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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2010	.	
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The Committee on Regulated Industries (Thrasher) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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

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



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13 pursuant to s. 721.10.

14 (5) Every filed public offering statement for a timeshare  
15 plan which is not a multisite timeshare plan shall contain the  
16 information required by this subsection. The division is  
17 authorized to provide by rule the method by which a developer  
18 must provide such information to the division.

19 (jj) The following statement in conspicuous type:

20  
21 The managing entity has a lien against each timeshare  
22 interest to secure the payment of assessments, ad  
23 valorem assessments, tax assessments, and special  
24 assessments. Your failure to make any required  
25 payments may result in the judicial or trustee  
26 foreclosure of an assessment lien and the loss of your  
27 timeshare interest. If the managing entity initiates a  
28 trustee procedure, you shall have the option to object  
29 to the use of the trustee foreclosure procedure and  
30 the managing entity may only proceed by filing a  
31 judicial foreclosure action.

32  
33 Section 2. Subsections (2) and (3) of section 721.16,  
34 Florida Statutes, are amended to read:

35 721.16 Liens for overdue assessments; liens for labor  
36 performed on, or materials furnished to, a timeshare unit.—

37 (2) The managing entity may bring a judicial ~~an~~ action in  
38 its name to foreclose a lien under subsection (1) in the manner  
39 a mortgage of real property is foreclosed and may also bring an  
40 action to recover a money judgment for the unpaid assessments  
41 without waiving any claim of lien. As an alternative to



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42 initiating a judicial action, the managing entity may initiate a  
43 trustee procedure to foreclose an assessment lien under s.  
44 721.855.

45 (3) The lien is effective from the date of recording a  
46 claim of lien in the official public records of the county or  
47 counties in which the timeshare interest is accommodations and  
48 facilities constituting the timeshare plan are located. The  
49 claim of lien shall state the name of the timeshare plan and  
50 identify the timeshare interest for which the lien is effective,  
51 state the name of the purchaser, state the assessment amount  
52 due, and state the due dates. Notwithstanding any provision of  
53 s. 718.116(5) ~~s. 718.116(5)(a)~~ or s. 719.108(4) to the contrary,  
54 the lien is effective until satisfied or until 5 years have  
55 expired after the date the claim of lien is recorded unless,  
56 within that time, an action to enforce the lien is commenced  
57 pursuant to subsection (2). A claim of lien for assessments may  
58 include only assessments which are due when the claim is  
59 recorded. A claim of lien shall be signed and acknowledged by an  
60 officer or agent of the managing entity. Upon full payment, the  
61 person making the payment is entitled to receive a satisfaction  
62 of the lien.

63 Section 3. Part III of chapter 721, Florida Statutes,  
64 entitled "Foreclosure of Liens on Timeshare Estates," is renamed  
65 "Foreclosure of Liens on Timeshare Interests."

66 Section 4. Section 721.81, Florida Statutes, is amended to  
67 read:

68 721.81 Legislative purpose.—The purposes of this part are  
69 to:

70 (1) Recognize that timeshare interests ~~estates are parcels~~



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71 ~~of real property~~ used for vacation experience rather than for  
72 homestead or investment purposes and that there are numerous  
73 timeshare interests ~~estates~~ in this ~~the~~ state.

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

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

82 (4) Improve judicial economy and reduce court congestion  
83 and the cost to taxpayers by establishing streamlined procedures  
84 for the judicial and trustee foreclosure of assessment liens and  
85 mortgage liens against timeshare interests ~~estates~~.

86 (5) Recognize that nearly all timeshare interest  
87 foreclosures are uncontested.

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

92 (7) Recognize that the use of the trustee foreclosure  
93 procedure established by ss. 721.855 and 721.856 shall have the  
94 same force and effect as the use of the judicial foreclosure  
95 procedure against a timeshare interest with respect to the  
96 provisions of this chapter or any other applicable law. However,  
97 obligors shall not be subject to a deficiency judgment even if  
98 the proceeds from the sale of the timeshare interest are  
99 insufficient to offset the amounts secured by the lien.



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100 Section 5. Section 721.82, Florida Statutes, is amended to  
101 read:

102 721.82 Definitions.—As used in this part, the term:

103 (1) "Amounts secured by the lien" means all amounts secured  
104 by an assessment lien or mortgage lien, including, but not  
105 limited to, all past due amounts, accrued interest, late fees,  
106 taxes, advances for the payment of taxes, insurance and  
107 maintenance of the timeshare interest, and any fees or costs  
108 incurred by the lienholder or trustee, including any reasonable  
109 attorney's fees, trustee's fees, and costs incurred in  
110 connection with the default.

111 (2)~~(1)~~ "Assessment lien" means:

112 (a) A lien for delinquent assessments as provided in ss.  
113 ~~721.16, 718.116, and 719.108, and 721.16 as to timeshare~~  
114 ~~condominiums; or~~

115 (b) A lien for unpaid ad valorem assessments, tax  
116 assessments, taxes and special assessments as provided in s.  
117 192.037(8).

118 (3)~~(2)~~ "Junior interestholder" means any person who has a  
119 lien or interest of record against a timeshare interest estate  
120 in the county or counties in which the timeshare interest estate  
121 is located, which is inferior to the mortgage lien or assessment  
122 lien being foreclosed under this part.

123 (4)~~(3)~~ "Lienholder" means a holder of an assessment lien or  
124 a holder of a mortgage lien, as applicable. A receiver appointed  
125 under s. 721.26 is a lienholder for purposes of foreclosure of  
126 assessment liens under this part.

127 (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.  
128 697.01.



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129           ~~(6)-(5)~~ "Mortgage lien" means a security interest in a  
130 timeshare interest estate created by a mortgage encumbering the  
131 timeshare interest estate.

132           ~~(7)-(6)~~ "Mortgagee" means a person holding a mortgage lien.

133           ~~(8)-(7)~~ "Mortgagor" means a person granting a mortgage lien  
134 or a person who has assumed the obligation secured by a mortgage  
135 lien.

136           ~~(9)-(8)~~ "Notice address" means:

137           (a) As to an assessment lien, the address of the ~~current~~  
138 owner of a timeshare interest estate as reflected by the books  
139 and records of the timeshare plan under ss. 721.13(4) and  
140 721.15(7).

141           (b) As to a mortgage lien:

142           1. The address of the mortgagor as set forth in the  
143 mortgage, the promissory note or a separate document executed by  
144 the mortgagor at the time the mortgage lien was created, or the  
145 most current address of the mortgagor according to the records  
146 of the mortgagee; and

147           2. If the ~~current~~ owner of the timeshare interest estate is  
148 different from the mortgagor, the address of the ~~current~~ owner  
149 of the timeshare interest estate as reflected by the books and  
150 records of the mortgagee.

151           (c) As to a junior interestholder, the address as set forth  
152 in the recorded instrument creating the junior lien interest or  
153 interest lien, or in any recorded amendment supplement thereto  
154 changing the address, or in any written notification by the  
155 junior interestholder to the foreclosing lienholder changing the  
156 ~~of such change in~~ address.

157           ~~(10)-(9)~~ "Obligor" means the mortgagor, the person subject



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158 to an assessment lien, or the record owner of the timeshare  
159 interest estate.

