

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; imposing an administrative fee on certain  
65 recorded trustee deeds; providing that revenues from such  
66 fees be deposited into the State Courts Revenue Trust  
67 Fund; providing an effective date.

68  
69 Be It Enacted by the Legislature of the State of Florida:

70  
71 Section 1. Paragraph (jj) is added to subsection (5) of  
72 section 721.07, Florida Statutes, to read:

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

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

85 (jj) The following statement in conspicuous type:

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

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

100 721.13 Management.—

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

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

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

121 721.16 Liens for overdue assessments; liens for labor  
 122 performed on, or materials furnished to, a timeshare unit.-

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

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

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

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

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

153 721.81 Legislative purpose.—The purposes of this part are  
 154 to:

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

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

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

167 (4) Improve judicial economy and reduce court congestion  
 168 and the cost to taxpayers by establishing streamlined procedures

169 for the judicial and trustee foreclosure of assessment liens and  
 170 mortgage liens against timeshare interests ~~estates~~.

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

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

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

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

187 721.82 Definitions.—As used in this part, the term:

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

196 (2)-1- "Assessment lien" means:

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

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

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

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

212 (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.  
 213 697.01.

214 (6)~~(5)~~ "Mortgage lien" means a security interest in a  
 215 timeshare interest estate created by a mortgage encumbering the  
 216 timeshare interest estate.

217 (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

218 (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien  
 219 or a person who has assumed the obligation secured by a mortgage  
 220 lien.

221 (9)~~(8)~~ "Notice address" means:

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



225 721.15(7).

226 (b) As to a mortgage lien:

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

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

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

242 (10) ~~(9)~~ "Obligor" means the mortgagor, the person subject  
 243 to an assessment lien, or the record owner of the timeshare  
 244 interest estate.

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

248 (12) ~~(10)~~ "Registered agent" means an agent duly appointed  
 249 by the obligor under s. 721.84 for the purpose of accepting all  
 250 notices and service of process under this part. A registered  
 251 agent may be an individual resident in this state whose business  
 252 office qualifies as a registered office, or a domestic or

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

258 (13)~~(11)~~ "Registered office" means the street address of  
 259 the business office of the registered agent appointed under s.  
 260 721.84, located in this state.

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

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

272 721.83 Consolidation of judicial foreclosure actions.—

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

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

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

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

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

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

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

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

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

302 721.85 Service to notice address or on registered agent.—

303 (1) Service of process for a foreclosure proceeding  
 304 involving a timeshare interest ~~estate~~ may be made by any means  
 305 recognized by law. In addition, substituted service on an  
 306 obligor ~~a party~~ who has appointed a registered agent under s.  
 307 721.84 may be made on such registered agent at the registered  
 308 office. Also, when using s. 48.194 where in rem or quasi in rem

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

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

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

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

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

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

330 721.855 Procedure for the trustee foreclosure of  
 331 assessment liens.—The provisions of this section establish a  
 332 trustee foreclosure procedure for assessment liens.

333 (1) APPOINTMENT OF TRUSTEE.—

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

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

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

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

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

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

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

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

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

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

393 communication used by the managing entity.

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

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

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

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

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

424 (3) OBLIGOR'S RIGHTS.—

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

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

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

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

447 (b) The trustee has not received a written objection to  
448 the use of the trustee foreclosure procedure under paragraph



449 (3) (a) and the timeshare interest was not redeemed under  
 450 paragraph (3) (b);

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

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

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

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

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

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

477 notice of default and intent to foreclose within which the  
478 obligor may cure the default.

