plan, or by any owner
 394 communication used by the managing entity.

395 (b) Before initiating the trustee foreclosure procedure
 396 against any timeshare interest, a claim of lien against the
 397 timeshare interest shall be recorded under s. 721.16 or, if
 398 applicable, s. 718.116 or s. 719.108, and the notice of the
 399 intent to file a lien shall be given under s. 718.121 for
 400 timeshare condominiums and s. 719.108 for timeshare
 401 cooperatives.

402 (c)1. In order to initiate a trustee foreclosure procedure
 403 against a timeshare interest, the lienholder shall deliver an
 404 affidavit to the trustee that identifies the obligor; the notice
 405 address of the obligor; the timeshare interest; the date that
 406 the notice of the intent to file a lien was given, if
 407 applicable; the official records book and page number where the
 408 claim of lien is recorded; and the name and notice address of
 409 any junior interestholder. The affidavit shall be accompanied by
 410 a title search of the timeshare interest identifying any junior
 411 interestholders of record, and the effective date of the title
 412 search must be a date that is within 60 calendar days before the
 413 date of the affidavit.

414 2. The affidavit shall also state the facts that establish
 415 that the obligor has defaulted in the obligation to make a
 416 payment under a specified provision of the timeshare instrument
 417 or applicable law.

418 3. The affidavit shall also specify the amounts secured by
 419 the lien as of the date of the affidavit and a per diem amount
 420 to account for further accrual of the amounts secured by the

421 lien.

422 4. The affidavit shall also state that the assessment lien
 423 was properly created and authorized pursuant to the timeshare
 424 instrument and applicable law.

425 (3) OBLIGOR'S RIGHTS.—

426 (a) The obligor may object to the lienholder's use of the
 427 trustee foreclosure procedure for a specific default any time
 428 before the sale of the timeshare interest under subsection (7)
 429 by delivering a written objection to the trustee using the
 430 objection form provided for in subsection (5). If the trustee
 431 receives the written objection from the obligor, the trustee may
 432 not proceed with the trustee foreclosure procedure as to the
 433 default specified in the notice of default and intent to
 434 foreclose under subsection (5), and the lienholder may proceed
 435 thereafter only with a judicial foreclosure action as to that
 436 specified default.

437 (b) At any time before the trustee issues the certificate
 438 of sale under paragraph (7) (f), the obligor may cure the default
 439 and redeem the timeshare interest by paying the amounts secured
 440 by the lien in cash or certified funds to the trustee. After the
 441 trustee issues the certificate of sale, there is no right of
 442 redemption.

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

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

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

449 the use of the trustee foreclosure procedure under paragraph
 450 (3) (a) and the timeshare interest was not redeemed under
 451 paragraph (3) (b);

452 (c) There is no lis pendens recorded and pending against
 453 the same timeshare interest and the trustee has not been served
 454 notice of the filing of any action to enjoin the trustee
 455 foreclosure sale;

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

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

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

464 (a) In any foreclosure proceeding under this section, the
 465 trustee is required to notify the obligor of the proceeding by
 466 sending the obligor a written notice of default and intent to
 467 foreclose to the notice address of the obligor by certified
 468 mail, registered mail, or permitted delivery service, return
 469 receipt requested, and by first-class mail or permitted delivery
 470 service, postage prepaid, as follows:

471 1. The notice of default and intent to foreclose shall
 472 identify the obligor, the notice address of the obligor, the
 473 legal description of the timeshare interest, the nature of the
 474 default, the amounts secured by the lien, and a per diem amount
 475 to account for further accrual of the amounts secured by the
 476 lien and shall state the method by which the obligor may cure

477 the default, including the period of time after the date of the
478 notice of default and intent to foreclose within which the
479 obligor may cure the default.

480 2. The notice of default and intent to foreclose shall
481 include an objection form with which the obligor can object to
482 the use of the trustee foreclosure procedure by signing and
483 returning the objection form to the trustee. The objection form
484 shall identify the obligor, the notice address of the obligor,
485 the timeshare interest, and the return address of the trustee
486 and shall state: "The undersigned obligor exercises the
487 obligor's right to object to the use of the trustee foreclosure
488 procedure contained in section 721.855, Florida Statutes."

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

491
492 If you fail to cure the default as set forth in this
493 notice or take other appropriate action with regard to
494 this foreclosure matter, you risk losing ownership of
495 your timeshare interest through the trustee
496 foreclosure procedure established in section 721.855,
497 Florida Statutes. You may choose to sign and send to
498 the trustee the enclosed objection form, exercising
499 your right to object to the use of the trustee
500 foreclosure procedure. Upon the trustee's receipt of
501 your signed objection form, the foreclosure of the
502 lien with respect to the default specified in this
503 notice shall be subject to the judicial foreclosure
504 procedure only. You have the right to cure your

CS/CS/HB 1411

2010

505 default in the manner set forth in this notice at any
506 time before the trustee's sale of your timeshare
507 interest. If you do not object to the use of the
508 trustee foreclosure procedure, you will not be subject
509 to a deficiency judgment even if the proceeds from the
510 sale of your timeshare interest are insufficient to
511 offset the amounts secured by the lien.

512
513 4. The trustee shall also mail a copy of the notice of
514 default and intent to foreclose, without the objection form, to
515 the notice address of any junior interestholder by certified
516 mail, registered mail, or permitted delivery service, return
517 receipt requested, and by first-class mail or permitted delivery
518 service, postage prepaid.