160 (11) "Permitted delivery service" means any nationally  
161 recognized common carrier delivery service or international  
162 airmail service that allows for return receipt service.

163 (12)~~(10)~~ "Registered agent" means an agent duly appointed  
164 by the obligor under s. 721.84 for the purpose of accepting all  
165 notices and service of process under this part. A registered  
166 agent may be an individual resident in this state whose business  
167 office qualifies as a registered office, or a domestic or  
168 foreign corporation or a not-for-profit corporation as defined  
169 in chapter 617 authorized to transact business or to conduct its  
170 affairs in this state, whose business office qualifies as a  
171 registered office. A registered agent for any obligor may not be  
172 the lienholder or the attorney for the lienholder.

173 (13)~~(11)~~ "Registered office" means the street address of  
174 the business office of the registered agent appointed under s.  
175 721.84, located in this state.

176 (14) "Trustee" means an attorney who is a member in good  
177 standing of The Florida Bar or his or her law firm, or a title  
178 insurer authorized to transact business in this state under s.  
179 624.401, appointed as trustee or as substitute trustee in  
180 accordance with s. 721.855 or s. 721.856. A receiver appointed  
181 under s. 721.26 may act as a trustee under s. 721.855. A trustee  
182 must be independent as required by s. 721.05(20).

183 Section 6. Section 721.83, Florida Statutes, is amended to  
184 read:

185 721.83 Consolidation of judicial foreclosure actions.-

186 (1) A complaint in a foreclosure proceeding involving



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187 timeshare interests ~~estates~~ may join in the same action multiple  
188 defendant obligors and junior interestholders of separate  
189 timeshare interests ~~estates~~, provided:

190 (a) The foreclosure proceeding involves a single timeshare  
191 property.

192 (b) The foreclosure proceeding is filed by a single  
193 plaintiff.

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

197 (d) The nature of the defaults alleged is the same for each  
198 defendant.

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

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

206 (3) A consolidated timeshare foreclosure action shall be  
207 considered a single action, suit, or proceeding for the payment  
208 of filing fees and service charges pursuant to general law. In  
209 addition to the payment of such filing fees and service charges,  
210 an additional filing fee of up to \$10 for each timeshare  
211 interest ~~estate~~ joined in that action shall be paid to the clerk  
212 of court.

213 Section 7. Section 721.85, Florida Statutes, is amended to  
214 read:

215 721.85 Service to notice address or on registered agent.—





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216 (1) Service of process for a foreclosure proceeding  
217 involving a timeshare interest ~~estate~~ may be made by any means  
218 recognized by law. In addition, substituted service on an  
219 obligor ~~a party~~ who has appointed a registered agent under s.  
220 721.84 may be made on such registered agent at the registered  
221 office. Also, when using s. 48.194 where in rem or quasi in rem  
222 relief only is sought, such service of process provisions are  
223 modified in connection with a foreclosure proceeding against a  
224 timeshare interest ~~estate~~ to provide that:

225 (a) Such service of process may be made on any person  
226 whether the person is located inside or outside this state, by  
227 certified mail, ~~or~~ registered mail, or permitted delivery  
228 service, return receipt requested, addressed to the person to be  
229 served at the notice address, or on the person's ~~party's~~  
230 registered agent duly appointed under s. 721.84, at the  
231 registered office; and

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

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

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

241 Section 8. Section 721.855, Florida Statutes, is created to  
242 read:

243 721.855 Procedure for the trustee foreclosure of assessment  
244 liens.-The provisions of this section establish a trustee



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245 foreclosure procedure for assessment liens.

246 (1) APPOINTMENT OF TRUSTEE.—

247 (a) A trustee or a substitute trustee may be appointed by a  
248 lienholder at any time by recording a notice of appointment of  
249 trustee or notice of substitution of trustee in the official  
250 records of the county or counties in which the timeshare  
251 interest is located. A lienholder may appoint multiple trustees  
252 in a single appointment, and any appointed trustee may be used  
253 by the lienholder regarding the trustee foreclosure of any  
254 assessment lien under any timeshare plan for which the trustee  
255 is appointed.

256 (b) The recorded notice of appointment of trustee or notice  
257 of substitution of trustee shall contain the name and address of  
258 the trustee or substitute trustee, the name and address of the  
259 lienholder, and the name and address of the timeshare plan.

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

261 (a) Before initiating the trustee foreclosure procedure  
262 against any timeshare interest in a given timeshare plan, the  
263 managing entity shall inform owners of timeshare interests in  
264 the timeshare plan in writing that the managing entity has the  
265 right to elect to use the trustee foreclosure procedure with  
266 respect to foreclosure of assessment liens as established in  
267 this section. The managing entity shall be deemed to have  
268 complied with the requirements of this paragraph if the owners  
269 of timeshare interests in the given timeshare plan are informed  
270 by mail sent to each owner's notice address, in the notice of an  
271 annual or special meeting of the owners, by posting on the  
272 website of the applicable timeshare plan, or by any owner  
273 communication used by the managing entity.



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274 (b) Before initiating the trustee foreclosure procedure  
275 against any timeshare interest, a claim of lien against the  
276 timeshare interest shall be recorded under s. 721.16 or, if  
277 applicable, s. 718.116 or s. 719.108, and the notice of the  
278 intent to file a lien shall be given under s. 718.121 for  
279 timeshare condominiums and s. 719.108 for timeshare  
280 cooperatives.

281 (c)1. In order to initiate the trustee foreclosure  
282 procedure against a timeshare interest, the lienholder shall  
283 deliver an affidavit to the trustee that identifies the obligor,  
284 the notice address of the obligor, the timeshare interest, the  
285 date that the notice of the intent to file a lien was given, if  
286 applicable, the official records book and page number where the  
287 claim of lien is recorded, and the name and notice address of  
288 any junior interestholder. The affidavit shall be accompanied by  
289 a title search of the timeshare interest identifying any junior  
290 interestholders of record, and the effective date of the title  
291 search must be a date that is within 60 calendar days before the  
292 date of the affidavit.

293 2. The affidavit shall also state the facts that establish  
294 that the obligor has defaulted in the obligation to make a  
295 payment under a specified provision of the timeshare instrument  
296 or applicable law.

297 3. The affidavit shall also specify the amounts secured by  
298 the lien as of the date of the affidavit and a per diem amount  
299 to account for further accrual of the amounts secured by the  
300 lien.

301 (3) OBLIGOR'S RIGHTS.—

302 (a) The obligor may object to the lienholder's use of the



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303 trustee foreclosure procedure for a specific default any time  
304 before the sale of the timeshare interest under subsection (7)  
305 by delivering a written objection to the trustee using the  
306 objection form provided for in subsection (5). If the trustee  
307 receives the written objection from the obligor, the trustee may  
308 not proceed with the trustee foreclosure procedure as to the  
309 default specified in the notice of default and intent to  
310 foreclose under subsection (5), and the lienholder may proceed  
311 thereafter only with a judicial foreclosure action as to that  
312 specified default.

313 (b) At any time before the trustee issues the certificate  
314 of sale under paragraph (7) (f), the obligor may cure the default  
315 and redeem the timeshare interest by paying to the trustee the  
316 amounts secured by the lien in cash or in certified funds. From  
317 the time the trustee issues the certificate of sale, there is no  
318 right of redemption.