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

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

490  
491 If you fail to cure the default as set forth in this  
492 notice or take other appropriate action with regard to  
493 this foreclosure matter, you risk losing ownership of  
494 your timeshare interest through the trustee  
495 foreclosure procedure established in section 721.855,  
496 Florida Statutes. You may choose to sign and send to  
497 the trustee the enclosed objection form, exercising  
498 your right to object to the use of the trustee  
499 foreclosure procedure. Upon the trustee's receipt of  
500 your signed objection form, the foreclosure of the  
501 lien with respect to the default specified in this  
502 notice shall be subject to the judicial foreclosure  
503 procedure only. You have the right to cure your  
504 default in the manner set forth in this notice at any

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

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

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

530 (b) If the notice required by paragraph (a) is returned as  
531 undeliverable within 30 calendar days after the trustee sent the  
532 notice, the trustee shall perform a diligent search and inquiry

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

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

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

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

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

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

589 service was timely received, and the name and address on the  
590 envelopes containing the notice.

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

605 (6) NOTICE OF SALE.—

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

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

617 lien.

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

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

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

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

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

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

644 (7) MANNER OF SALE.—

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

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

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

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

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



673 the notice of sale as required under subparagraph (6) (a) 6.

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

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

689 (8) EFFECT OF TRUSTEE'S SALE.—

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

700 (b) On the issuance of a certificate of sale under

701 paragraph (7)(f), all rights of redemption that have been  
702 foreclosed under this section shall terminate.

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

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

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

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

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

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

729 (3) (b) .

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

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

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

741 (10) TRUSTEE'S DEED.-

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

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

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

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

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

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

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

772        (11) DISPOSITION OF PROCEEDS OF SALE.—

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

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

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

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

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

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

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

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

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

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

812 (b) Any trustee who intentionally violates the provisions

813 of this section concerning the trustee foreclosure procedure  
 814 commits a felony of the third degree, punishable as provided in  
 815 s. 775.082, s. 775.083, or s. 775.084.

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

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

821 (1) APPOINTMENT OF TRUSTEE.—

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

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

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

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

839 (a) Before initiating the trustee foreclosure against a  
 840 timeshare interest, the mortgage, or an amendment to a mortgage

841 executed by the obligor before the effective date of this  
842 section, must contain a statement in substantially the following  
843 form:

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

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

869        2. The affidavit shall also state the facts that establish  
870 that the obligor has defaulted in the obligation to make a  
871 payment under a specified provision of the mortgage or is  
872 otherwise deemed in uncured default under a specified provision  
873 of the mortgage.

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

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

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

887        (3) OBLIGOR'S RIGHTS.—

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



897 thereafter only with a judicial foreclosure action as to that  
 898 specified default.

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

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

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

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

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

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

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

925        (f) The notice of sale required under subsection (6) has  
 926 been recorded in the official records of the county in which the  
 927 mortgage was recorded.

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

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

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

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

953 procedure contained in section 721.856, Florida Statutes."

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

956

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

977

978 4. The trustee shall also mail a copy of the notice of  
979 default and intent to foreclose, without the objection form, to  
980 the notice address of any junior interestholder by certified

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

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

996 (b) If the notice required by paragraph (a) is returned as  
997 undeliverable within 30 calendar days after the trustee sent the  
998 notice, the trustee shall perform a diligent search and inquiry  
999 to obtain a different address for the obligor or junior  
1000 interestholder. For purposes of this paragraph, any address  
1001 known and used by the lienholder for sending regular mailings or  
1002 other communications from the lienholder to the obligor or  
1003 junior interestholder, as applicable, shall be included with  
1004 other addresses produced from the diligent search and inquiry,  
1005 if any.

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

1009 permitted delivery service, return receipt requested, and by  
1010 first-class mail or permitted delivery service, postage prepaid,  
1011 to the new address. Notice under this subparagraph is considered  
1012 perfected upon the trustee receiving the return receipt bearing  
1013 the signature of the obligor or junior interestholder, as  
1014 applicable, within 30 calendar days after the trustee sent the  
1015 notice under this subparagraph. Notice under this subparagraph  
1016 is not perfected if the trustee cannot ascertain from the  
1017 receipt that the obligor or junior interestholder, as  
1018 applicable, is the person who signed the receipt or the receipt  
1019 from the obligor or junior interestholder, as applicable, is  
1020 returned refused. If the trustee does not perfect notice under  
1021 this subparagraph, the trustee shall perfect service in the  
1022 manner set forth in paragraph (c).