519 5. Notice under this paragraph is considered perfected
520 upon the trustee receiving the return receipt bearing the
521 signature of the obligor or junior interestholder, as
522 applicable, within 30 calendar days after the trustee sent the
523 notice under this paragraph. Notice under this paragraph is not
524 perfected if the notice is returned as undeliverable within 30
525 calendar days after the trustee sent the notice, if the trustee
526 cannot ascertain from the receipt that the obligor or junior
527 interestholder, as applicable, is the person who signed the
528 receipt, or if the receipt from the obligor or junior
529 interestholder, as applicable, is returned or refused within 30
530 calendar days after the trustee sent the notice.

531 (b) If the notice required by paragraph (a) is returned as
532 undeliverable within 30 calendar days after the trustee sent the

533 notice, the trustee shall perform a diligent search and inquiry
534 to obtain a different address for the obligor or junior
535 interestholder. For purposes of this paragraph, any address
536 known and used by the lienholder for sending regular mailings or
537 other communications from the lienholder to the obligor or
538 junior interestholder, as applicable, shall be included with
539 other addresses produced from the diligent search and inquiry,
540 if any.

541 1. If the trustee's diligent search and inquiry produces
542 an address different from the notice address, the trustee shall
543 mail a copy of the notice by certified mail, registered mail, or
544 permitted delivery service, return receipt requested, and by
545 first-class mail or permitted delivery service, postage prepaid,
546 to the new address. Notice under this subparagraph is considered
547 perfected upon the trustee receiving the return receipt bearing
548 the signature of the obligor or junior interestholder, as
549 applicable, within 30 calendar days after the trustee sent the
550 notice under this subparagraph. Notice under this subparagraph
551 is not perfected if the trustee cannot ascertain from the
552 receipt that the obligor or junior interestholder, as
553 applicable, is the person who signed the receipt or the receipt
554 from the obligor or junior interestholder, as applicable, is
555 returned refused. If the trustee does not perfect notice under
556 this subparagraph, the trustee shall perfect service in the
557 manner set forth in paragraph (c).

558 2. If the trustee's diligent search and inquiry does not
559 locate a different address for the obligor or junior
560 interestholder, as applicable, the trustee may perfect notice

561 against that person under paragraph (c).

562 (c) If the notice is not perfected under subparagraph
563 (a)5., and such notice was not returned as undeliverable, or if
564 the notice was not perfected under subparagraph (b)1., the
565 trustee may perfect notice by publication in a newspaper of
566 general circulation in the county or counties in which the
567 timeshare interest is located. The notice shall appear at least
568 once a week for 2 consecutive weeks. The trustee may group an
569 unlimited number of notices in the same publication, if all of
570 the notices pertain to the same timeshare plan. Notice under
571 this paragraph is considered perfected upon publication as
572 required in this paragraph.

573 (d) If notice is perfected under subparagraph (a)5., the
574 trustee shall execute an affidavit in recordable form setting
575 forth the manner in which notice was perfected and attach the
576 affidavit to the certificate of compliance set forth in
577 subsection (9). The affidavit shall state the nature of the
578 notice, the date on which the notice was mailed, the name and
579 address on the envelope containing the notice, the manner in
580 which the notice was mailed, and the basis for that knowledge.

581 (e) If notice is perfected under subparagraph (b)1., the
582 trustee shall execute an affidavit in recordable form setting
583 forth the manner in which notice was perfected and attach the
584 affidavit to the certificate of compliance set forth in
585 subsection (9). The affidavit shall state the nature of the
586 notice, the dates on which the notice was mailed, the name and
587 addresses on the envelopes containing the notice, the manner in
588 which the notices were mailed, the fact that a signed receipt

CS/CS/HB 1411

2010

589 from the certified mail, registered mail, or permitted delivery
590 service was timely received, and the name and address on the
591 envelopes containing the notice.

592 (f) If notice is perfected by publication under paragraph
593 (c), the trustee shall execute an affidavit in recordable form
594 setting forth the manner in which notice was perfected and
595 attach the affidavit to the certificate of compliance set forth
596 in subsection (9). The affidavit shall include all the
597 information contained in either paragraph (d) or paragraph (e),
598 as applicable, shall state that the notice was perfected by
599 publication after diligent search and inquiry was made for the
600 current address for the person, and shall include a statement
601 that notice was perfected by publication, and shall set forth
602 the information required by s. 49.041 in the case of a natural
603 person or s. 49.051 in the case of a corporation, whichever is
604 applicable. No other action of the trustee is necessary to
605 perfect notice.

606 (6) NOTICE OF SALE.—

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

608 1. The name and notice addresses of the obligor and any
609 junior interestholder.

610 2. The legal description of the timeshare interest.

611 3. The name and address of the trustee.

612 4. A description of the default that is the basis for the
613 foreclosure.

614 5. The official records book and page numbers where the
615 claim of lien is recorded.

616 6. The amounts secured by the lien and a per diem amount

CS/CS/HB 1411

2010

617 to account for further accrual of the amounts secured by the
618 lien.

619 7. The date, location, and starting time of the trustee's
620 sale.

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

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

630 (c) After the date of recording of the notice of sale,
631 notice is not required to be given to any person claiming an
632 interest in the timeshare interest except as provided in this
633 section. The recording of the notice of sale has the same force
634 and effect as the filing of a lis pendens in a judicial
635 proceeding under s. 48.23.

636 (d)1. The trustee shall publish the notice of sale in a
637 newspaper of general circulation in the county or counties in
638 which the timeshare interest is located at least once a week for
639 2 consecutive weeks before the date of the sale. The last
640 publication shall occur at least 5 calendar days before the
641 sale.