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

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

324 (b) The trustee has not received a written objection to the  
325 use of the trustee foreclosure procedure under paragraph (3) (a)  
326 and the timeshare interest was not redeemed under paragraph  
327 (3) (b);

328 (c) There is no lis pendens recorded and pending against  
329 the same timeshare interest and the trustee has not been served  
330 notice of the filing of any action to enjoin the trustee  
331 foreclosure sale;



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332       (d) The trustee has provided written notice of default and  
333 intent to foreclose as required by subsection (5) and a period  
334 of at least 30 calendar days has elapsed after such notice is  
335 deemed perfected under subsection (5); and

336       (e) The notice of sale required by subsection (6) has been  
337 recorded in the official records of the county or counties in  
338 which the timeshare interest is located.

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

340       (a) In any foreclosure proceeding under this section, the  
341 trustee is required to notify the obligor of the proceeding by  
342 sending the obligor a written notice of default and intent to  
343 foreclose to the notice address of the obligor by certified  
344 mail, registered mail, or permitted delivery service, return  
345 receipt requested, and by first class mail or permitted delivery  
346 service, postage prepaid, as follows:

347       1. The notice of default and intent to foreclose shall  
348 identify the obligor, the notice address of the obligor, the  
349 legal description of the timeshare interest, the nature of the  
350 default, the amounts secured by the lien, and a per diem amount  
351 to account for further accrual of the amounts secured by the  
352 lien and shall state the method by which the obligor may cure  
353 the default, including the period of time following the date of  
354 the notice of default and intent to foreclose within which the  
355 obligor may cure the default.

356       2. The notice of default and intent to foreclose shall  
357 include an objection form with which the obligor can object to  
358 the use of the trustee foreclosure procedure by signing and  
359 returning the objection form to the trustee. The objection form  
360 shall identify the obligor, the notice address of the obligor,



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361 the timeshare interest, and the return address of the trustee  
362 and shall state: "The undersigned obligor exercises the  
363 obligor's right to object to the use of the trustee foreclosure  
364 procedure contained in section 721.855, Florida Statutes."

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

367  
368 If you fail to cure the default as set forth in this  
369 notice or take other appropriate action with regard to  
370 this foreclosure matter, you risk losing ownership of  
371 your timeshare interest through the trustee  
372 foreclosure procedure established in section 721.855,  
373 Florida Statutes. You may choose to sign and send to  
374 the trustee the enclosed objection form, exercising  
375 your right to object to the use of the trustee  
376 foreclosure procedure. Upon the trustee's receipt of  
377 your signed objection form, the foreclosure of the  
378 lien with respect to the default specified in this  
379 notice shall be subject to the judicial foreclosure  
380 procedure only. You have the right to cure your  
381 default in the manner set forth in this notice at any  
382 time before the trustee's sale of your timeshare  
383 interest. If you do not object to the use of the  
384 trustee foreclosure procedure, you will not be subject  
385 to a deficiency judgment even if the proceeds from the  
386 sale of your timeshare interest are insufficient to  
387 offset the amounts secured by the lien.

388  
389 4. The trustee shall also mail a copy of the notice of



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390 default and intent to foreclose, without the objection form, to  
391 the notice address of any junior interestholder by certified  
392 mail, registered mail, or permitted delivery service, return  
393 receipt requested, and by first class mail or permitted delivery  
394 service, postage prepaid.

395 5. Notice under this paragraph is considered perfected upon  
396 the trustee receiving the return receipt bearing the signature  
397 of the obligor or junior interestholder, as applicable, within  
398 30 calendar days after the trustee sent the notice under this  
399 paragraph. Notice under this paragraph is not perfected if the  
400 notice is returned as undeliverable within 30 calendar days  
401 after the trustee sent the notice, if the trustee cannot  
402 ascertain from the receipt that the obligor or junior  
403 interestholder, as applicable, is the person who signed the  
404 receipt, or if the receipt from the obligor or junior  
405 interestholder, as applicable, is returned or refused within 30  
406 calendar days after the trustee sent the notice.

407 (b) If the notice required by paragraph (a) is returned as  
408 undeliverable within 30 calendar days after the trustee sent the  
409 notice, the trustee shall perform a diligent search and inquiry  
410 to obtain a different address for the obligor or junior  
411 interestholder. For purposes of this paragraph, any address  
412 known and used by the lienholder for sending regular mailings or  
413 other communications from the lienholder to the obligor or  
414 junior interestholder, as applicable, shall be included with  
415 other addresses produced from the diligent search and inquiry,  
416 if any.

417 1. If the trustee's diligent search and inquiry produces an  
418 address different from the notice address, the trustee shall



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419 mail a copy of the notice by certified mail, registered mail, or  
420 permitted delivery service, return receipt requested, and by  
421 first class mail or permitted delivery service, postage prepaid  
422 to the new address. Notice under this subparagraph is considered  
423 perfected upon the trustee receiving the return receipt bearing  
424 the signature of the obligor or junior interestholder, as  
425 applicable, within 30 calendar days after the trustee sent the  
426 notice under this paragraph. Notice under this subparagraph is  
427 not perfected if the trustee cannot ascertain from the receipt  
428 that the obligor or junior interestholder, as applicable, is the  
429 person who signed the receipt or the receipt from the obligor or  
430 junior interestholder, as applicable, is returned refused.  
431 Unless the trustee perfects notice under this subparagraph, the  
432 trustee shall perfect service in the manner set forth in  
433 paragraph (c).

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

438 (c) If the notice is not perfected under subparagraph  
439 (a)5., and such notice was not returned as undeliverable, or if  
440 the notice was not perfected under subparagraph (b)1. or  
441 subparagraph (b)2., the trustee may perfect notice by  
442 publication in a newspaper of general circulation in the county  
443 or counties in which the timeshare interest is located. The  
444 notice shall appear at least once a week for 2 consecutive  
445 weeks. The trustee may group an unlimited number of notices in  
446 the same publication, provided that all of the notices pertain  
447 to the same timeshare plan. Notice under this paragraph is





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448 considered perfected upon publication as required in this  
449 paragraph.

450 (d) If notice is perfected under subparagraph (a)5., the  
451 trustee shall execute an affidavit in recordable form setting  
452 forth the manner in which notice was perfected and attach the  
453 affidavit to the certificate of compliance set forth in  
454 subsection (9). The affidavit shall state the nature of the  
455 notice, the date on which the notice was mailed, the name and  
456 address on the envelope containing the notice, the manner in  
457 which the notice was mailed, and the basis for that knowledge.

458 (e) If notice is perfected under subparagraph (b)1., the  
459 trustee shall execute an affidavit in recordable form setting  
460 forth the manner in which notice was perfected and attach the  
461 affidavit to the certificate of compliance set forth in  
462 subsection (9). The affidavit shall state the nature of the  
463 notice, the dates on which the notice was mailed, the name and  
464 addresses on the envelopes containing the notice, the manner in  
465 which the notices were mailed, the fact that a signed receipt  
466 from the certified mail, registered mail, or permitted delivery  
467 service was not timely received, and the name and address on the  
468 envelopes containing the notice.