1023 2. If the trustee's diligent search and inquiry does not  
1024 locate a different address for the obligor or junior  
1025 interestholder, as applicable, the trustee may perfect notice  
1026 against that person under paragraph (c).

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

1037 required in this paragraph.

1038 (d) If notice is perfected under subparagraph (a)5., the  
1039 trustee shall execute an affidavit in recordable form setting  
1040 forth the manner in which notice was perfected and attach the  
1041 affidavit to the certificate of compliance set forth in  
1042 subsection (9). The affidavit shall state the nature of the  
1043 notice, the date on which the notice was mailed, the name and  
1044 address on the envelope containing the notice, the manner in  
1045 which the notice was mailed, and the basis for that knowledge.

1046 (e) If notice is perfected under subparagraph (b)1., the  
1047 trustee shall execute an affidavit in recordable form setting  
1048 forth the manner in which notice was perfected and attach the  
1049 affidavit to the certificate of compliance set forth in  
1050 subsection (9). The affidavit shall state the nature of the  
1051 notice, the dates on which the notice was mailed, the name and  
1052 addresses on the envelopes containing the notice, the manner in  
1053 which the notice was mailed, the fact that a signed receipt from  
1054 the certified mail, registered mail, or permitted delivery  
1055 service was timely received, and the name and address on the  
1056 envelopes containing the notice.

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

1065 current address for the person, shall include a statement that  
 1066 notice was perfected by publication, and shall set forth the  
 1067 information required by s. 49.041 in the case of a natural  
 1068 person or s. 49.051 in the case of a corporation, whichever is  
 1069 applicable. No other action of the trustee is necessary to  
 1070 perfect notice.

1071 (6) NOTICE OF SALE.—

1072 (a) The notice of sale shall set forth:

1073 1. The name and notice addresses of the obligor and any  
 1074 junior interestholder.

1075 2. The legal description of the timeshare interest.

1076 3. The name and address of the trustee.

1077 4. A description of the default that is the basis for the  
 1078 foreclosure.

1079 5. The official records book and page numbers where the  
 1080 mortgage is recorded.

1081 6. The amounts secured by the lien and a per diem amount  
 1082 to account for further accrual of the amounts secured by the  
 1083 lien.

1084 7. The date, location, and starting time of the trustee's  
 1085 sale.

1086 8. The right of and the method by which the obligor may  
 1087 cure the default or the right of any junior interestholder to  
 1088 redeem its interest up to the date the trustee issues the  
 1089 certificate of sale in accordance with paragraph (7) (f).

1090 (b) The trustee shall send a copy of the notice of sale  
 1091 within 3 business days after the date it is submitted for  
 1092 recording, by first-class mail or permitted delivery service,

1093 postage prepaid, to the notice addresses of the obligor and any  
 1094 junior interestholder.

1095 (c) After the date of recording of the notice of sale,  
 1096 notice is not required to be given to any person claiming an  
 1097 interest in the timeshare interest except as provided in this  
 1098 section. The recording of the notice of sale has the same force  
 1099 and effect as the filing of a lis pendens in a judicial  
 1100 proceeding under s. 48.23.

1101 (d)1. The trustee shall publish the notice of sale in a  
 1102 newspaper of general circulation in the county or counties in  
 1103 which the timeshare interest is located at least once a week for  
 1104 2 consecutive weeks before the date of the sale. The last  
 1105 publication shall occur at least 5 calendar days before the  
 1106 sale.

1107 2. The trustee may group an unlimited number of notices of  
 1108 sale in the same publication, if all of the notices of sale  
 1109 pertain to the same timeshare plan.

