

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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:

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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:

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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).

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.—

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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,

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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,

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

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.