469 (f) If notice is perfected under paragraph (c), the trustee  
470 shall execute an affidavit in recordable form setting forth the  
471 manner in which notice was perfected and attach the affidavit to  
472 the certificate of compliance set forth in subsection (9). The  
473 affidavit shall state the nature of the notice, the date on  
474 which the notice was mailed, the name and address on the  
475 envelope containing the notice, the manner in which the notice  
476 was mailed, the fact that a signed receipt from the certified or



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477 registered mail or the permitted delivery service was not timely  
478 received, the date on which a copy of the notice was mailed  
479 again by first class mail with the return address of the trustee  
480 on the envelope, and the name and address on the envelope  
481 containing the notice. The envelopes from the attempts to mail  
482 notice, if available, shall also be attached to the affidavit.

483 (g) If notice is perfected by publication under paragraph  
484 (d), the trustee shall execute an affidavit in recordable form  
485 setting forth the manner in which notice was perfected and  
486 attach the affidavit to the certificate of compliance set forth  
487 in subsection (7). The affidavit shall include all the  
488 information contained in either paragraph (d) or paragraph (e),  
489 as applicable, shall state that the notice was perfected by  
490 publication after diligent search and inquiry was made for the  
491 current address for the person, and shall include a statement  
492 that notice was perfected by publication, and shall set forth  
493 the information required by s. 49.041 in the case of a natural  
494 person, or s. 49.051 in the case of a corporation, whichever is  
495 applicable. No other action of the trustee is necessary to  
496 perfect notice.

497 (6) NOTICE OF SALE.—

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

499 1. The name and notice addresses of the obligor and any  
500 junior interestholder.

501 2. The legal description of the timeshare interest.

502 3. The name and address of the trustee.

503 4. A description of the default that is the basis for the  
504 foreclosure.

505 5. The official records book and page numbers where the



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506 claim of lien is recorded.

507 6. The amounts secured by the lien and a per diem amount to  
508 account for further accrual of the amounts secured by the lien.

509 7. The date, location, and starting time of the trustee's  
510 sale.

511 8. The right of and the method by which the obligor may  
512 cure the default or the right of any junior interestholder to  
513 redeem its interest up to the date the trustee issues the  
514 certificate of sale in accordance with paragraph (8) (f).

515 (b) The trustee shall send a copy of the notice of sale  
516 within 3 business days following the date it is submitted for  
517 recording, by first-class mail or permitted delivery service,  
518 postage prepaid, to the notice addresses of the obligor and any  
519 junior interestholder.

520 (c) Subsequent to the date of recording of the notice of  
521 sale, no notice is required to be given to any person claiming  
522 an interest in the timeshare interest except as provided in this  
523 section. The recording of the notice of sale has the same force  
524 and effect as the filing of a lis pendens in a judicial  
525 proceeding under s. 48.23.

526 (d)1. The trustee shall publish the notice of sale in a  
527 newspaper of general circulation in the county or counties in  
528 which the timeshare interest is located at least once a week for  
529 2 consecutive weeks before the date of the sale. The last  
530 publication shall occur at least 5 calendar days before the  
531 sale.

532 2. The trustee may group an unlimited number of notices of  
533 sale in the same publication, provided that all of the notices  
534 of sale pertain to the same timeshare plan.



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535 (7) MANNER OF SALE.—

536 (a) The sale of a timeshare interest by the trustee in a  
537 public auction shall be held in the county in which the  
538 timeshare interest is located, on the date, location, and  
539 starting time designated in the notice of sale, which shall be  
540 after 9 a.m. but before 4 p.m. on a business day not less than  
541 30 calendar days after the recording of the notice of sale. The  
542 trustee's sale may occur online at a specific website on the  
543 Internet or in any other manner used by the clerk of the court  
544 for a judicial foreclosure sales procedure in the county or  
545 counties in which the timeshare interest is located.

546 (b) The trustee shall conduct the sale and act as the  
547 auctioneer.

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

552 (d) The trustee may postpone the sale from time to time. In  
553 such case, notice of postponement must be given by the trustee  
554 at the date, time, and location contained in the notice of sale.  
555 The notice of sale for the postponed sale shall be mailed under  
556 paragraph (6) (b), recorded under paragraph (4) (e), and published  
557 pursuant to paragraph (6) (d). The effective date of the initial  
558 notice of sale under paragraph (6) (b) is not affected by a  
559 postponed sale.

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



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564 the notice of sale under subparagraph (6) (a) 6.

565 (f) On the date of the sale the trustee shall issue to the  
566 highest bidder a certificate of sale stating that a foreclosure  
567 conforming to the requirements of this section has occurred,  
568 including the time, location, and date of the sale, that the  
569 timeshare interest was sold, the amounts secured by the lien,  
570 and the amount of the highest bid. A copy of the certificate of  
571 sale shall be mailed by certified mail, registered mail, or  
572 permitted delivery service, return receipt requested, to all  
573 persons entitled to receive a notice of sale under subsection  
574 (6).

575 (g) Before a sale conducted under this subsection (7), a  
576 junior interestholder may pursue adjudication by court, by  
577 interpleader, or otherwise respecting any matter that is  
578 disputed by the junior interestholder.

579 (8) EFFECT OF TRUSTEE'S SALE.—

580 (a) A sale conducted under subsection (7) forecloses and  
581 terminates all interests of any person to whom notice is given  
582 under paragraph (4) (d) and under paragraph (6) (b), and of any  
583 other person claiming by, through, or under any such person, in  
584 the affected timeshare interest. A failure to give notice to any  
585 person entitled to notice does not affect the validity of the  
586 sale as to the interests of any person properly notified. A  
587 person entitled to notice but not given notice has the rights of  
588 a person not made a defendant in a judicial foreclosure.

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

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



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593 obligor's liability for all amounts secured by the lien. The  
594 lienholder has no right to any deficiency judgment against the  
595 obligor after a sale of the obligor's timeshare interest under  
596 this section.

597 (d) The issuance and recording of the trustee's deed is  
598 presumed valid and may be relied upon by third parties without  
599 actual knowledge of irregularities in the foreclosure  
600 proceedings. If for any reason there is an irregularity in the  
601 foreclosure proceedings, a purchaser becomes subrogated to all  
602 the rights of the lienholder to the indebtedness that it secured  
603 to the extent necessary to reforeclose the assessment lien in  
604 order to correct the irregularity, and becomes entitled to an  
605 action de novo for the foreclosure of such assessment lien. Any  
606 subsequent reforeclosure required to correct an irregularity may  
607 be conducted under this section.

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

609 (a) Within 10 calendar days after the trustee conducts a  
610 sale, the trustee shall execute and acknowledge a certificate of  
611 compliance which shall:

612 1. Confirm delivery of the notice of default and intent to  
613 foreclose and attach the affidavit required under subsection  
614 (5).

615 2. State that the default was not cured, that the trustee  
616 did not receive any written objection under paragraph (3) (a),  
617 and that the timeshare interest was not redeemed under paragraph  
618 (3) (b).

619 3. Confirm that the notice of sale was published as  
620 required under paragraph (6) (d) and attach an affidavit of  
621 publication for the notice of sale.



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622           4. Confirm that the notice of sale was mailed under  
623 paragraph (6) (b) together with a list of the parties to whom the  
624 notice of sale was mailed.

