

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 contain no warranties
 744 of title from the trustee. The certificate of compliance shall
 745 be attached as an exhibit to the trustee's deed.

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

- 750 1. Issue a trustee's deed to the highest bidder.
- 751 2. Record the trustee's deed in the official records of
 752 the county or counties in which the timeshare interest is
 753 located.

754 (c)1. The certificate of compliance and trustee's deed
 755 together are presumptive evidence of the truth of the matters
 756 set forth in them, and an action to set aside the sale and void

757 the trustee's deed may not be filed or otherwise pursued against
 758 any person acquiring the timeshare interest for value.

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

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

769 (11) DISPOSITION OF PROCEEDS OF SALE.—

770 (a) The trustee shall apply the proceeds of the sale as
 771 follows:

772 1. To the expenses of the sale, including compensation of
 773 the trustee.

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

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

782 4. If there are no junior interestholders, or if all
 783 junior interestholders have been paid, any surplus shall be paid
 784 to the former owner. If the trustee is unable to locate the

785 former owner within 1 year after the sale, the surplus, if any,
 786 shall be deposited with the Chief Financial Officer under
 787 chapter 717.

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

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

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

803 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 804 PROCEDURE.—

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

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

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

815 721.856 Procedure for the trustee foreclosure of mortgage
816 liens.—The provisions of this section establish a trustee
817 foreclosure procedure for mortgage liens.

818 (1) APPOINTMENT OF TRUSTEE.—

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

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

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

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

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

841
842 If the mortgagor fails to make timely payments under
843 the obligation secured by this mortgage, or is
844 otherwise deemed in uncured default of this mortgage,
845 the lien against the mortgagor's timeshare interest
846 created by this mortgage may be foreclosed in
847 accordance with either a judicial foreclosure
848 procedure or a trustee foreclosure procedure and may
849 result in the loss of your timeshare interest. If the
850 mortgagee initiates a trustee foreclosure procedure,
851 the mortgagor shall have the option to object and the
852 mortgagee may proceed only by filing a judicial
853 foreclosure action.

854
855 (b)1. In order to initiate a trustee foreclosure procedure
856 against a timeshare interest, the lienholder shall deliver an
857 affidavit to the trustee that identifies the obligor, the notice
858 address of the obligor, the timeshare interest, the official
859 records book and page number where the mortgage is recorded, and
860 the name and notice address of any junior interestholder. The
861 affidavit shall be accompanied by a title search of the
862 timeshare interest identifying any junior interestholders of
863 record, and the effective date of the title search must be a
864 date that is within 60 calendar days before the date of the
865 affidavit.

866 2. The affidavit shall also state the facts that establish
867 that the obligor has defaulted in the obligation to make a
868 payment under a specified provision of the mortgage or is

869 otherwise deemed in uncured default under a specified provision
870 of the mortgage.

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

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

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

884 (3) OBLIGOR'S RIGHTS.-

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

896 (b) At any time before the trustee issues the certificate

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

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

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

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

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

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

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

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

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

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

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

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

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

953
954 If you fail to cure the default as set forth in this
955 notice or take other appropriate action with regard to
956 this foreclosure matter, you risk losing ownership of
957 your timeshare interest through the trustee
958 foreclosure procedure established in section 721.856,
959 Florida Statutes. You may choose to sign and send to
960 the trustee the enclosed objection form, exercising
961 your right to object to the use of the trustee
962 foreclosure procedure. Upon the trustee's receipt of
963 your signed objection form, the foreclosure of the
964 lien with respect to the default specified in this
965 notice shall be subject to the judicial foreclosure
966 procedure only. You have the right to cure your
967 default in the manner set forth in this notice at any
968 time before the trustee's sale of your timeshare
969 interest. If you do not object to the use of the
970 trustee foreclosure procedure, you will not be subject
971 to a deficiency judgment even if the proceeds from the
972 sale of your timeshare interest are insufficient to
973 offset the amounts secured by the lien.

974
975 4. The trustee shall also mail a copy of the notice of
976 default and intent to foreclose, without the objection form, to
977 the notice address of any junior interestholder by certified
978 mail, registered mail, or permitted delivery service, return
979 receipt requested, and by first-class mail or permitted delivery
980 service, postage prepaid.

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

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

1003 1. If the trustee's diligent search and inquiry produces
 1004 an address different from the notice address, the trustee shall
 1005 mail a copy of the notice by certified mail, registered mail, or
 1006 permitted delivery service, return receipt requested, and by
 1007 first-class mail or permitted delivery service, postage prepaid,
 1008 to the new address. Notice under this subparagraph is considered

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

1020 2. If the trustee's diligent search and inquiry does not
1021 locate a different address for the obligor or junior
1022 interestholder, as applicable, the trustee may perfect notice
1023 against that person under paragraph (c).

