

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; providing a criminal penalty; creating s.  
41 721.856, F.S.; establishing procedure for the trustee  
42 foreclosure of mortgage liens; providing for the  
43 appointment of a trustee; providing recording requirements  
44 for such liens; providing procedures for the initiation of  
45 a trustee foreclosure procedure against a timeshare  
46 interest; providing procedures for an obligor's objection  
47 to the trustee foreclosure procedure; providing conditions  
48 to a trustee's exercise of power of sale; providing  
49 requirements for a notice of default and intent to sell;  
50 providing requirements for a notice of sale; providing  
51 requirements for the sale by auction of foreclosed  
52 encumbered timeshare interests; providing requirements for  
53 a trustee's certificate of compliance; providing for the  
54 effect of a trustee's sale; providing requirements for a  
55 trustee's deed; providing for the disposition of proceeds  
56 of the sale; providing that the trustee foreclosure

57 | procedure does not impair or otherwise affect the right to  
 58 | bring certain actions; providing for actions for failure  
 59 | to follow the trustee foreclosure procedure; providing a  
 60 | criminal penalty; amending s. 721.86, F.S.; providing for  
 61 | priority of application in case of conflict; conforming  
 62 | terminology to changes made by this act; amending s.  
 63 | 721.20, F.S.; revising exemptions from certain licensing  
 64 | requirements; providing an effective date.

65 |  
 66 | Be It Enacted by the Legislature of the State of Florida:

67 |  
 68 | Section 1. Paragraph (jj) is added to subsection (5) of  
 69 | section 721.07, Florida Statutes, to read:

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

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

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

83 |  
 84 | The managing entity has a lien against each timeshare

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

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

97 721.13 Management.—

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

113 act or omission that was in bad faith, with malicious purpose,  
 114 or in a manner exhibiting wanton and willful disregard of human  
 115 rights, safety, or property.

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

118 721.16 Liens for overdue assessments; liens for labor  
 119 performed on, or materials furnished to, a timeshare unit.—

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

128 (3) The lien is effective from the date of recording a  
 129 claim of lien in the official ~~public~~ records of the county or  
 130 counties in which the timeshare interest is ~~accommodations and~~  
 131 ~~facilities constituting the timeshare plan are~~ located. The  
 132 claim of lien shall state the name of the timeshare plan and  
 133 identify the timeshare interest for which the lien is effective,  
 134 state the name of the purchaser, state the assessment amount  
 135 due, and state the due dates. Notwithstanding any provision of  
 136 s. 718.116(5) ~~(a)~~ or s. 719.108(4) to the contrary, the lien is  
 137 effective until satisfied or until 5 years have expired after  
 138 the date the claim of lien is recorded unless, within that time,  
 139 an action to enforce the lien is commenced pursuant to  
 140 subsection (2). A claim of lien for assessments may include only

141 assessments which are due when the claim is recorded. A claim of  
 142 lien shall be signed and acknowledged by an officer or agent of  
 143 the managing entity. Upon full payment, the person making the  
 144 payment is entitled to receive a satisfaction of the lien.

145 Section 4. Part III of chapter 721, Florida Statutes,  
 146 entitled "Foreclosure of Liens on Timeshare Estates," is renamed  
 147 "Foreclosure of Liens on Timeshare Interests."

148 Section 5. Section 721.81, Florida Statutes, is amended to  
 149 read:

150 721.81 Legislative purpose.—The purposes of this part are  
 151 to:

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

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

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

164 (4) Improve judicial economy and reduce court congestion  
 165 and the cost to taxpayers by establishing streamlined procedures  
 166 for the judicial and trustee foreclosure of assessment liens and  
 167 mortgage liens against timeshare interests ~~estates~~.

168 (5) Recognize that nearly all timeshare interest

169 foreclosures are uncontested.

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

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

182 Section 6. Section 721.82, Florida Statutes, is amended to  
 183 read:

184 721.82 Definitions.—As used in this part, the term:

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

193 (2)~~(1)~~ "Assessment lien" means:

194 (a) A lien for delinquent assessments as provided in ss.  
 195 ~~721.16,~~ 718.116, and 719.108, and 721.16 ~~as to timeshare~~  
 196 ~~condominiums;~~ or

197 (b) A lien for unpaid ad valorem assessments, tax  
 198 assessments, taxes and special assessments as provided in s.  
 199 192.037(8).

200 (3)~~(2)~~ "Junior interestholder" means any person who has a  
 201 lien or interest of record against a timeshare interest estate  
 202 in the county or counties in which the timeshare interest estate  
 203 is located, which is inferior to the mortgage lien or assessment  
 204 lien being foreclosed under this part.