625           (b) In furtherance of the execution the certificate of  
626 compliance required under this subsection, the trustee is  
627 entitled to rely upon an affidavit or certification from the  
628 lienholder as to the facts and circumstances of default and  
629 failure to cure the default.

630           (10) TRUSTEE'S DEED.—

631           (a) The trustee's deed shall include the name and address  
632 of the trustee, the name and address of the highest bidder, the  
633 name of the former owner, a legal description of the timeshare  
634 interest, and the name and address of the preparer of the  
635 trustee's deed. The trustee's deed shall recite that the  
636 certificate of compliance was recorded, and shall contain no  
637 warranties of title from the trustee. The certificate of  
638 compliance shall be attached as an exhibit to the trustee's  
639 deed.

640           (b) Ten calendar days after a sale, absent the prior filing  
641 and service on the trustee of a judicial action to enjoin  
642 issuance of the trustee's deed to the timeshare interest, the  
643 trustee shall:

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

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

647           (c)1. The certificate of compliance and trustee's deed  
648 together are presumptive evidence of the truth of the matters  
649 set forth in them, and no action to set aside the sale and void  
650 the trustee's deed may be filed or otherwise pursued against any



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651 person acquiring the timeshare interest for value.

652 2. The trustee's deed conveys to the highest bidder all  
653 rights, title, and interest in the timeshare interest that the  
654 former owner had, or had the power to convey, at the time of the  
655 recording of the claim of lien, together with all rights, title,  
656 and interest that the former owner or his or her successors in  
657 interest acquired after the recording of the claim of lien.

658 3. The issuance and recording of a trustee's deed shall  
659 have the same force and effect as the issuance and recording of  
660 a certificate of title by the clerk of the court in a judicial  
661 foreclosure action.

662 (11) DISPOSITION OF PROCEEDS OF SALE.-

663 (a) The trustee shall apply the proceeds of the sale as  
664 follows:

665 1. To the expenses of the sale, including compensation of  
666 the trustee.

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

669 3. If there are junior interestholders, the trustee may  
670 file an action in interpleader, pay the surplus to a court of  
671 competent jurisdiction, name the competing junior  
672 interestholders, and ask the court to determine the proper  
673 distribution of the surplus. In any interpleader action, the  
674 trustee shall recover reasonable attorney's fees and costs.

675 4. If there are no junior interestholders, or if all junior  
676 interestholders have been paid, any surplus shall be paid to the  
677 former owner. If the trustee is unable to locate the former  
678 owner 1 year after the sale, the surplus, if any, shall be  
679 deposited with the Chief Financial Officer under chapter 717.





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680           (b) In disposing of the proceeds of the sale, the trustee  
681 may rely on the information provided in the affidavit of the  
682 lienholder under paragraph (2)(c) and, in the event of a dispute  
683 or uncertainty over such claims, the trustee has the discretion  
684 to submit the matter to adjudication by court, by interpleader,  
685 or otherwise and shall recover reasonable attorney's fees and  
686 costs.

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

692           (13) APPLICATION.—This section applies to any default  
693 giving rise to the imposition of an assessment lien which occurs  
694 after the effective date of this section. An amendment to a  
695 timeshare instrument is not required to permit a managing entity  
696 lienholder to use the trustee foreclosure procedures of this  
697 section. If a timeshare instrument contains any provision that  
698 prevents the use of the trustee foreclosure procedures, an  
699 amendment to the timeshare instrument permitting the use of the  
700 trustee foreclosure procedure set forth in this section may be  
701 adopted by a majority of those present and voting at a duly  
702 called meeting of the owners' association at which at least 15  
703 percent of the voting interests are present in person or by  
704 proxy.

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



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709 procedure contained in this section.

710 Section 9. Section 721.856, Florida Statutes, is created to  
711 read:

712 721.856 Procedure for the trustee foreclosure of mortgage  
713 liens.—The provisions of this section establish a trustee  
714 foreclosure procedure for mortgage liens.

715 (1) APPOINTMENT OF TRUSTEE.—

716 (a) A trustee or a substitute trustee may be appointed by a  
717 lienholder at any time by recording a notice of appointment of  
718 trustee or notice of substitution of trustee in the official  
719 records of the county or counties in which the timeshare  
720 interest is located. A lienholder may appoint multiple trustees  
721 in a single appointment, and any appointed trustee may be used  
722 by the lienholder regarding the trustee foreclosure of any  
723 mortgage lien.

724 (b) The recorded notice of appointment of trustee or notice  
725 of substitution of trustee shall contain the name and address of  
726 the trustee or substitute trustee, the name and address of the  
727 lienholder, and the name and address of the timeshare plan.

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

729 (a) Before initiating the trustee foreclosure against a  
730 timeshare interest, the mortgage, or an amendment to a mortgage  
731 executed by the obligor before the effective date of this  
732 section, must contain a statement in substantially the following  
733 form:

734  
735 If the mortgagor fails to make timely payments under  
736 the obligation secured by this mortgage, or is  
737 otherwise deemed in uncured default of this mortgage,



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738 the lien against the mortgagor's timeshare interest  
739 created by this mortgage may be foreclosed in  
740 accordance with either a judicial foreclosure  
741 procedure or a trustee foreclosure procedure and may  
742 result in the loss of your timeshare interest. If the  
743 mortgagee initiates a trustee foreclosure procedure,  
744 the mortgagor shall have the option to object and the  
745 mortgagee may proceed only by filing a judicial  
746 foreclosure action.

747  
748 (b)1. In order to initiate a trustee foreclosure procedure  
749 against a timeshare interest, the lienholder shall deliver an  
750 affidavit to the trustee that identifies the obligor, the notice  
751 address of the obligor, the timeshare interest, the official  
752 records book and page number where the mortgage is recorded, and  
753 the name and notice address of any junior interestholder. The  
754 affidavit shall be accompanied by a title search of the  
755 timeshare interest identifying any junior interestholders of  
756 record, and the effective date of the title search must be a  
757 date that is within 60 calendar days before the date of the  
758 affidavit.

759 2. The affidavit shall also state the facts that establish  
760 that the obligor has defaulted in the obligation to make a  
761 payment under a specified provision of the mortgage or is  
762 otherwise deemed in uncured default under a specified provision  
763 of the mortgage.

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



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767 lien.

768 (3) OBLIGOR'S RIGHTS.—

769 (a) The obligor may object to the lienholder's use of the  
770 trustee's foreclosure procedure for a specific default any time  
771 before the sale of the timeshare interest under subsection (8)  
772 by delivering a written objection to the trustee using the  
773 objection form provided for in subsection (5). If the trustee  
774 receives the written objection from the obligor, the trustee may  
775 not proceed with the trustee foreclosure procedure as to the  
776 default specified in the notice of default and intent to  
777 foreclose under subsection (5), and the lienholder may proceed  
778 thereafter only with a judicial foreclosure action as to that  
779 specified default.

780 (b) At any time before the trustee issues the certificate  
781 of sale under paragraph (7) (f), the obligor may cure the default  
782 and redeem the timeshare interest by paying the amounts secured  
783 by the lien in cash or certified funds to the trustee.  
784 Otherwise, once the trustee issues the certificate of sale,  
785 there is no right of redemption.