1024 (c) If the notice is not perfected under subparagraph
1025 (a)5., and such notice was not returned as undeliverable, or if
1026 the notice was not perfected under subparagraph (b)1., the
1027 trustee may perfect notice by publication in a newspaper of
1028 general circulation in the county or counties in which the
1029 timeshare interest is located. The notice shall appear at least
1030 once a week for 2 consecutive weeks. The trustee may group an
1031 unlimited number of notices in the same publication, if all of
1032 the notices pertain to the same timeshare plan. Notice under
1033 this paragraph is considered perfected upon publication as
1034 required in this paragraph.

1035 (d) If notice is perfected under subparagraph (a)5., the
1036 trustee shall execute an affidavit in recordable form setting

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

1043 (e) If notice is perfected under subparagraph (b)1., the
 1044 trustee shall execute an affidavit in recordable form setting
 1045 forth the manner in which notice was perfected and attach the
 1046 affidavit to the certificate of compliance set forth in
 1047 subsection (9). The affidavit shall state the nature of the
 1048 notice, the dates on which the notice was mailed, the name and
 1049 addresses on the envelopes containing the notice, the manner in
 1050 which the notice was mailed, the fact that a signed receipt from
 1051 the certified mail, registered mail, or permitted delivery
 1052 service was timely received, and the name and address on the
 1053 envelopes containing the notice.

1054 (f) If notice is perfected under paragraph (c), the
 1055 trustee shall execute an affidavit in recordable form setting
 1056 forth the manner in which notice was perfected and attach the
 1057 affidavit to the certificate of compliance set forth in
 1058 subsection (9). The affidavit shall include all the information
 1059 contained in either paragraph (d) or paragraph (e), as
 1060 applicable, shall state that the notice was perfected by
 1061 publication after diligent search and inquiry was made for the
 1062 current address for the person, shall include a statement that
 1063 notice was perfected by publication, and shall set forth the
 1064 information required by s. 49.041 in the case of a natural

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

1068 (6) NOTICE OF SALE.—

1069 (a) The notice of sale shall set forth:

1070 1. The name and notice addresses of the obligor and any
 1071 junior interestholder.

1072 2. The legal description of the timeshare interest.

1073 3. The name and address of the trustee.

1074 4. A description of the default that is the basis for the
 1075 foreclosure.

1076 5. The official records book and page numbers where the
 1077 mortgage is recorded.

1078 6. The amounts secured by the lien and a per diem amount
 1079 to account for further accrual of the amounts secured by the
 1080 lien.

1081 7. The date, location, and starting time of the trustee's
 1082 sale.

1083 8. The right of and the method by which the obligor may
 1084 cure the default or the right of any junior interestholder to
 1085 redeem its interest up to the date the trustee issues the
 1086 certificate of sale in accordance with paragraph (7) (f).

1087 (b) The trustee shall send a copy of the notice of sale
 1088 within 3 business days after the date it is submitted for
 1089 recording, by first-class mail or permitted delivery service,
 1090 postage prepaid, to the notice addresses of the obligor and any
 1091 junior interestholder.

1092 (c) After the date of recording of the notice of sale,

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

1098 (d)1. The trustee shall publish the notice of sale in a
 1099 newspaper of general circulation in the county or counties in
 1100 which the timeshare interest is located at least once a week for
 1101 2 consecutive weeks before the date of the sale. The last
 1102 publication shall occur at least 5 calendar days before the
 1103 sale.

1104 2. The trustee may group an unlimited number of notices of
 1105 sale in the same publication, if all of the notices of sale
 1106 pertain to the same timeshare plan.

1107 (7) MANNER OF SALE.—

1108 (a) The sale of a timeshare interest by the trustee in a
 1109 public auction shall be held in the county in which the
 1110 timeshare interest is located, on the date, location, and
 1111 starting time designated in the notice of sale, which shall be
 1112 after 9:00 a.m. but before 4:00 p.m. on a business day not less
 1113 than 30 calendar days after the recording of the notice of sale.
 1114 The trustee's sale may occur online at a specific website on the
 1115 Internet or in any other manner used by the clerk of the court
 1116 for a judicial foreclosure sales procedure in the county or
 1117 counties in which the timeshare interest is located.

1118 (b) The trustee shall conduct the sale and act as the
 1119 auctioneer.

1120 (c) The lienholder and any person other than the trustee

1121 may bid at the sale. In lieu of participating in the sale, the
 1122 lienholder may send the trustee written bidding instructions
 1123 that the trustee shall announce as appropriate during the sale.