642 2. The trustee may group an unlimited number of notices of
643 sale in the same publication, if all of the notices of sale
644 pertain to the same timeshare plan.

645 (7) MANNER OF SALE.—

646 (a) The sale of a timeshare interest by the trustee in a
647 public auction shall be held in the county in which the
648 timeshare interest is located, on the date, location, and
649 starting time designated in the notice of sale, which shall be
650 after 9:00 a.m. but before 4:00 p.m. on a business day not less
651 than 30 calendar days after the recording of the notice of sale.
652 The trustee's sale may occur online at a specific website on the
653 Internet or in any other manner used by the clerk of the court
654 for a judicial foreclosure sales procedure in the county or
655 counties in which the timeshare interest is located.

656 (b) The trustee shall conduct the sale and act as the
657 auctioneer.

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

662 (d) The trustee may postpone the sale from time to time.
663 In such case, notice of postponement must be given by the
664 trustee at the date, time, and location contained in the notice
665 of sale. The notice of sale for the postponed sale shall be
666 mailed under paragraph (6) (b), recorded under paragraph (4) (e),
667 and published under paragraph (6) (d). The effective date of the
668 initial notice of sale under paragraph (6) (b) is not affected by
669 a postponed sale.

670 (e) The highest bidder of the timeshare interest shall pay
671 the price bid to the trustee in cash or certified funds on the
672 day of the sale. If the lienholder is the highest bidder, the

CS/CS/HB 1411

2010

673 lienholder shall receive a credit up to the amount set forth in
674 the notice of sale as required under subparagraph (6)(a)6.

675 (f) On the date of the sale and upon receipt of the cash
676 or certified funds due from the highest bidder, the trustee
677 shall issue to the highest bidder a certificate of sale stating
678 that a foreclosure conforming to the requirements of this
679 section has occurred, including the time, location, and date of
680 the sale, that the timeshare interest was sold, the amounts
681 secured by the lien, and the amount of the highest bid. A copy
682 of the certificate of sale shall be mailed by certified mail,
683 registered mail, or permitted delivery service, return receipt
684 requested, to all persons entitled to receive a notice of sale
685 under subsection (6).

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

690 (8) EFFECT OF TRUSTEE'S SALE.—

691 (a) A sale conducted under subsection (7) forecloses and
692 terminates all interests of any person with notice to whom
693 notice is given under paragraph (4)(d) and paragraph (6)(b), and
694 of any other person claiming interests by, through, or under any
695 such person, in the affected timeshare interest. A failure to
696 give notice to any person entitled to notice does not affect the
697 validity of the sale as to the interests of any person properly
698 notified. A person entitled to notice but not given notice has
699 the rights of a person not made a defendant in a judicial
700 foreclosure.

CS/CS/HB 1411

2010

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

704 (c) A sale conducted under subsection (7) releases the
705 obligor's liability for all amounts secured by the lien. The
706 lienholder has no right to any deficiency judgment against the
707 obligor after a sale of the obligor's timeshare interest under
708 this section.

709 (d) The issuance and recording of the trustee's deed is
710 presumed valid and may be relied upon by third parties without
711 actual knowledge of irregularities in the foreclosure
712 proceedings. If for any reason there is an irregularity in the
713 foreclosure proceedings, a purchaser becomes subrogated to all
714 the rights of the lienholder to the indebtedness that it secured
715 to the extent necessary to reforeclose the assessment lien in
716 order to correct the irregularity and becomes entitled to an
717 action de novo for the foreclosure of such assessment lien. Any
718 subsequent reforeclosure required to correct an irregularity may
719 be conducted under this section.

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

721 (a) Within 10 calendar days after the trustee conducts a
722 sale, the trustee shall execute and acknowledge a certificate of
723 compliance that:

724 1. Confirms delivery of the notice of default and intent
725 to foreclose and attaches the affidavit required under
726 subsection (5).

727 2. States that the default was not cured, that the trustee
728 did not receive any written objection under paragraph (3)(a),

CS/CS/HB 1411

2010

729 and that the timeshare interest was not redeemed under paragraph
730 (3) (b).

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

734 4. Confirms that the notice of sale was mailed under
735 paragraph (6) (b) together with a list of the parties to whom the
736 notice of sale was mailed.

737 (b) In furtherance of the execution of the certificate of
738 compliance required under this subsection, the trustee is
739 entitled to rely upon an affidavit or certification from the
740 lienholder as to the facts and circumstances of default and
741 failure to cure the default.

742 (10) TRUSTEE'S DEED.—

743 (a) The trustee's deed shall include the name and address
744 of the trustee, the name and address of the highest bidder, the
745 name of the former owner, a legal description of the timeshare
746 interest, and the name and address of the preparer of the
747 trustee's deed. The trustee's deed shall recite that the
748 certificate of compliance was recorded and shall contain no
749 warranties of title from the trustee. The certificate of
750 compliance shall be attached as an exhibit to the trustee's
751 deed.

752 (b) Ten calendar days after a sale, absent the prior
753 filing and service on the trustee of a judicial action to enjoin
754 issuance of the trustee's deed to the timeshare interest, the
755 trustee shall:

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

757 2. Record the trustee's deed in the official records of
 758 the county or counties in which the timeshare interest is
 759 located.