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

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

791 (b) The trustee has not received a written objection to the  
792 use of the trustee foreclosure procedure under paragraph (3) (a)  
793 and the timeshare interest was not redeemed under paragraph  
794 (3) (b);

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



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796 the same timeshare interest, and the trustee has not been served  
797 notice of the filing of any action to enjoin the trustee  
798 foreclosure sale;

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

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

805 (f) The notice of sale required by subsection (6) has been  
806 recorded in the official records of the county in which the  
807 mortgage was recorded.

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

809 (a) In any foreclosure proceeding under this section, the  
810 trustee is required to notify the obligor of the proceeding by  
811 sending the obligor a written notice of default and intent to  
812 foreclose to the notice address of the obligor by certified  
813 mail, registered mail, or permitted delivery service, return  
814 receipt requested, and by first class mail or permitted service,  
815 postage prepaid, as follows:

816 1. The notice of default and intent to foreclose shall  
817 identify the obligor, the notice address of the obligor, the  
818 legal description of the timeshare interest, the nature of the  
819 default, the amounts secured by the lien, and a per diem amount  
820 to account for further accrual of the amounts secured by the  
821 lien and shall state the method by which the obligor may cure  
822 the default, including the period of time following the date of  
823 the notice of default and intent to foreclose within which the  
824 obligor may cure the default.



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825           2. The notice of default and intent to foreclose shall  
826 include an objection form with which the obligor can object to  
827 the use of the trustee foreclosure procedure by signing and  
828 returning the objection form to the trustee. The objection form  
829 shall identify the obligor, the notice address of the obligor,  
830 the timeshare interest, and the return address of the trustee  
831 and shall state: "The undersigned obligor exercises the  
832 obligor's right to object to the use of the trustee foreclosure  
833 procedure contained in section 721.856, Florida Statutes."

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

836  
837           If you fail to cure the default as set forth in this  
838 notice or take other appropriate action with regard to  
839 this foreclosure matter, you risk losing ownership of  
840 your timeshare interest through the trustee  
841 foreclosure procedure established in section 721.856,  
842 Florida Statutes. You may choose to sign and send to  
843 the trustee the enclosed objection form, exercising  
844 your right to object to the use of the trustee  
845 foreclosure procedure. Upon the trustee's receipt of  
846 your signed objection form, the foreclosure of the  
847 lien with respect to the default specified in this  
848 notice shall be subject to the judicial foreclosure  
849 procedure only. You have the right to cure your  
850 default in the manner set forth in this notice at any  
851 time before the trustee's sale of your timeshare  
852 interest. If you do not object to the use of the  
853 trustee foreclosure procedure, you will not be subject



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854 to a deficiency judgment even if the proceeds from the  
855 sale of your timeshare interest are insufficient to  
856 offset the amounts secured by the lien.

857  
858 4. The trustee shall also mail a copy of the notice of  
859 default and intent to foreclose, without the objection form, to  
860 the notice address of any junior interestholder by certified  
861 mail, registered mail, or permitted delivery service, return  
862 receipt requested, and by first class mail or permitted delivery  
863 service, postage prepaid.

864 5. Notice under this paragraph is considered perfected upon  
865 the trustee receiving the return receipt bearing the signature  
866 of the obligor or junior interestholder, as applicable, within  
867 30 calendar days after the trustee sent the notice under this  
868 paragraph. Notice under this paragraph is not perfected if the  
869 notice is returned as undeliverable within 30 calendar days  
870 after the trustee sent the notice, if the trustee cannot  
871 ascertain from the receipt that the obligor or junior  
872 interestholder, as applicable, is the person who signed the  
873 receipt, or if the receipt from the obligor or junior  
874 interestholder, as applicable, is returned or refused within 30  
875 calendar days after the trustee sent the notice.

876 (b) If the notice required by paragraph (a) is returned as  
877 undeliverable within 30 calendar days after the trustee sent the  
878 notice, the trustee shall perform a diligent search and inquiry  
879 to obtain a different address for the obligor or junior  
880 interestholder. For purposes of this paragraph, any address  
881 known and used by the lienholder for sending regular mailings or  
882 other communications from the lienholder to the obligor or



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883 junior interestholder, as applicable, shall be included with  
884 other addresses produced from the diligent search and inquiry,  
885 if any.

886 1. If the trustee's diligent search and inquiry produces an  
887 address different from the notice address, the trustee shall  
888 mail a copy of the notice by certified mail, registered mail, or  
889 permitted delivery service, return receipt requested, and by  
890 first class mail or permitted delivery service, postage prepaid  
891 to the new address. Notice under this subparagraph is considered  
892 perfected upon the trustee receiving the return receipt bearing  
893 the signature of the obligor or junior interestholder, as  
894 applicable, within 30 calendar days after the trustee sent the  
895 notice under this paragraph. Notice under this subparagraph is  
896 not perfected if the trustee cannot ascertain from the receipt  
897 that the obligor or junior interestholder, as applicable, is the  
898 person who signed the receipt or the receipt from the obligor or  
899 junior interestholder, as applicable, is returned refused.  
900 Unless the trustee perfects notice under this subparagraph, the  
901 trustee shall perfect service in the manner set forth in  
902 paragraph (c).

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

907 (c) If the notice is not perfected under subparagraph  
908 (a)5., and such notice was not returned as undeliverable, or if  
909 the notice was not perfected under subparagraph (b)1. or  
910 subparagraph (b)2., the trustee may perfect notice by  
911 publication in a newspaper of general circulation in the county





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912 or counties in which the timeshare interest is located. The  
913 notice shall appear at least once a week for 2 consecutive  
914 weeks. The trustee may group an unlimited number of notices in  
915 the same publication, provided that all of the notices pertain  
916 to the same timeshare plan. Notice under this paragraph is  
917 considered perfected upon publication as required in this  
918 paragraph.

919 (d) If notice is perfected under subparagraph (a)5., the  
920 trustee shall execute an affidavit in recordable form setting  
921 forth the manner in which notice was perfected and attach the  
922 affidavit to the certificate of compliance set forth in  
923 subsection (9). The affidavit shall state the nature of the  
924 notice, the date on which the notice was mailed, the name and  
925 address on the envelope containing the notice, the manner in  
926 which the notice was mailed, and the basis for that knowledge.

927 (e) If notice is perfected under subparagraph (b)1., the  
928 trustee shall execute an affidavit in recordable form setting  
929 forth the manner in which notice was perfected and attach the  
930 affidavit to the certificate of compliance set forth in  
931 subsection (9). The affidavit shall state the nature of the  
932 notice, the dates on which the notice was mailed, the name and  
933 addresses on the envelopes containing the notice, the manner in  
934 which the notices were mailed, the fact that a signed receipt  
935 from the certified mail, registered mail, or permitted delivery  
936 service was not timely received, and the name and address on the  
937 envelopes containing the notice.

938 (f) If notice is perfected under paragraph (c), the trustee  
939 shall execute an affidavit in recordable form setting forth the  
940 manner in which notice was perfected and attach the affidavit to



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941 the certificate of compliance set forth in subsection (9). The  
942 affidavit shall include all the information contained in either  
943 paragraph (d) or paragraph (e), as applicable, shall state that  
944 the notice was perfected by publication after diligent search  
945 and inquiry was made for the current address for the person,  
946 shall include a statement that notice was perfected by  
947 publication, and shall set forth the information required by s.  
948 49.041 in the case of a natural person, or s. 49.051 in the case  
949 of a corporation, whichever is applicable. No other action of  
950 the trustee is necessary to perfect notice.