1110 (7) MANNER OF SALE.—

1111 (a) The sale of a timeshare interest by the trustee in a  
 1112 public auction shall be held in the county in which the  
 1113 timeshare interest is located, on the date, location, and  
 1114 starting time designated in the notice of sale, which shall be  
 1115 after 9:00 a.m. but before 4:00 p.m. on a business day not less  
 1116 than 30 calendar days after the recording of the notice of sale.  
 1117 The trustee's sale may occur online at a specific website on the  
 1118 Internet or in any other manner used by the clerk of the court  
 1119 for a judicial foreclosure sales procedure in the county or  
 1120 counties in which the timeshare interest is located.



1121 (b) The trustee shall conduct the sale and act as the  
 1122 auctioneer.

1123 (c) The lienholder and any person other than the trustee  
 1124 may bid at the sale. In lieu of participating in the sale, the  
 1125 lienholder may send the trustee written bidding instructions  
 1126 that the trustee shall announce as appropriate during the sale.

1127 (d) The trustee may postpone the sale from time to time.  
 1128 In such case, notice of postponement must be given by the  
 1129 trustee at the date, time, and location contained in the notice  
 1130 of sale. The notice of sale for the postponed sale shall be  
 1131 mailed under paragraph (6) (b), recorded under paragraph (4) (f),  
 1132 and published under paragraph (6) (d). The effective date of the  
 1133 initial notice of sale under paragraph (6) (b) is not affected by  
 1134 a postponed sale.

1135 (e) The highest bidder of the timeshare interest shall pay  
 1136 the price bid to the trustee in cash or certified funds on the  
 1137 day of the sale. If the lienholder is the highest bidder, the  
 1138 lienholder shall receive a credit up to the amount set forth in  
 1139 the notice of sale as required under subparagraph (6) (a)6.

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

1149 requested, to all persons entitled to receive a notice of sale  
 1150 under subsection (6).

1151 (g) Before a sale conducted pursuant to this subsection, a  
 1152 junior interestholder may pursue adjudication by court, by  
 1153 interpleader, or in any other authorized manner respecting any  
 1154 matter that is disputed by the junior interestholder.

1155 (8) EFFECT OF TRUSTEE'S SALE.—

1156 (a) A sale conducted under subsection (7) forecloses and  
 1157 terminates all interests of any person with notice to whom  
 1158 notice is given under paragraph (4) (e) and paragraph (6) (b), and  
 1159 of any other person claiming interests by, through, or under any  
 1160 such person, in the affected timeshare interest. A failure to  
 1161 give notice to any person entitled to notice does not affect the  
 1162 validity of the sale as to the interests of any person properly  
 1163 notified. A person entitled to notice but not given notice has  
 1164 the rights of a person not made a defendant in a judicial  
 1165 foreclosure.

1166 (b) On the issuance of a certificate of sale under  
 1167 paragraph (7) (f), all rights of redemption that have been  
 1168 foreclosed under this section shall terminate.

1169 (c) A sale conducted under subsection (7) releases the  
 1170 obligor's liability for all amounts secured by the lien. The  
 1171 lienholder has no right to any deficiency judgment against the  
 1172 obligor after a sale of the obligor's timeshare interest under  
 1173 this section.

1174 (d) The issuance and recording of the trustee's deed is  
 1175 presumed valid and may be relied upon by third parties without  
 1176 actual knowledge of any irregularities in the foreclosure

1177 proceedings. If for any reason there is an irregularity in the  
 1178 foreclosure proceedings, a purchaser becomes subrogated to all  
 1179 the rights of the lienholder to the indebtedness that it secured  
 1180 to the extent necessary to reforeclose the mortgage lien in  
 1181 order to correct the irregularity and becomes entitled to an  
 1182 action de novo for the foreclosure of such mortgage lien. Any  
 1183 subsequent reforeclosure required to correct an irregularity may  
 1184 be conducted under this section.