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

765 2. The trustee's deed conveys to the highest bidder all
 766 rights, title, and interest in the timeshare interest that the
 767 former owner had, or had the power to convey, at the time of the
 768 recording of the claim of lien, together with all rights, title,
 769 and interest that the former owner or his or her successors in
 770 interest acquired after the recording of the claim of lien.

771 3. The issuance and recording of a trustee's deed shall
 772 have the same force and effect as the issuance and recording of
 773 a certificate of title by the clerk of the court in a judicial
 774 foreclosure action.

775 (11) DISPOSITION OF PROCEEDS OF SALE.—

776 (a) The trustee shall apply the proceeds of the sale as
 777 follows:

778 1. To the expenses of the sale, including compensation of
 779 the trustee.

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

782 3. If there are junior interestholders, the trustee may
 783 file an action in interpleader, pay the surplus to a court of
 784 competent jurisdiction, name the competing junior

785 interestholders, and ask the court to determine the proper
 786 distribution of the surplus. In any interpleader action, the
 787 trustee shall recover reasonable attorney's fees and costs.

788 4. If there are no junior interestholders, or if all
 789 junior interestholders have been paid, any surplus shall be paid
 790 to the former owner. If the trustee is unable to locate the
 791 former owner within 1 year after the sale, the surplus, if any,
 792 shall be deposited with the Chief Financial Officer under
 793 chapter 717.

794 (b) In disposing of the proceeds of the sale, the trustee
 795 may rely on the information provided in the affidavit of the
 796 lienholder under paragraph (2) (c) and, in the event of a dispute
 797 or uncertainty over such claims, the trustee has the discretion
 798 to submit the matter to adjudication by court, by interpleader,
 799 or in any other authorized manner and shall recover reasonable
 800 attorney's fees and costs.

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

806 (13) APPLICATION.—This section applies to any default
 807 giving rise to the imposition of an assessment lien which occurs
 808 after the effective date of this section.

809 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 810 PROCEDURE.—An action for actual damages for a material violation
 811 of this section may be brought by an obligor against the
 812 lienholder for the failure to follow the trustee foreclosure

813 procedure contained in this section.

814 Section 10. Section 721.856, Florida Statutes, is created
815 to read:

816 721.856 Procedure for the trustee foreclosure of mortgage
817 liens.—The provisions of this section establish a trustee
818 foreclosure procedure for mortgage liens.

819 (1) APPOINTMENT OF TRUSTEE.—

820 (a) A trustee or a substitute trustee may be appointed by
821 a lienholder at any time by recording a notice of appointment of
822 trustee or notice of substitution of trustee in the official
823 records of the county or counties in which the timeshare
824 interest is located. A lienholder may appoint multiple trustees
825 in a single appointment, and any appointed trustee may be used
826 by the lienholder regarding the trustee foreclosure of any
827 mortgage lien.

828 (b) A trustee shall use good faith, skill, care, and
829 diligence in discharging all of the trustee duties under this
830 section and shall deal honestly and fairly with all parties.

831 (c) The recorded notice of appointment of trustee or
832 notice of substitution of trustee shall contain the name and
833 address of the trustee or substitute trustee, the name and
834 address of the lienholder, and the name and address of the
835 timeshare plan.

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

837 (a) Before initiating the trustee foreclosure against a
838 timeshare interest, the mortgage, or an amendment to a mortgage
839 executed by the obligor before the effective date of this
840 section, must contain a statement in substantially the following

CS/CS/HB 1411

2010

841 form:

842

843 If the mortgagor fails to make timely payments under
844 the obligation secured by this mortgage, or is
845 otherwise deemed in uncured default of this mortgage,
846 the lien against the mortgagor's timeshare interest
847 created by this mortgage may be foreclosed in
848 accordance with either a judicial foreclosure
849 procedure or a trustee foreclosure procedure and may
850 result in the loss of your timeshare interest. If the
851 mortgagee initiates a trustee foreclosure procedure,
852 the mortgagor shall have the option to object and the
853 mortgagee may proceed only by filing a judicial
854 foreclosure action.

855

856 (b)1. In order to initiate a trustee foreclosure procedure
857 against a timeshare interest, the lienholder shall deliver an
858 affidavit to the trustee that identifies the obligor, the notice
859 address of the obligor, the timeshare interest, the official
860 records book and page number where the mortgage is recorded, and
861 the name and notice address of any junior interestholder. The
862 affidavit shall be accompanied by a title search of the
863 timeshare interest identifying any junior interestholders of
864 record, and the effective date of the title search must be a
865 date that is within 60 calendar days before the date of the
866 affidavit.

867 2. The affidavit shall also state the facts that establish
868 that the obligor has defaulted in the obligation to make a

CS/CS/HB 1411

2010

869 payment under a specified provision of the mortgage or is
870 otherwise deemed in uncured default under a specified provision
871 of the mortgage.

872 3. The affidavit shall also specify the amounts secured by
873 the lien as of the date of the affidavit and a per diem amount
874 to account for further accrual of the amounts secured by the
875 lien.

876 4. The affidavit shall also state that the appropriate
877 amount of documentary stamp tax and intangible taxes has been
878 paid upon recording of the mortgage, or otherwise paid to the
879 state.

880 5. The affidavit shall also state that the lienholder is
881 the holder of the note and has complied with all preconditions
882 in the note and mortgage to determine the amounts secured by the
883 lien and to initiate the use of the trustee foreclosure
884 procedure.