205 (4)~~(3)~~ "Lienholder" means a holder of an assessment lien  
 206 or a holder of a mortgage lien, as applicable. A receiver  
 207 appointed under s. 721.26 is a lienholder for purposes of  
 208 foreclosure of assessment liens under this part.

209 (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.  
 210 697.01.

211 (6)~~(5)~~ "Mortgage lien" means a security interest in a  
 212 timeshare interest estate created by a mortgage encumbering the  
 213 timeshare interest estate.

214 (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

215 (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien  
 216 or a person who has assumed the obligation secured by a mortgage  
 217 lien.

218 (9)~~(8)~~ "Notice address" means:

219 (a) As to an assessment lien, the address of the ~~current~~  
 220 owner of a timeshare interest estate as reflected by the books  
 221 and records of the timeshare plan under ss. 721.13(4) and  
 222 721.15(7).

223 (b) As to a mortgage lien:

224 1. The address of the mortgagor as set forth in the

225 mortgage, the promissory note or a separate document executed by  
 226 the mortgagor at the time the mortgage lien was created, or the  
 227 most current address of the mortgagor according to the records  
 228 of the mortgagee; and

229 2. If the ~~current~~ owner of the timeshare interest estate  
 230 is different from the mortgagor, the address of the ~~current~~  
 231 owner of the timeshare interest estate as reflected by the books  
 232 and records of the mortgagee.

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

239 (10) ~~(9)~~ "Obligor" means the mortgagor, the person subject  
 240 to an assessment lien, or the record owner of the timeshare  
 241 interest estate.

242 (11) "Permitted delivery service" means any nationally  
 243 recognized common carrier delivery service or international  
 244 airmail service that allows for return receipt service.

245 (12) ~~(10)~~ "Registered agent" means an agent duly appointed  
 246 by the obligor under s. 721.84 for the purpose of accepting all  
 247 notices and service of process under this part. A registered  
 248 agent may be an individual resident in this state whose business  
 249 office qualifies as a registered office, or a domestic or  
 250 foreign corporation or a not-for-profit corporation as defined  
 251 in chapter 617 authorized to transact business or to conduct its  
 252 affairs in this state, whose business office qualifies as a

253 registered office. A registered agent for any obligor may not be  
 254 the lienholder or the attorney for the lienholder.

255 (13)~~(11)~~ "Registered office" means the street address of  
 256 the business office of the registered agent appointed under s.  
 257 721.84, located in this state.

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

267 Section 7. Section 721.83, Florida Statutes, is amended to  
 268 read:

269 721.83 Consolidation of judicial foreclosure actions.—

270 (1) A complaint in a foreclosure proceeding involving  
 271 timeshare interests ~~estates~~ may join in the same action multiple  
 272 defendant obligors and junior interestholders of separate  
 273 timeshare interests ~~estates~~, provided:

274 (a) The foreclosure proceeding involves a single timeshare  
 275 property.

276 (b) The foreclosure proceeding is filed by a single  
 277 plaintiff.

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

281 (d) The nature of the defaults alleged is the same for  
 282 each defendant.

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

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

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

297 Section 8. Section 721.85, Florida Statutes, is amended to  
 298 read:

299 721.85 Service to notice address or on registered agent.-

300 (1) Service of process for a foreclosure proceeding  
 301 involving a timeshare interest ~~estate~~ may be made by any means  
 302 recognized by law. In addition, substituted service on an  
 303 obligor ~~a party~~ who has appointed a registered agent under s.  
 304 721.84 may be made on such registered agent at the registered  
 305 office. Also, when using s. 48.194 where in rem or quasi in rem  
 306 relief only is sought, such service of process provisions are  
 307 modified in connection with a foreclosure proceeding against a  
 308 timeshare interest ~~estate~~ to provide that:

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

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

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

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

325 Section 9. Section 721.855, Florida Statutes, is created  
 326 to read:

327 721.855 Procedure for the trustee foreclosure of  
 328 assessment liens.—The provisions of this section establish a  
 329 trustee foreclosure procedure for assessment liens.

330 (1) APPOINTMENT OF TRUSTEE.—

331 (a) A trustee or a substitute trustee may be appointed by  
 332 a lienholder at any time by recording a notice of appointment of  
 333 trustee or notice of substitution of trustee in the official  
 334 records of the county or counties in which the timeshare  
 335 interest is located. A lienholder may appoint multiple trustees  
 336 in a single appointment, and any appointed trustee may be used

337 by the lienholder regarding the trustee foreclosure of any  
338 assessment lien under any timeshare plan for which the trustee  
339 is appointed.