1185 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1186 (a) Within 10 calendar days after the trustee conducts a  
 1187 sale, the trustee shall execute and acknowledge a certificate of  
 1188 compliance which:

1189 1. Confirms delivery of the notice of default and intent  
 1190 to foreclose and attaches the affidavit required under  
 1191 subsection (5).

1192 2. States that the default was not cured, that the trustee  
 1193 did not receive any written objection under paragraph (3) (a),  
 1194 and that the timeshare interest was not redeemed under paragraph  
 1195 (3) (b).

1196 3. States that the trustee is in possession of the  
 1197 original promissory note executed by the mortgagor and secured  
 1198 by the mortgage lien.

1199 4. Confirms that the notice of sale was published as  
 1200 required under paragraph (6) (d) and attaches an affidavit of  
 1201 publication for the notice of sale.

1202 5. Confirms that the notice of sale was mailed under  
 1203 paragraph (6) (b) together with a list of the parties to whom the  
 1204 notice of sale was mailed.

1205 (b) In furtherance of the execution of the certificate of  
 1206 compliance required under this subsection, the trustee is  
 1207 entitled to rely upon an affidavit or certification from the  
 1208 lienholder as to the facts and circumstances of default and  
 1209 failure to cure the default.

1210 (10) TRUSTEE'S DEED.-

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

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

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

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

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

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

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

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

1243           (11) DISPOSITION OF PROCEEDS OF SALE.—

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

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

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

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

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

1261 chapter 717.

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

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

1274 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE  
 1275 PROCEDURE.—

1276 (a) An action for actual damages for a material violation  
 1277 of this section may be brought by an obligor against the  
 1278 lienholder for the failure to follow the trustee foreclosure  
 1279 procedure contained in this section.

1280 (b) Any trustee who intentionally violates the provisions  
 1281 of this section concerning the trustee foreclosure procedure  
 1282 commits a felony of the third degree, punishable as provided in  
 1283 s. 775.082, s. 775.083, or s. 775.084.

1284 Section 11. Subsections (1) and (4) of section 721.86,  
 1285 Florida Statutes, are amended to read:

1286 721.86 Miscellaneous provisions.—

1287 (1) In the event of a conflict between the provisions of  
 1288 this part and the other provisions of this chapter, chapter 702,

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

1294 (4) In addition to assessment liens and mortgage liens  
 1295 arising after the effective date of this part, except as  
 1296 provided in s. 721.855(13), the provisions of this part apply to  
 1297 all assessment liens and mortgage liens existing prior to the  
 1298 effective date of this act regarding which a foreclosure  
 1299 proceeding has not yet commenced.

1300 Section 12. Subsection (2) of section 721.20, Florida  
 1301 Statutes, is amended to read:

1302 721.20 Licensing requirements; suspension or revocation of  
 1303 license; exceptions to applicability; collection of advance fees  
 1304 for listings unlawful.-

1305 (2) Solicitors who engage only in the solicitation of  
 1306 prospective purchasers and any purchaser who refers no more than  
 1307 20 people to a developer or managing entity per year or who  
 1308 otherwise provides testimonials on behalf of a developer or  
 1309 managing entity are exempt from the provisions of chapter 475.

1310 Section 13. An administrative fee of \$50 per trustee deed  
 1311 for each deed recorded pursuant to the trustee foreclosure  
 1312 procedures set forth in ss. 721.855 and 721.856, Florida  
 1313 Statutes, shall be paid and remitted at the same time and in the  
 1314 same manner as documentary stamp taxes imposed pursuant to s.  
 1315 201.02, Florida Statutes. Revenues from such fees shall be  
 1316 remitted to the Department of Revenue in the same manner as

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1317 documentary stamp taxes and deposited in the State Courts  
1318 Revenue Trust Fund.  
1319 Section 14. This act shall take effect upon becoming a  
1320 law.