885 (3) OBLIGOR'S RIGHTS.—

886 (a) The obligor may object to the lienholder's use of the
887 trustee foreclosure procedure for a specific default any time
888 before the sale of the timeshare interest under subsection (7)
889 by delivering a written objection to the trustee using the
890 objection form provided for in subsection (5). If the trustee
891 receives the written objection from the obligor, the trustee may
892 not proceed with the trustee foreclosure procedure as to the
893 default specified in the notice of default and intent to
894 foreclose under subsection (5), and the lienholder may proceed
895 thereafter only with a judicial foreclosure action as to that
896 specified default.

897 (b) At any time before the trustee issues the certificate
 898 of sale under paragraph (7) (f), the obligor may cure the default
 899 and redeem the timeshare interest by paying the amounts secured
 900 by the lien in cash or certified funds to the trustee. After the
 901 trustee issues the certificate of sale, there is no right of
 902 redemption.

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

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

908 (b) The trustee has not received a written objection to
 909 the use of the trustee foreclosure procedure under paragraph
 910 (3) (a) and the timeshare interest was not redeemed under
 911 paragraph (3) (b);

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

916 (d) The trustee is in possession of the original
 917 promissory note executed by the mortgagor and secured by the
 918 mortgage lien;

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

923 (f) The notice of sale required under subsection (6) has
 924 been recorded in the official records of the county in which the

925 mortgage was recorded.

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

927 (a) In any foreclosure proceeding under this section, the
 928 trustee is required to notify the obligor of the proceeding by
 929 sending the obligor a written notice of default and intent to
 930 foreclose to the notice address of the obligor by certified
 931 mail, registered mail, or permitted delivery service, return
 932 receipt requested, and by first-class mail or permitted delivery
 933 service, postage prepaid, as follows:

934 1. The notice of default and intent to foreclose shall
 935 identify the obligor, the notice address of the obligor, the
 936 legal description of the timeshare interest, the nature of the
 937 default, the amounts secured by the lien, and a per diem amount
 938 to account for further accrual of the amounts secured by the
 939 lien and shall state the method by which the obligor may cure
 940 the default, including the period of time after the date of the
 941 notice of default and intent to foreclose within which the
 942 obligor may cure the default.

943 2. The notice of default and intent to foreclose shall
 944 include an objection form with which the obligor can object to
 945 the use of the trustee foreclosure procedure by signing and
 946 returning the objection form to the trustee. The objection form
 947 shall identify the obligor, the notice address of the obligor,
 948 the timeshare interest, and the return address of the trustee
 949 and shall state: "The undersigned obligor exercises the
 950 obligor's right to object to the use of the trustee foreclosure
 951 procedure contained in section 721.856, Florida Statutes."

952 3. The notice of default and intent to foreclose shall

953 also contain a statement in substantially the following form:

954

955 If you fail to cure the default as set forth in this
956 notice or take other appropriate action with regard to
957 this foreclosure matter, you risk losing ownership of
958 your timeshare interest through the trustee
959 foreclosure procedure established in section 721.856,
960 Florida Statutes. You may choose to sign and send to
961 the trustee the enclosed objection form, exercising
962 your right to object to the use of the trustee
963 foreclosure procedure. Upon the trustee's receipt of
964 your signed objection form, the foreclosure of the
965 lien with respect to the default specified in this
966 notice shall be subject to the judicial foreclosure
967 procedure only. You have the right to cure your
968 default in the manner set forth in this notice at any
969 time before the trustee's sale of your timeshare
970 interest. If you do not object to the use of the
971 trustee foreclosure procedure, you will not be subject
972 to a deficiency judgment even if the proceeds from the
973 sale of your timeshare interest are insufficient to
974 offset the amounts secured by the lien.

975

976 4. The trustee shall also mail a copy of the notice of
977 default and intent to foreclose, without the objection form, to
978 the notice address of any junior interestholder by certified
979 mail, registered mail, or permitted delivery service, return
980 receipt requested, and by first-class mail or permitted delivery

CS/CS/HB 1411

2010

981 service, postage prepaid.

982 5. Notice under this paragraph is considered perfected
983 upon the trustee receiving the return receipt bearing the
984 signature of the obligor or junior interestholder, as
985 applicable, within 30 calendar days after the trustee sent the
986 notice under this paragraph. Notice under this paragraph is not
987 perfected if the notice is returned as undeliverable within 30
988 calendar days after the trustee sent the notice, if the trustee
989 cannot ascertain from the receipt that the obligor or junior
990 interestholder, as applicable, is the person who signed the
991 receipt, or if the receipt from the obligor or junior
992 interestholder, as applicable, is returned or refused within 30
993 calendar days after the trustee sent the notice.

994 (b) If the notice required by paragraph (a) is returned as
995 undeliverable within 30 calendar days after the trustee sent the
996 notice, the trustee shall perform a diligent search and inquiry
997 to obtain a different address for the obligor or junior
998 interestholder. For purposes of this paragraph, any address
999 known and used by the lienholder for sending regular mailings or
1000 other communications from the lienholder to the obligor or
1001 junior interestholder, as applicable, shall be included with
1002 other addresses produced from the diligent search and inquiry,
1003 if any.