951 (6) NOTICE OF SALE.—

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

953 1. The name and notice addresses of the obligor and any  
954 junior interestholder.

955 2. The legal description of the timeshare interest.

956 3. The name and address of the trustee.

957 4. A description of the default that is the basis for the  
958 foreclosure.

959 5. The official records book and page numbers where the  
960 mortgage is recorded.

961 6. The amounts secured by the lien and a per diem amount to  
962 account for further accrual of the amounts secured by the lien.

963 7. The date, location, and starting time of the trustee's  
964 sale.

965 8. The right of and the method by which the obligor may  
966 cure the default or the right of any junior interestholder to  
967 redeem its interest up to the date the trustee issues the  
968 certificate of sale in accordance with paragraph (8) (f).

969 (b) The trustee shall send a copy of the notice of sale



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970 within 3 business days following the date it is submitted for  
971 recording, by first-class mail, postage prepaid, to the notice  
972 addresses of the obligor and any junior interestholder.

973 (c) Subsequent to the date of recording of the notice of  
974 sale, no notice is required to be given to any person claiming  
975 an interest in the timeshare interest except as provided in this  
976 section. The recording of the notice of sale has the same force  
977 and effect as the filing of a lis pendens in a judicial  
978 proceeding under s. 48.23.

979 (d)1. The trustee shall publish the notice of sale in a  
980 newspaper of general circulation in the county or counties in  
981 which the timeshare interest is located at least once a week for  
982 two consecutive weeks before the date of the sale. The last  
983 publication shall occur at least 5 calendar days before the  
984 sale.

985 2. The trustee may group an unlimited number of notices of  
986 sale in the same publication, provided that all of the notices  
987 of sale pertain to the same timeshare plan.

988 (7) MANNER OF SALE.—

989 (a) The sale of a timeshare interest by the trustee in a  
990 public auction shall be held in the county in which the  
991 timeshare interest is located, on the date, location, and  
992 starting time designated in the notice of sale, which shall be  
993 after 9 a.m. but before 4 p.m. on a business day not less than  
994 30 calendar days after the recording of the notice of sale. The  
995 trustee's sale may occur online at a specific website on the  
996 Internet or in any other manner used by the clerk of the court  
997 for a judicial foreclosure sales procedure in the county or  
998 counties in which the timeshare interest is located.



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999           (b) The trustee shall conduct the sale and act as the  
1000 auctioneer.

1001           (c) The lienholder and any person other than the trustee  
1002 may bid at the sale. In lieu of participating in the sale, the  
1003 lienholder may send the trustee written bidding instructions  
1004 that the trustee shall announce as appropriate during the sale.

1005           (d) The trustee may postpone the sale from time to time. In  
1006 such case, notice of postponement must be given by the trustee  
1007 at the date, time, and location contained in the notice of sale.  
1008 The notice of sale for the postponed sale shall be mailed under  
1009 paragraph (6) (b), recorded under paragraph (4) (f), and published  
1010 under paragraph (6) (d). The effective date of the initial notice  
1011 of sale for purposes of paragraph (4) (b) is not affected by a  
1012 postponed sale.

1013           (e) The highest bidder of the timeshare interest shall pay  
1014 the price bid to the trustee in cash or certified funds on the  
1015 day of the sale. If the lienholder is the highest bidder, the  
1016 lienholder shall receive a credit up to the amount set forth in  
1017 the notice of sale as required under subparagraph (6) (a)6.

1018           (f) On the date of the sale and upon receipt of the cash or  
1019 certified funds due from the highest bidder, the trustee shall  
1020 issue to the highest bidder a certificate of sale stating that a  
1021 foreclosure conforming to the requirements of this section has  
1022 occurred, including the time, location, and date of the sale,  
1023 that the timeshare interest was sold, the amounts secured by the  
1024 lien, and the amount of the highest bid. A copy of the  
1025 certificate of sale shall be mailed by certified mail,  
1026 registered mail, or permitted delivery service, return receipt  
1027 requested, to all persons entitled to receive a notice of sale



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1028 under subsection (6).

1029 (g) Before a sale conducted under this subsection (7), a  
1030 junior interestholder may pursue adjudication by court, by  
1031 interpleader, or otherwise respecting any matter that is  
1032 disputed by the junior interestholder.

1033 (8) EFFECT OF TRUSTEE'S SALE.—

1034 (a) A sale conducted under subsection (7) forecloses and  
1035 terminates all interests of any person to whom notice is given  
1036 under paragraph (4) (e) or paragraph (6) (b), and of any other  
1037 person claiming by, through, or under any such person, in the  
1038 affected timeshare interest. A failure to give notice to any  
1039 person entitled to notice does not affect the validity of the  
1040 sale as to the interests of any person properly notified. A  
1041 person entitled to notice but not given notice has the rights of  
1042 a person not made a defendant in a judicial foreclosure.

1043 (b) On the issuance of a certificate of sale under  
1044 paragraph (7) (f), all rights of redemption that have been  
1045 foreclosed under this section shall terminate.

1046 (c) A sale conducted under subsection (7) releases the  
1047 obligor's liability for all amounts secured by the lien. The  
1048 lienholder has no right to any deficiency judgment against the  
1049 obligor after a sale of the obligor's timeshare interest under  
1050 this section.

1051 (d) The issuance and recording of the trustee's deed is  
1052 presumed valid and may be relied upon by third parties without  
1053 actual knowledge of any irregularities in the foreclosure  
1054 proceedings. If for any reason there is an irregularity in the  
1055 foreclosure proceedings, a purchaser becomes subrogated to all  
1056 the rights of the lienholder to the indebtedness that it secured



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1057 to the extent necessary to reforeclose the mortgage lien in  
1058 order to correct the irregularity, and becomes entitled to an  
1059 action de novo for the foreclosure of such mortgage lien. Any  
1060 subsequent reforeclosure required to correct an irregularity may  
1061 be conducted under this section.

1062 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1063 (a) Within 10 calendar days after the trustee conducts a  
1064 sale, the trustee shall execute and acknowledge a certificate of  
1065 compliance which shall:

1066 1. Confirm delivery of the notice of default and intent to  
1067 foreclose and attach the affidavit required under subsection  
1068 (5);

1069 2. State that the default was not cured, that the trustee  
1070 did not receive any written objection under paragraph (3) (a),  
1071 and that the timeshare interest was not redeemed under paragraph  
1072 (3) (b);

1073 3. State that the trustee is in possession of the original  
1074 promissory note executed by the mortgagor and secured by the  
1075 mortgage lien;

1076 4. Confirm that the notice of sale was published as  
1077 required under paragraph (6) (d) and attach an affidavit of  
1078 publication for the notice of sale; and

1079 5. Confirm that the notice of sale was mailed under  
1080 paragraph (6) (b) together with a list of the parties to whom the  
1081 notice of sale was mailed.

1082 (b) In furtherance of the execution and recording of the  
1083 certificate of compliance required under this subsection, the  
1084 trustee is entitled to rely upon an affidavit or certification  
1085 from the lienholder as to the facts and circumstances of default



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1086 and failure to cure the default.