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

343 (c) The recorded notice of appointment of trustee or  
344 notice of substitution of trustee shall contain the name and  
345 address of the trustee or substitute trustee, the name and  
346 address of the lienholder, and the name and address of the  
347 timeshare plan.

348 (2) INITIATING THE USE OF A TRUSTEE FORECLOSURE  
349 PROCEDURE.—

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

352 1. If a timeshare instrument contains any provision  
353 specifically prohibiting the use of the trustee foreclosure  
354 procedure, or if the managing entity otherwise determines that  
355 the timeshare instrument should be amended to specifically  
356 provide for the use of the trustee foreclosure procedure, an  
357 amendment to the timeshare instrument permitting the use of the  
358 trustee foreclosure procedure set forth in this section must be  
359 adopted and recorded prior to the use of the trustee foreclosure  
360 procedure. Such amendment to the timeshare instrument shall  
361 contain a statement in substantially the following form and may  
362 be adopted by a majority of those present and voting at a duly  
363 called meeting of the owners' association at which at least 15  
364 percent of the voting interest are present in person or by

365 proxy:

366

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

379

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

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

393 timeshare interest shall be recorded under s. 721.16 or, if  
 394 applicable, s. 718.116 or s. 719.108, and the notice of the  
 395 intent to file a lien shall be given under s. 718.121 for  
 396 timeshare condominiums and s. 719.108 for timeshare  
 397 cooperatives.

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

410 2. The affidavit shall also state the facts that establish  
 411 that the obligor has defaulted in the obligation to make a  
 412 payment under a specified provision of the timeshare instrument  
 413 or applicable law.

414 3. The affidavit shall also specify the amounts secured by  
 415 the lien as of the date of the affidavit and a per diem amount  
 416 to account for further accrual of the amounts secured by the  
 417 lien.

418 4. The affidavit shall also state that the assessment lien  
 419 was properly created and authorized pursuant to the timeshare  
 420 instrument and applicable law.

421 (3) OBLIGOR'S RIGHTS.—

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

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

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

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

444 (b) The trustee has not received a written objection to  
 445 the use of the trustee foreclosure procedure under paragraph  
 446 (3) (a) and the timeshare interest was not redeemed under  
 447 paragraph (3) (b);

448 (c) There is no lis pendens recorded and pending against

449 the same timeshare interest and the trustee has not been served  
450 notice of the filing of any action to enjoin the trustee  
451 foreclosure sale;

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

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

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

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

467 1. The notice of default and intent to foreclose shall  
468 identify the obligor, the notice address of the obligor, the  
469 legal description of the timeshare interest, the nature of the  
470 default, the amounts secured by the lien, and a per diem amount  
471 to account for further accrual of the amounts secured by the  
472 lien and shall state the method by which the obligor may cure  
473 the default, including the period of time after the date of the  
474 notice of default and intent to foreclose within which the  
475 obligor may cure the default.

476 2. The notice of default and intent to foreclose shall

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

485 3. The notice of default and intent to foreclose shall  
486 also contain a statement in substantially the following form:  
487

488 If you fail to cure the default as set forth in this  
489 notice or take other appropriate action with regard to  
490 this foreclosure matter, you risk losing ownership of  
491 your timeshare interest through the trustee  
492 foreclosure procedure established in section 721.855,  
493 Florida Statutes. You may choose to sign and send to  
494 the trustee the enclosed objection form, exercising  
495 your right to object to the use of the trustee  
496 foreclosure procedure. Upon the trustee's receipt of  
497 your signed objection form, the foreclosure of the  
498 lien with respect to the default specified in this  
499 notice shall be subject to the judicial foreclosure  
500 procedure only. You have the right to cure your  
501 default in the manner set forth in this notice at any  
502 time before the trustee's sale of your timeshare  
503 interest. If you do not object to the use of the  
504 trustee foreclosure procedure, you will not be subject

505 to a deficiency judgment even if the proceeds from the  
506 sale of your timeshare interest are insufficient to  
507 offset the amounts secured by the lien.

508  
509 4. The trustee shall also mail a copy of the notice of  
510 default and intent to foreclose, without the objection form, to  
511 the notice address of any junior interestholder by certified  
512 mail, registered mail, or permitted delivery service, return  
513 receipt requested, and by first-class mail or permitted delivery  
514 service, postage prepaid.