1004 1. If the trustee's diligent search and inquiry produces
1005 an address different from the notice address, the trustee shall
1006 mail a copy of the notice by certified mail, registered mail, or
1007 permitted delivery service, return receipt requested, and by
1008 first-class mail or permitted delivery service, postage prepaid,

CS/CS/HB 1411

2010

1009 to the new address. Notice under this subparagraph is considered
1010 perfected upon the trustee receiving the return receipt bearing
1011 the signature of the obligor or junior interestholder, as
1012 applicable, within 30 calendar days after the trustee sent the
1013 notice under this subparagraph. Notice under this subparagraph
1014 is not perfected if the trustee cannot ascertain from the
1015 receipt that the obligor or junior interestholder, as
1016 applicable, is the person who signed the receipt or the receipt
1017 from the obligor or junior interestholder, as applicable, is
1018 returned refused. If the trustee does not perfect notice under
1019 this subparagraph, the trustee shall perfect service in the
1020 manner set forth in paragraph (c).

1021 2. If the trustee's diligent search and inquiry does not
1022 locate a different address for the obligor or junior
1023 interestholder, as applicable, the trustee may perfect notice
1024 against that person under paragraph (c).

1025 (c) If the notice is not perfected under subparagraph
1026 (a)5., and such notice was not returned as undeliverable, or if
1027 the notice was not perfected under subparagraph (b)1., the
1028 trustee may perfect notice by publication in a newspaper of
1029 general circulation in the county or counties in which the
1030 timeshare interest is located. The notice shall appear at least
1031 once a week for 2 consecutive weeks. The trustee may group an
1032 unlimited number of notices in the same publication, if all of
1033 the notices pertain to the same timeshare plan. Notice under
1034 this paragraph is considered perfected upon publication as
1035 required in this paragraph.

1036 (d) If notice is perfected under subparagraph (a)5., the

CS/CS/HB 1411

2010

1037 trustee shall execute an affidavit in recordable form setting
1038 forth the manner in which notice was perfected and attach the
1039 affidavit to the certificate of compliance set forth in
1040 subsection (9). The affidavit shall state the nature of the
1041 notice, the date on which the notice was mailed, the name and
1042 address on the envelope containing the notice, the manner in
1043 which the notice was mailed, and the basis for that knowledge.

1044 (e) If notice is perfected under subparagraph (b)1., the
1045 trustee shall execute an affidavit in recordable form setting
1046 forth the manner in which notice was perfected and attach the
1047 affidavit to the certificate of compliance set forth in
1048 subsection (9). The affidavit shall state the nature of the
1049 notice, the dates on which the notice was mailed, the name and
1050 addresses on the envelopes containing the notice, the manner in
1051 which the notice was mailed, the fact that a signed receipt from
1052 the certified mail, registered mail, or permitted delivery
1053 service was timely received, and the name and address on the
1054 envelopes containing the notice.

1055 (f) If notice is perfected under paragraph (c), the
1056 trustee shall execute an affidavit in recordable form setting
1057 forth the manner in which notice was perfected and attach the
1058 affidavit to the certificate of compliance set forth in
1059 subsection (9). The affidavit shall include all the information
1060 contained in either paragraph (d) or paragraph (e), as
1061 applicable, shall state that the notice was perfected by
1062 publication after diligent search and inquiry was made for the
1063 current address for the person, shall include a statement that
1064 notice was perfected by publication, and shall set forth the

1065 information required by s. 49.041 in the case of a natural
 1066 person or s. 49.051 in the case of a corporation, whichever is
 1067 applicable. No other action of the trustee is necessary to
 1068 perfect notice.

1069 (6) NOTICE OF SALE.—

1070 (a) The notice of sale shall set forth:

1071 1. The name and notice addresses of the obligor and any
 1072 junior interestholder.

1073 2. The legal description of the timeshare interest.

1074 3. The name and address of the trustee.

1075 4. A description of the default that is the basis for the
 1076 foreclosure.

1077 5. The official records book and page numbers where the
 1078 mortgage is recorded.

1079 6. The amounts secured by the lien and a per diem amount
 1080 to account for further accrual of the amounts secured by the
 1081 lien.

1082 7. The date, location, and starting time of the trustee's
 1083 sale.

1084 8. The right of and the method by which the obligor may
 1085 cure the default or the right of any junior interestholder to
 1086 redeem its interest up to the date the trustee issues the
 1087 certificate of sale in accordance with paragraph (7) (f).

1088 (b) The trustee shall send a copy of the notice of sale
 1089 within 3 business days after the date it is submitted for
 1090 recording, by first-class mail or permitted delivery service,
 1091 postage prepaid, to the notice addresses of the obligor and any
 1092 junior interestholder.

1093 (c) After the date of recording of the notice of sale,
 1094 notice is not required to be given to any person claiming an
 1095 interest in the timeshare interest except as provided in this
 1096 section. The recording of the notice of sale has the same force
 1097 and effect as the filing of a lis pendens in a judicial
 1098 proceeding under s. 48.23.

1099 (d)1. The trustee shall publish the notice of sale in a
 1100 newspaper of general circulation in the county or counties in
 1101 which the timeshare interest is located at least once a week for
 1102 2 consecutive weeks before the date of the sale. The last
 1103 publication shall occur at least 5 calendar days before the
 1104 sale.

1105 2. The trustee may group an unlimited number of notices of
 1106 sale in the same publication, if all of the notices of sale
 1107 pertain to the same timeshare plan.

1108 (7) MANNER OF SALE.—

1109 (a) The sale of a timeshare interest by the trustee in a
 1110 public auction shall be held in the county in which the
 1111 timeshare interest is located, on the date, location, and
 1112 starting time designated in the notice of sale, which shall be
 1113 after 9:00 a.m. but before 4:00 p.m. on a business day not less
 1114 than 30 calendar days after the recording of the notice of sale.
 1115 The trustee's sale may occur online at a specific website on the
 1116 Internet or in any other manner used by the clerk of the court
 1117 for a judicial foreclosure sales procedure in the county or
 1118 counties in which the timeshare interest is located.