1124 (d) The trustee may postpone the sale from time to time.
 1125 In such case, notice of postponement must be given by the
 1126 trustee at the date, time, and location contained in the notice
 1127 of sale. The notice of sale for the postponed sale shall be
 1128 mailed under paragraph (6) (b), recorded under paragraph (4) (f),
 1129 and published under paragraph (6) (d). The effective date of the
 1130 initial notice of sale under paragraph (6) (b) is not affected by
 1131 a postponed sale.

1132 (e) The highest bidder of the timeshare interest shall pay
 1133 the price bid to the trustee in cash or certified funds on the
 1134 day of the sale. If the lienholder is the highest bidder, the
 1135 lienholder shall receive a credit up to the amount set forth in
 1136 the notice of sale as required under subparagraph (6) (a)6.

1137 (f) On the date of the sale and upon receipt of the cash
 1138 or certified funds due from the highest bidder, the trustee
 1139 shall issue to the highest bidder a certificate of sale stating
 1140 that a foreclosure conforming to the requirements of this
 1141 section has occurred, including the time, location, and date of
 1142 the sale, that the timeshare interest was sold, the amounts
 1143 secured by the lien, and the amount of the highest bid. A copy
 1144 of the certificate of sale shall be mailed by certified mail,
 1145 registered mail, or permitted delivery service, return receipt
 1146 requested, to all persons entitled to receive a notice of sale
 1147 under subsection (6).

1148 (g) Before a sale conducted pursuant to this subsection, a

1149 junior interestholder may pursue adjudication by court, by
 1150 interpleader, or in any other authorized manner respecting any
 1151 matter that is disputed by the junior interestholder.

1152 (8) EFFECT OF TRUSTEE'S SALE.—

1153 (a) A sale conducted under subsection (7) forecloses and
 1154 terminates all interests of any person with notice to whom
 1155 notice is given under paragraph (4) (e) and paragraph (6) (b), and
 1156 of any other person claiming interests by, through, or under any
 1157 such person, in the affected timeshare interest. A failure to
 1158 give notice to any person entitled to notice does not affect the
 1159 validity of the sale as to the interests of any person properly
 1160 notified. A person entitled to notice but not given notice has
 1161 the rights of a person not made a defendant in a judicial
 1162 foreclosure.

1163 (b) On the issuance of a certificate of sale under
 1164 paragraph (7) (f), all rights of redemption that have been
 1165 foreclosed under this section shall terminate.

1166 (c) A sale conducted under subsection (7) releases the
 1167 obligor's liability for all amounts secured by the lien. The
 1168 lienholder has no right to any deficiency judgment against the
 1169 obligor after a sale of the obligor's timeshare interest under
 1170 this section.

1171 (d) The issuance and recording of the trustee's deed is
 1172 presumed valid and may be relied upon by third parties without
 1173 actual knowledge of any irregularities in the foreclosure
 1174 proceedings. If for any reason there is an irregularity in the
 1175 foreclosure proceedings, a purchaser becomes subrogated to all
 1176 the rights of the lienholder to the indebtedness that it secured

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

1182 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1183 (a) Within 10 calendar days after the trustee conducts a
1184 sale, the trustee shall execute and acknowledge a certificate of
1185 compliance which:

1186 1. Confirms delivery of the notice of default and intent
1187 to foreclose and attaches the affidavit required under
1188 subsection (5).

1189 2. States that the default was not cured, that the trustee
1190 did not receive any written objection under paragraph (3) (a),
1191 and that the timeshare interest was not redeemed under paragraph
1192 (3) (b).

1193 3. States that the trustee is in possession of the
1194 original promissory note executed by the mortgagor and secured
1195 by the mortgage lien.

1196 4. Confirms that the notice of sale was published as
1197 required under paragraph (6) (d) and attaches an affidavit of
1198 publication for the notice of sale.

1199 5. Confirms that the notice of sale was mailed under
1200 paragraph (6) (b) together with a list of the parties to whom the
1201 notice of sale was mailed.

1202 (b) In furtherance of the execution of the certificate of
1203 compliance required under this subsection, the trustee is
1204 entitled to rely upon an affidavit or certification from the

1205 lienholder as to the facts and circumstances of default and
 1206 failure to cure the default.

1207 (10) TRUSTEE'S DEED.—

1208 (a) The trustee's deed shall include the name and address
 1209 of the trustee, the name and address of the highest bidder, the
 1210 name of the former owner, a legal description of the timeshare
 1211 interest, and the name and address of the preparer of the
 1212 trustee's deed. The trustee's deed shall contain no warranties
 1213 of title from the trustee. The certificate of compliance shall
 1214 be attached as an exhibit to the trustee's deed.