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

527 (b) If the notice required by paragraph (a) is returned as  
528 undeliverable within 30 calendar days after the trustee sent the  
529 notice, the trustee shall perform a diligent search and inquiry  
530 to obtain a different address for the obligor or junior  
531 interestholder. For purposes of this paragraph, any address  
532 known and used by the lienholder for sending regular mailings or

533 other communications from the lienholder to the obligor or  
534 junior interestholder, as applicable, shall be included with  
535 other addresses produced from the diligent search and inquiry,  
536 if any.

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

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

558 (c) If the notice is not perfected under subparagraph  
559 (a)5., and such notice was not returned as undeliverable, or if  
560 the notice was not perfected under subparagraph (b)1., the

561 trustee may perfect notice by publication in a newspaper of  
562 general circulation in the county or counties in which the  
563 timeshare interest is located. The notice shall appear at least  
564 once a week for 2 consecutive weeks. The trustee may group an  
565 unlimited number of notices in the same publication, if all of  
566 the notices pertain to the same timeshare plan. Notice under  
567 this paragraph is considered perfected upon publication as  
568 required in this paragraph.

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

577 (e) If notice is perfected under subparagraph (b)1., the  
578 trustee shall execute an affidavit in recordable form setting  
579 forth the manner in which notice was perfected and attach the  
580 affidavit to the certificate of compliance set forth in  
581 subsection (9). The affidavit shall state the nature of the  
582 notice, the dates on which the notice was mailed, the name and  
583 addresses on the envelopes containing the notice, the manner in  
584 which the notices were mailed, the fact that a signed receipt  
585 from the certified mail, registered mail, or permitted delivery  
586 service was timely received, and the name and address on the  
587 envelopes containing the notice.

588 (f) If notice is perfected by publication under paragraph

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

602 (6) NOTICE OF SALE.—

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

- 604 1. The name and notice addresses of the obligor and any  
605 junior interestholder.
- 606 2. The legal description of the timeshare interest.
- 607 3. The name and address of the trustee.
- 608 4. A description of the default that is the basis for the  
609 foreclosure.
- 610 5. The official records book and page numbers where the  
611 claim of lien is recorded.
- 612 6. The amounts secured by the lien and a per diem amount  
613 to account for further accrual of the amounts secured by the  
614 lien.
- 615 7. The date, location, and starting time of the trustee's  
616 sale.

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

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

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

632 (d)1. The trustee shall publish the notice of sale in a  
633 newspaper of general circulation in the county or counties in  
634 which the timeshare interest is located at least once a week for  
635 2 consecutive weeks before the date of the sale. The last  
636 publication shall occur at least 5 calendar days before the  
637 sale.

638 2. The trustee may group an unlimited number of notices of  
639 sale in the same publication, if all of the notices of sale  
640 pertain to the same timeshare plan.

641 (7) MANNER OF SALE.—

642 (a) The sale of a timeshare interest by the trustee in a  
643 public auction shall be held in the county in which the  
644 timeshare interest is located, on the date, location, and

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

652 (b) The trustee shall conduct the sale and act as the  
653 auctioneer.

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

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

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

671 (f) On the date of the sale and upon receipt of the cash  
672 or certified funds due from the highest bidder, the trustee

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

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

686 (8) EFFECT OF TRUSTEE'S SALE.—

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

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

700 (c) A sale conducted under subsection (7) releases the

701 obligor's liability for all amounts secured by the lien. The  
 702 lienholder has no right to any deficiency judgment against the  
 703 obligor after a sale of the obligor's timeshare interest under  
 704 this section.

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

716 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.-

717 (a) Within 10 calendar days after the trustee conducts a  
 718 sale, the trustee shall execute and acknowledge a certificate of  
 719 compliance that:

720 1. Confirms delivery of the notice of default and intent  
 721 to foreclose and attaches the affidavit required under  
 722 subsection (5).

723 2. States that the default was not cured, that the trustee  
 724 did not receive any written objection under paragraph (3) (a),  
 725 and that the timeshare interest was not redeemed under paragraph  
 726 (3) (b).

727 3. Confirms that the notice of sale was published as  
 728 required under paragraph (6) (d) and attaches an affidavit of

729 publication for the notice of sale.

730 4. Confirms that the notice of sale was mailed under  
731 paragraph (6) (b) together with a list of the parties to whom the  
732 notice of sale was mailed.

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

738 (10) TRUSTEE'S DEED.—

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

748 (b) Ten calendar days after a sale, absent the prior  
749 filing and service on the trustee of a judicial action to enjoin  
750 issuance of the trustee's deed to the timeshare interest, the  
751 trustee shall:

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

753 2. Record the trustee's deed in the official records of  
754 the county or counties in which the timeshare interest is  
755 located.