1119 (b) The trustee shall conduct the sale and act as the
 1120 auctioneer.

1121 (c) The lienholder and any person other than the trustee
 1122 may bid at the sale. In lieu of participating in the sale, the
 1123 lienholder may send the trustee written bidding instructions
 1124 that the trustee shall announce as appropriate during the sale.

1125 (d) The trustee may postpone the sale from time to time.
 1126 In such case, notice of postponement must be given by the
 1127 trustee at the date, time, and location contained in the notice
 1128 of sale. The notice of sale for the postponed sale shall be
 1129 mailed under paragraph (6) (b), recorded under paragraph (4) (f),
 1130 and published under paragraph (6) (d). The effective date of the
 1131 initial notice of sale under paragraph (6) (b) is not affected by
 1132 a postponed sale.

1133 (e) The highest bidder of the timeshare interest shall pay
 1134 the price bid to the trustee in cash or certified funds on the
 1135 day of the sale. If the lienholder is the highest bidder, the
 1136 lienholder shall receive a credit up to the amount set forth in
 1137 the notice of sale as required under subparagraph (6) (a) 6.

1138 (f) On the date of the sale and upon receipt of the cash
 1139 or certified funds due from the highest bidder, the trustee
 1140 shall issue to the highest bidder a certificate of sale stating
 1141 that a foreclosure conforming to the requirements of this
 1142 section has occurred, including the time, location, and date of
 1143 the sale, that the timeshare interest was sold, the amounts
 1144 secured by the lien, and the amount of the highest bid. A copy
 1145 of the certificate of sale shall be mailed by certified mail,
 1146 registered mail, or permitted delivery service, return receipt
 1147 requested, to all persons entitled to receive a notice of sale
 1148 under subsection (6).

1149 (g) Before a sale conducted pursuant to this subsection, a
 1150 junior interestholder may pursue adjudication by court, by
 1151 interpleader, or in any other authorized manner respecting any
 1152 matter that is disputed by the junior interestholder.

1153 (8) EFFECT OF TRUSTEE'S SALE.—

1154 (a) A sale conducted under subsection (7) forecloses and
 1155 terminates all interests of any person with notice to whom
 1156 notice is given under paragraph (4) (e) and paragraph (6) (b), and
 1157 of any other person claiming interests by, through, or under any
 1158 such person, in the affected timeshare interest. A failure to
 1159 give notice to any person entitled to notice does not affect the
 1160 validity of the sale as to the interests of any person properly
 1161 notified. A person entitled to notice but not given notice has
 1162 the rights of a person not made a defendant in a judicial
 1163 foreclosure.

1164 (b) On the issuance of a certificate of sale under
 1165 paragraph (7) (f), all rights of redemption that have been
 1166 foreclosed under this section shall terminate.

1167 (c) A sale conducted under subsection (7) releases the
 1168 obligor's liability for all amounts secured by the lien. The
 1169 lienholder has no right to any deficiency judgment against the
 1170 obligor after a sale of the obligor's timeshare interest under
 1171 this section.

1172 (d) The issuance and recording of the trustee's deed is
 1173 presumed valid and may be relied upon by third parties without
 1174 actual knowledge of any irregularities in the foreclosure
 1175 proceedings. If for any reason there is an irregularity in the
 1176 foreclosure proceedings, a purchaser becomes subrogated to all

CS/CS/HB 1411

2010

1177 the rights of the lienholder to the indebtedness that it secured
 1178 to the extent necessary to reforeclose the mortgage lien in
 1179 order to correct the irregularity and becomes entitled to an
 1180 action de novo for the foreclosure of such mortgage lien. Any
 1181 subsequent reforeclosure required to correct an irregularity may
 1182 be conducted under this section.

1183 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1184 (a) Within 10 calendar days after the trustee conducts a
 1185 sale, the trustee shall execute and acknowledge a certificate of
 1186 compliance which:

1187 1. Confirms delivery of the notice of default and intent
 1188 to foreclose and attaches the affidavit required under
 1189 subsection (5).

1190 2. States that the default was not cured, that the trustee
 1191 did not receive any written objection under paragraph (3) (a),
 1192 and that the timeshare interest was not redeemed under paragraph
 1193 (3) (b).

1194 3. States that the trustee is in possession of the
 1195 original promissory note executed by the mortgagor and secured
 1196 by the mortgage lien.

1197 4. Confirms that the notice of sale was published as
 1198 required under paragraph (6) (d) and attaches an affidavit of
 1199 publication for the notice of sale.

1200 5. Confirms that the notice of sale was mailed under
 1201 paragraph (6) (b) together with a list of the parties to whom the
 1202 notice of sale was mailed.

1203 (b) In furtherance of the execution of the certificate of
 1204 compliance required under this subsection, the trustee is

CS/CS/HB 1411

2010

1205 entitled to rely upon an affidavit or certification from the
 1206 lienholder as to the facts and circumstances of default and
 1207 failure to cure the default.

1208 (10) TRUSTEE'S DEED.—

1209 (a) The trustee's deed shall include the name and address
 1210 of the trustee, the name and address of the highest bidder, the
 1211 name of the former owner, a legal description of the timeshare
 1212 interest, and the name and address of the preparer of the
 1213 trustee's deed. The trustee's deed shall recite that the
 1214 certificate of compliance was recorded and shall contain no
 1215 warranties of title from the trustee. The certificate of
 1216 compliance shall be attached as an exhibit to the trustee's
 1217 deed.