1215 (b) Ten calendar days after a sale, absent the prior
 1216 filing and service on the trustee of a judicial action to enjoin
 1217 issuance of the trustee's deed to the timeshare interest, the
 1218 trustee shall:

1219 1. Cancel the original promissory note executed by the
 1220 mortgagor and secured by the mortgage lien.

1221 2. Issue a trustee's deed to the highest bidder.

1222 3. Record the trustee's deed in the official records of
 1223 the county or counties in which the timeshare interest is
 1224 located.

1225 (c)1. The certificate of compliance and trustee's deed
 1226 together are presumptive evidence of the truth of the matters
 1227 set forth in them, and an action to set aside the sale and void
 1228 the trustee's deed may not be filed or otherwise pursued against
 1229 any person acquiring the timeshare interest for value.

1230 2. The trustee's deed conveys to the highest bidder all
 1231 rights, title, and interest in the timeshare interest that the
 1232 former owner had, or had the power to convey, together with all

1233 rights, title, and interest that the former owner or his or her
 1234 successors in interest acquired after the execution of the
 1235 mortgage.

1236 3. The issuance and recording of a trustee's deed shall
 1237 have the same force and effect as the issuance and recording of
 1238 a certificate of title by the clerk of the court in a judicial
 1239 foreclosure action.

1240 (11) DISPOSITION OF PROCEEDS OF SALE.—

1241 (a) The trustee shall apply the proceeds of the sale as
 1242 follows:

1243 1. To the expenses of the sale, including compensation of
 1244 the trustee.

1245 2. To the amount owed and set forth in the notice as
 1246 required under subparagraph (6) (a) 6.

1247 3. If there are junior interestholders, the trustee may
 1248 file an action in interpleader, pay the surplus to a court of
 1249 competent jurisdiction, name the competing junior
 1250 interestholders, and ask the court to determine the proper
 1251 distribution of the surplus. In any interpleader action, the
 1252 trustee shall recover reasonable attorney's fees and costs.

1253 4. If there are no junior interestholders, or if all
 1254 junior interestholders have been paid, any surplus shall be paid
 1255 to the former owner. If the trustee is unable to locate the
 1256 former owner within 1 year after the sale, the surplus, if any,
 1257 shall be deposited with the Chief Financial Officer under
 1258 chapter 717.

1259 (b) In disposing of the proceeds of the sale, the trustee
 1260 may rely on the information provided in the affidavit of the

1261 lienholder under paragraph (2) (b) and, in the event of a dispute
 1262 or uncertainty over such claims, the trustee has the discretion
 1263 to submit the matter to adjudication by court, by interpleader,
 1264 or in any other authorized manner and shall recover reasonable
 1265 attorney's fees and costs.

1266 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure
 1267 procedure established in this section does not impair or
 1268 otherwise affect the lienholder's continuing right to bring a
 1269 judicial foreclosure action, in lieu of using the trustee
 1270 foreclosure procedure, with respect to any mortgage lien.

1271 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 1272 PROCEDURE.—

1273 (a) An action for actual damages for a material violation
 1274 of this section may be brought by an obligor against the
 1275 lienholder for the failure to follow the trustee foreclosure
 1276 procedure contained in this section.

1277 (b) Any trustee who intentionally violates the provisions
 1278 of this section concerning the trustee foreclosure procedure
 1279 commits a felony of the third degree, punishable as provided in
 1280 s. 775.082, s. 775.083, or s. 775.084.

1281 Section 11. Subsections (1) and (4) of section 721.86,
 1282 Florida Statutes, are amended to read:

1283 721.86 Miscellaneous provisions.—

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

1289 interests ~~estates~~ governed by this chapter, chapter 702, chapter
1290 718, or chapter 719.

1291 (4) In addition to assessment liens and mortgage liens
1292 arising after the effective date of this part, except as
1293 provided in s. 721.855(13), the provisions of this part apply to
1294 all assessment liens and mortgage liens existing prior to the
1295 effective date of this act regarding which a foreclosure
1296 proceeding has not yet commenced.

1297 Section 12. Subsection (2) of section 721.20, Florida
1298 Statutes, is amended to read:

1299 721.20 Licensing requirements; suspension or revocation of
1300 license; exceptions to applicability; collection of advance fees
1301 for listings unlawful.—

1302 (2) Solicitors who engage only in the solicitation of
1303 prospective purchasers and any purchaser who refers no more than
1304 20 people to a developer or managing entity per year or who
1305 otherwise provides testimonials on behalf of a developer or
1306 managing entity are exempt from the provisions of chapter 475.

1307 Section 13. This act shall take effect upon becoming a
1308 law.