756 (c)1. The certificate of compliance and trustee's deed

757 together are presumptive evidence of the truth of the matters  
758 set forth in them, and an action to set aside the sale and void  
759 the trustee's deed may not be filed or otherwise pursued against  
760 any person acquiring the timeshare interest for value.

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

767 3. The issuance and recording of a trustee's deed shall  
768 have the same force and effect as the issuance and recording of  
769 a certificate of title by the clerk of the court in a judicial  
770 foreclosure action.

771 (11) DISPOSITION OF PROCEEDS OF SALE.—

772 (a) The trustee shall apply the proceeds of the sale as  
773 follows:

774 1. To the expenses of the sale, including compensation of  
775 the trustee.

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

778 3. If there are junior interestholders, the trustee may  
779 file an action in interpleader, pay the surplus to a court of  
780 competent jurisdiction, name the competing junior  
781 interestholders, and ask the court to determine the proper  
782 distribution of the surplus. In any interpleader action, the  
783 trustee shall recover reasonable attorney's fees and costs.

784 4. If there are no junior interestholders, or if all

785 junior interestholders have been paid, any surplus shall be paid  
786 to the former owner. If the trustee is unable to locate the  
787 former owner within 1 year after the sale, the surplus, if any,  
788 shall be deposited with the Chief Financial Officer under  
789 chapter 717.

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

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

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

805 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE  
806 PROCEDURE.—

807 (a) An action for actual damages for a material violation  
808 of this section may be brought by an obligor against the  
809 lienholder for the failure to follow the trustee foreclosure  
810 procedure contained in this section.

811 (b) Any trustee who intentionally violates the provisions  
812 of this section concerning the trustee foreclosure procedure

813 commits a felony of the third degree, punishable as provided in  
 814 s. 775.082, s. 775.083, or s. 775.084.

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

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

820 (1) APPOINTMENT OF TRUSTEE.—

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

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

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

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

838 (a) Before initiating the trustee foreclosure against a  
 839 timeshare interest, the mortgage, or an amendment to a mortgage  
 840 executed by the obligor before the effective date of this

841 section, must contain a statement in substantially the following  
842 form:

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

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

868 2. The affidavit shall also state the facts that establish

869 that the obligor has defaulted in the obligation to make a  
870 payment under a specified provision of the mortgage or is  
871 otherwise deemed in uncured default under a specified provision  
872 of the mortgage.

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

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

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

886 (3) OBLIGOR'S RIGHTS.—

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

897 specified default.

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

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

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

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

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

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

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

924 (f) The notice of sale required under subsection (6) has

925 been recorded in the official records of the county in which the  
 926 mortgage was recorded.

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

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

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

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

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

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

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

981 receipt requested, and by first-class mail or permitted delivery  
982 service, postage prepaid.

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

995 (b) If the notice required by paragraph (a) is returned as  
996 undeliverable within 30 calendar days after the trustee sent the  
997 notice, the trustee shall perform a diligent search and inquiry  
998 to obtain a different address for the obligor or junior  
999 interestholder. For purposes of this paragraph, any address  
1000 known and used by the lienholder for sending regular mailings or  
1001 other communications from the lienholder to the obligor or  
1002 junior interestholder, as applicable, shall be included with  
1003 other addresses produced from the diligent search and inquiry,  
1004 if any.

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

1009 first-class mail or permitted delivery service, postage prepaid,  
1010 to the new address. Notice under this subparagraph is considered  
1011 perfected upon the trustee receiving the return receipt bearing  
1012 the signature of the obligor or junior interestholder, as  
1013 applicable, within 30 calendar days after the trustee sent the  
1014 notice under this subparagraph. Notice under this subparagraph  
1015 is not perfected if the trustee cannot ascertain from the  
1016 receipt that the obligor or junior interestholder, as  
1017 applicable, is the person who signed the receipt or the receipt  
1018 from the obligor or junior interestholder, as applicable, is  
1019 returned refused. If the trustee does not perfect notice under  
1020 this subparagraph, the trustee shall perfect service in the  
1021 manner set forth in paragraph (c).

1022 2. If the trustee's diligent search and inquiry does not  
1023 locate a different address for the obligor or junior  
1024 interestholder, as applicable, the trustee may perfect notice  
1025 against that person under paragraph (c).