1218 (b) Ten calendar days after a sale, absent the prior
 1219 filing and service on the trustee of a judicial action to enjoin
 1220 issuance of the trustee's deed to the timeshare interest, the
 1221 trustee shall:

1222 1. Cancel the original promissory note executed by the
 1223 mortgagor and secured by the mortgage lien.

1224 2. Issue a trustee's deed to the highest bidder.

1225 3. Record the trustee's deed in the official records of
 1226 the county or counties in which the timeshare interest is
 1227 located.

1228 (c)1. The certificate of compliance and trustee's deed
 1229 together are presumptive evidence of the truth of the matters
 1230 set forth in them, and an action to set aside the sale and void
 1231 the trustee's deed may not be filed or otherwise pursued against
 1232 any person acquiring the timeshare interest for value.

1233 2. The trustee's deed conveys to the highest bidder all
 1234 rights, title, and interest in the timeshare interest that the
 1235 former owner had, or had the power to convey, together with all
 1236 rights, title, and interest that the former owner or his or her
 1237 successors in interest acquired after the execution of the
 1238 mortgage.

1239 3. The issuance and recording of a trustee's deed shall
 1240 have the same force and effect as the issuance and recording of
 1241 a certificate of title by the clerk of the court in a judicial
 1242 foreclosure action.

1243 (11) DISPOSITION OF PROCEEDS OF SALE.-

1244 (a) The trustee shall apply the proceeds of the sale as
 1245 follows:

1246 1. To the expenses of the sale, including compensation of
 1247 the trustee.

1248 2. To the amount owed and set forth in the notice as
 1249 required under subparagraph (6) (a) 6.

1250 3. If there are junior interestholders, the trustee may
 1251 file an action in interpleader, pay the surplus to a court of
 1252 competent jurisdiction, name the competing junior
 1253 interestholders, and ask the court to determine the proper
 1254 distribution of the surplus. In any interpleader action, the
 1255 trustee shall recover reasonable attorney's fees and costs.

1256 4. If there are no junior interestholders, or if all
 1257 junior interestholders have been paid, any surplus shall be paid
 1258 to the former owner. If the trustee is unable to locate the
 1259 former owner within 1 year after the sale, the surplus, if any,
 1260 shall be deposited with the Chief Financial Officer under

1261 chapter 717.

1262 (b) In disposing of the proceeds of the sale, the trustee
 1263 may rely on the information provided in the affidavit of the
 1264 lienholder under paragraph (2) (c) and, in the event of a dispute
 1265 or uncertainty over such claims, the trustee has the discretion
 1266 to submit the matter to adjudication by court, by interpleader,
 1267 or in any other authorized manner and shall recover reasonable
 1268 attorney's fees and costs.

1269 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure
 1270 procedure established in this section does not impair or
 1271 otherwise affect the lienholder's continuing right to bring a
 1272 judicial foreclosure action, in lieu of using the trustee
 1273 foreclosure procedure, with respect to any mortgage lien.

1274 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 1275 PROCEDURE.—An action for actual damages for a material violation
 1276 of this section may be brought by an obligor against the
 1277 lienholder for the failure to follow the trustee foreclosure
 1278 procedure contained in this section.

1279 Section 11. Subsections (1) and (4) of section 721.86,
 1280 Florida Statutes, are amended to read:

1281 721.86 Miscellaneous provisions.—

1282 (1) In the event of a conflict between the provisions of
 1283 this part and the other provisions of this chapter, chapter 702,
 1284 or other applicable law, the provisions of this part shall
 1285 prevail. The procedures in this part must be given effect in the
 1286 context of any foreclosure proceedings against timeshare
 1287 interests ~~estates~~ governed by this chapter, chapter 702, chapter
 1288 718, or chapter 719.

CS/CS/HB 1411

2010

1289 (4) In addition to assessment liens and mortgage liens
 1290 arising after the effective date of this part, except as
 1291 provided in s. 721.855(13), the provisions of this part apply to
 1292 all assessment liens and mortgage liens existing prior to the
 1293 effective date of this act regarding which a foreclosure
 1294 proceeding has not yet commenced.

1295 Section 12. Subsection (2) of section 721.20, Florida
 1296 Statutes, is amended to read:

1297 721.20 Licensing requirements; suspension or revocation of
 1298 license; exceptions to applicability; collection of advance fees
 1299 for listings unlawful.—

1300 (2) Solicitors who engage only in the solicitation of
 1301 prospective purchasers and any purchaser who refers no more than
 1302 20 people to a developer or managing entity per year or who
 1303 otherwise provides testimonials on behalf of a developer or
 1304 managing entity are exempt from the provisions of chapter 475.

1305 Section 13. Subsection (5) is added to section 727.113,
 1306 Florida Statutes, to read:

1307 727.113 Objections to claims.—

1308 (5) In determining the amount of any deficiency pursuant
 1309 to subsection (4) that may exist with respect to property
 1310 abandoned to a secured creditor, the court shall determine the
 1311 amount of any such deficiency as of the date of the assignee's
 1312 motion to abandon or notice of abandonment by deducting the fair
 1313 market value of the abandoned property from the amount owed to
 1314 the secured creditor. This subsection is remedial in nature and
 1315 shall apply to cases pending on the effective date of this act.

CS/CS/HB 1411

2010

1316 | Section 14. This act shall take effect upon becoming a
1317 | law.