1026 (c) If the notice is not perfected under subparagraph  
1027 (a)5., and such notice was not returned as undeliverable, or if  
1028 the notice was not perfected under subparagraph (b)1., the  
1029 trustee may perfect notice by publication in a newspaper of  
1030 general circulation in the county or counties in which the  
1031 timeshare interest is located. The notice shall appear at least  
1032 once a week for 2 consecutive weeks. The trustee may group an  
1033 unlimited number of notices in the same publication, if all of  
1034 the notices pertain to the same timeshare plan. Notice under  
1035 this paragraph is considered perfected upon publication as  
1036 required in this paragraph.

1037 (d) If notice is perfected under subparagraph (a)5., the  
1038 trustee shall execute an affidavit in recordable form setting  
1039 forth the manner in which notice was perfected and attach the  
1040 affidavit to the certificate of compliance set forth in  
1041 subsection (9). The affidavit shall state the nature of the  
1042 notice, the date on which the notice was mailed, the name and  
1043 address on the envelope containing the notice, the manner in  
1044 which the notice was mailed, and the basis for that knowledge.

1045 (e) If notice is perfected under subparagraph (b)1., the  
1046 trustee shall execute an affidavit in recordable form setting  
1047 forth the manner in which notice was perfected and attach the  
1048 affidavit to the certificate of compliance set forth in  
1049 subsection (9). The affidavit shall state the nature of the  
1050 notice, the dates on which the notice was mailed, the name and  
1051 addresses on the envelopes containing the notice, the manner in  
1052 which the notice was mailed, the fact that a signed receipt from  
1053 the certified mail, registered mail, or permitted delivery  
1054 service was timely received, and the name and address on the  
1055 envelopes containing the notice.

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

1065 notice was perfected by publication, and shall set forth the  
 1066 information required by s. 49.041 in the case of a natural  
 1067 person or s. 49.051 in the case of a corporation, whichever is  
 1068 applicable. No other action of the trustee is necessary to  
 1069 perfect notice.

1070 (6) NOTICE OF SALE.—

1071 (a) The notice of sale shall set forth:

- 1072 1. The name and notice addresses of the obligor and any  
 1073 junior interestholder.
- 1074 2. The legal description of the timeshare interest.
- 1075 3. The name and address of the trustee.
- 1076 4. A description of the default that is the basis for the  
 1077 foreclosure.
- 1078 5. The official records book and page numbers where the  
 1079 mortgage is recorded.
- 1080 6. The amounts secured by the lien and a per diem amount  
 1081 to account for further accrual of the amounts secured by the  
 1082 lien.
- 1083 7. The date, location, and starting time of the trustee's  
 1084 sale.
- 1085 8. The right of and the method by which the obligor may  
 1086 cure the default or the right of any junior interestholder to  
 1087 redeem its interest up to the date the trustee issues the  
 1088 certificate of sale in accordance with paragraph (7) (f).
- 1089 (b) The trustee shall send a copy of the notice of sale  
 1090 within 3 business days after the date it is submitted for  
 1091 recording, by first-class mail or permitted delivery service,  
 1092 postage prepaid, to the notice addresses of the obligor and any

1093 junior interestholder.

1094 (c) After the date of recording of the notice of sale,  
 1095 notice is not required to be given to any person claiming an  
 1096 interest in the timeshare interest except as provided in this  
 1097 section. The recording of the notice of sale has the same force  
 1098 and effect as the filing of a lis pendens in a judicial  
 1099 proceeding under s. 48.23.

1100 (d)1. The trustee shall publish the notice of sale in a  
 1101 newspaper of general circulation in the county or counties in  
 1102 which the timeshare interest is located at least once a week for  
 1103 2 consecutive weeks before the date of the sale. The last  
 1104 publication shall occur at least 5 calendar days before the  
 1105 sale.

1106 2. The trustee may group an unlimited number of notices of  
 1107 sale in the same publication, if all of the notices of sale  
 1108 pertain to the same timeshare plan.

1109 (7) MANNER OF SALE.—

1110 (a) The sale of a timeshare interest by the trustee in a  
 1111 public auction shall be held in the county in which the  
 1112 timeshare interest is located, on the date, location, and  
 1113 starting time designated in the notice of sale, which shall be  
 1114 after 9:00 a.m. but before 4:00 p.m. on a business day not less  
 1115 than 30 calendar days after the recording of the notice of sale.  
 1116 The trustee's sale may occur online at a specific website on the  
 1117 Internet or in any other manner used by the clerk of the court  
 1118 for a judicial foreclosure sales procedure in the county or  
 1119 counties in which the timeshare interest is located.

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

1121 auctioneer.

1122 (c) The lienholder and any person other than the trustee  
 1123 may bid at the sale. In lieu of participating in the sale, the  
 1124 lienholder may send the trustee written bidding instructions  
 1125 that the trustee shall announce as appropriate during the sale.

1126 (d) The trustee may postpone the sale from time to time.  
 1127 In such case, notice of postponement must be given by the  
 1128 trustee at the date, time, and location contained in the notice  
 1129 of sale. The notice of sale for the postponed sale shall be  
 1130 mailed under paragraph (6) (b), recorded under paragraph (4) (f),  
 1131 and published under paragraph (6) (d). The effective date of the  
 1132 initial notice of sale under paragraph (6) (b) is not affected by  
 1133 a postponed sale.

1134 (e) The highest bidder of the timeshare interest shall pay  
 1135 the price bid to the trustee in cash or certified funds on the  
 1136 day of the sale. If the lienholder is the highest bidder, the  
 1137 lienholder shall receive a credit up to the amount set forth in  
 1138 the notice of sale as required under subparagraph (6) (a)6.

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

1149 under subsection (6).

1150 (g) Before a sale conducted pursuant to this subsection, a  
 1151 junior interestholder may pursue adjudication by court, by  
 1152 interpleader, or in any other authorized manner respecting any  
 1153 matter that is disputed by the junior interestholder.

1154 (8) EFFECT OF TRUSTEE'S SALE.—

1155 (a) A sale conducted under subsection (7) forecloses and  
 1156 terminates all interests of any person with notice to whom  
 1157 notice is given under paragraph (4) (e) and paragraph (6) (b), and  
 1158 of any other person claiming interests by, through, or under any  
 1159 such person, in the affected timeshare interest. A failure to  
 1160 give notice to any person entitled to notice does not affect the  
 1161 validity of the sale as to the interests of any person properly  
 1162 notified. A person entitled to notice but not given notice has  
 1163 the rights of a person not made a defendant in a judicial  
 1164 foreclosure.

1165 (b) On the issuance of a certificate of sale under  
 1166 paragraph (7) (f), all rights of redemption that have been  
 1167 foreclosed under this section shall terminate.

1168 (c) A sale conducted under subsection (7) releases the  
 1169 obligor's liability for all amounts secured by the lien. The  
 1170 lienholder has no right to any deficiency judgment against the  
 1171 obligor after a sale of the obligor's timeshare interest under  
 1172 this section.

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

1177 foreclosure proceedings, a purchaser becomes subrogated to all  
 1178 the rights of the lienholder to the indebtedness that it secured  
 1179 to the extent necessary to reforeclose the mortgage lien in  
 1180 order to correct the irregularity and becomes entitled to an  
 1181 action de novo for the foreclosure of such mortgage lien. Any  
 1182 subsequent reforeclosure required to correct an irregularity may  
 1183 be conducted under this section.

1184 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1185 (a) Within 10 calendar days after the trustee conducts a  
 1186 sale, the trustee shall execute and acknowledge a certificate of  
 1187 compliance which:

1188 1. Confirms delivery of the notice of default and intent  
 1189 to foreclose and attaches the affidavit required under  
 1190 subsection (5).

1191 2. States that the default was not cured, that the trustee  
 1192 did not receive any written objection under paragraph (3) (a),  
 1193 and that the timeshare interest was not redeemed under paragraph  
 1194 (3) (b).

1195 3. States that the trustee is in possession of the  
 1196 original promissory note executed by the mortgagor and secured  
 1197 by the mortgage lien.

1198 4. Confirms that the notice of sale was published as  
 1199 required under paragraph (6) (d) and attaches an affidavit of  
 1200 publication for the notice of sale.

1201 5. Confirms that the notice of sale was mailed under  
 1202 paragraph (6) (b) together with a list of the parties to whom the  
 1203 notice of sale was mailed.

1204 (b) In furtherance of the execution of the certificate of

1205 compliance required under this subsection, the trustee is  
 1206 entitled to rely upon an affidavit or certification from the  
 1207 lienholder as to the facts and circumstances of default and  
 1208 failure to cure the default.

1209 (10) TRUSTEE'S DEED.—

1210 (a) The trustee's deed shall include the name and address  
 1211 of the trustee, the name and address of the highest bidder, the  
 1212 name of the former owner, a legal description of the timeshare  
 1213 interest, and the name and address of the preparer of the  
 1214 trustee's deed. The trustee's deed shall recite that the  
 1215 certificate of compliance was recorded and shall contain no  
 1216 warranties of title from the trustee. The certificate of  
 1217 compliance shall be attached as an exhibit to the trustee's  
 1218 deed.

1219 (b) Ten calendar days after a sale, absent the prior  
 1220 filing and service on the trustee of a judicial action to enjoin  
 1221 issuance of the trustee's deed to the timeshare interest, the  
 1222 trustee shall:

1223 1. Cancel the original promissory note executed by the  
 1224 mortgagor and secured by the mortgage lien.

1225 2. Issue a trustee's deed to the highest bidder.

1226 3. Record the trustee's deed in the official records of  
 1227 the county or counties in which the timeshare interest is  
 1228 located.

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

1233 any person acquiring the timeshare interest for value.

1234 2. The trustee's deed conveys to the highest bidder all  
 1235 rights, title, and interest in the timeshare interest that the  
 1236 former owner had, or had the power to convey, together with all  
 1237 rights, title, and interest that the former owner or his or her  
 1238 successors in interest acquired after the execution of the  
 1239 mortgage.

1240 3. The issuance and recording of a trustee's deed shall  
 1241 have the same force and effect as the issuance and recording of  
 1242 a certificate of title by the clerk of the court in a judicial  
 1243 foreclosure action.

1244 (11) DISPOSITION OF PROCEEDS OF SALE.—

1245 (a) The trustee shall apply the proceeds of the sale as  
 1246 follows:

1247 1. To the expenses of the sale, including compensation of  
 1248 the trustee.

1249 2. To the amount owed and set forth in the notice as  
 1250 required under subparagraph (6) (a) 6.

1251 3. If there are junior interestholders, the trustee may  
 1252 file an action in interpleader, pay the surplus to a court of  
 1253 competent jurisdiction, name the competing junior  
 1254 interestholders, and ask the court to determine the proper  
 1255 distribution of the surplus. In any interpleader action, the  
 1256 trustee shall recover reasonable attorney's fees and costs.

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

1261 shall be deposited with the Chief Financial Officer under  
 1262 chapter 717.

1263 (b) In disposing of the proceeds of the sale, the trustee  
 1264 may rely on the information provided in the affidavit of the  
 1265 lienholder under paragraph (2) (b) and, in the event of a dispute  
 1266 or uncertainty over such claims, the trustee has the discretion  
 1267 to submit the matter to adjudication by court, by interpleader,  
 1268 or in any other authorized manner and shall recover reasonable  
 1269 attorney's fees and costs.

1270 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure  
 1271 procedure established in this section does not impair or  
 1272 otherwise affect the lienholder's continuing right to bring a  
 1273 judicial foreclosure action, in lieu of using the trustee  
 1274 foreclosure procedure, with respect to any mortgage lien.

1275 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE  
 1276 PROCEDURE.—

1277 (a) An action for actual damages for a material violation  
 1278 of this section may be brought by an obligor against the  
 1279 lienholder for the failure to follow the trustee foreclosure  
 1280 procedure contained in this section.

1281 (b) Any trustee who intentionally violates the provisions  
 1282 of this section concerning the trustee foreclosure procedure  
 1283 commits a felony of the third degree, punishable as provided in  
 1284 s. 775.082, s. 775.083, or s. 775.084.

1285 Section 11. Subsections (1) and (4) of section 721.86,  
 1286 Florida Statutes, are amended to read:

1287 721.86 Miscellaneous provisions.—

1288 (1) In the event of a conflict between the provisions of

1289 this part and the other provisions of this chapter, chapter 702,  
 1290 or other applicable law, the provisions of this part shall  
 1291 prevail. The procedures in this part must be given effect in the  
 1292 context of any foreclosure proceedings against timeshare  
 1293 interests ~~estates~~ governed by this chapter, chapter 702, chapter  
 1294 718, or chapter 719.

1295 (4) In addition to assessment liens and mortgage liens  
 1296 arising after the effective date of this part, except as  
 1297 provided in s. 721.855(13), the provisions of this part apply to  
 1298 all assessment liens and mortgage liens existing prior to the  
 1299 effective date of this act regarding which a foreclosure  
 1300 proceeding has not yet commenced.

1301 Section 12. Subsection (2) of section 721.20, Florida  
 1302 Statutes, is amended to read:

1303 721.20 Licensing requirements; suspension or revocation of  
 1304 license; exceptions to applicability; collection of advance fees  
 1305 for listings unlawful.—

1306 (2) Solicitors who engage only in the solicitation of  
 1307 prospective purchasers and any purchaser who refers no more than  
 1308 20 people to a developer or managing entity per year or who  
 1309 otherwise provides testimonials on behalf of a developer or  
 1310 managing entity are exempt from the provisions of chapter 475.

1311 Section 13. This act shall take effect upon becoming a  
 1312 law.