1087 (10) TRUSTEE'S DEED.—

1088 (a) The trustee's deed shall include the name and address  
1089 of the trustee, the name and address of the highest bidder, the  
1090 name of the former owner, a legal description of the timeshare  
1091 interest, and the name and address of the preparer of the  
1092 trustee's deed. The trustee's deed shall recite that the  
1093 certificate of compliance was recorded, and shall contain no  
1094 warranties of title from the trustee. The certificate of  
1095 compliance shall be attached as an exhibit to the trustee's  
1096 deed.

1097 (b) Ten calendar days after a sale, absent the prior filing  
1098 and service on the trustee of a judicial action to enjoin  
1099 issuance of the trustee's deed to the timeshare interest, the  
1100 trustee shall:

1101 1. Cancel the original promissory note executed by the  
1102 mortgagor and secured by the mortgage lien.

1103 2. Issue a trustee's deed to the highest bidder.

1104 3. Record the trustee's deed in the official records of the  
1105 county or counties in which the timeshare interest is located.

1106 (c)1. The certificate of compliance and trustee's deed  
1107 together are presumptive evidence of the truth of the matters  
1108 set forth in them, and no action to set aside the sale and void  
1109 the trustee's deed may be filed or otherwise pursued against any  
1110 person acquiring the timeshare interest for value.

1111 2. The trustee's deed conveys to the highest bidder all  
1112 rights, title, and interest in the timeshare interest that the  
1113 former owner had, or had the power to convey together with all  
1114 rights, title, and interest that the former owner or his or her



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1115 successors in interest acquired after the execution of the  
1116 mortgage.

1117 3. The issuance and recording of a trustee's deed shall  
1118 have the same force and effect as the issuance and recording of  
1119 a certificate of title by the clerk of the court in a judicial  
1120 foreclosure action.

1121 (11) DISPOSITION OF PROCEEDS OF SALE.-

1122 (a) The trustee shall apply the proceeds of the sale as  
1123 follows:

1124 1. To the expenses of the sale, including compensation of  
1125 the trustee.

1126 2. To the amount owed and set forth in the notice as  
1127 required under subparagraph (6) (a) 6.

1128 3. If there are junior interestholders, the trustee may  
1129 file an action in interpleader, pay the surplus to a court of  
1130 competent jurisdiction, name the competing junior  
1131 interestholders, and ask the court to determine the proper  
1132 distribution of the surplus. In any interpleader action, the  
1133 trustee shall recover reasonable attorney's fees and costs.

1134 4. If there are no junior interestholders, or if all junior  
1135 interestholders have been paid, any surplus shall be paid to the  
1136 former owner. If the trustee is unable to locate the former  
1137 owner 1 year after the sale, the surplus, if any, shall be  
1138 deposited with the Chief Financial Officer under chapter 717.

1139 (b) In disposing of the proceeds of the sale, the trustee  
1140 may rely on the information provided in the affidavit of the  
1141 lienholder under paragraph (2) (c) and, in the event of a dispute  
1142 or uncertainty over such claims, the trustee has the discretion  
1143 to submit the matter to adjudication by court, by interpleader,





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1144 or otherwise and shall recover reasonable attorney's fees and  
1145 costs.

1146 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure  
1147 procedure established in this section does not impair or  
1148 otherwise affect the lienholder's continuing right to bring a  
1149 judicial foreclosure action, in lieu of using the trustee  
1150 foreclosure procedure, with respect to any mortgage lien.

1151 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE  
1152 PROCEDURE.—An action for actual damages for a material violation  
1153 of this section may be brought by an obligor against the  
1154 lienholder for the failure to follow the trustee foreclosure  
1155 procedure contained in this section.

1156 Section 10. Subsections (1) and (4) of section 721.86,  
1157 Florida Statutes, are amended to read:

1158 721.86 Miscellaneous provisions.—

1159 (1) In the event of a conflict between the provisions of  
1160 this part and the other provisions of this chapter, chapter 702,  
1161 or other applicable law, the provisions of this part shall  
1162 prevail. The procedures in this part must be given effect in the  
1163 context of any foreclosure proceedings against timeshare  
1164 interests ~~estates~~ governed by this chapter, chapter 702, chapter  
1165 718, or chapter 719.

1166 (4) In addition to assessment liens and mortgage liens  
1167 arising after the effective date of this part, except as  
1168 provided in s. 721.855(13), the provisions of this part apply to  
1169 all assessment liens and mortgage liens existing prior to the  
1170 effective date of this act regarding which a foreclosure  
1171 proceeding has not yet commenced.

1172 Section 11. Subsection (2) of section 721.20, Florida



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1173 Statutes, is amended to read:

1174       721.20 Licensing requirements; suspension or revocation of  
1175 license; exceptions to applicability; collection of advance fees  
1176 for listings unlawful.-

1177       (2) Solicitors who engage only in the solicitation of  
1178 prospective purchasers and any purchaser who refers no more than  
1179 20 people to a developer or managing entity per year or who  
1180 otherwise provides testimonials on behalf of a developer or  
1181 managing entity are exempt from the provisions of chapter 475.

1182       Section 12. This act shall take effect upon becoming a law.

1183  
1184 ===== T I T L E   A M E N D M E N T =====

1185 And the title is amended as follows:

1186       Delete everything before the enacting clause  
1187 and insert:

1188                               A bill to be entitled  
1189       An act relating to timeshares; amending s. 721.07,  
1190 F.S.; providing lien disclosure requirements for filed  
1191 public offering statements for certain timeshare  
1192 plans; amending s. 721.16, F.S.; authorizing a  
1193 managing entity to bring judicial action or a trustee  
1194 procedure to foreclose certain liens under specified  
1195 conditions; renaming part III of chapter 721, F.S.;  
1196 amending s. 721.81, F.S.; revising and providing  
1197 legislative purposes of the part; amending s. 721.82  
1198 F.S.; revising and providing definitions; amending s.  
1199 721.83, F.S.; revising application to apply to  
1200 judicial foreclosure actions; amending s. 721.85,  
1201 F.S.; conforming provisions to changes made by the



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1202 act; creating s. 721.855, F.S.; establishing procedure  
1203 for the trustee foreclosure of assessment liens;  
1204 providing for the appointment of a trustee; providing  
1205 recording requirements for such liens; providing  
1206 procedures for the initiation of a trustee foreclosure  
1207 procedure against a timeshare interest; providing  
1208 procedures for an obligor's objection to the trustee  
1209 foreclosure procedure; providing conditions to a  
1210 trustee's exercise of power of sale; providing  
1211 requirements for a notice of default and intent to  
1212 sell; providing requirements for a notice of sale;  
1213 providing requirements for the sale by auction of  
1214 foreclosed encumbered timeshare interests; providing  
1215 requirements for a trustee's certificate of  
1216 compliance; providing for the effect of a trustee's  
1217 sale; providing requirements for a trustee's deed;  
1218 providing for the disposition of proceeds of the sale;  
1219 providing that the trustee foreclosure procedure does  
1220 not impair or otherwise affect the right to bring  
1221 certain actions; providing application; providing for  
1222 actions for failure to follow the trustee foreclosure  
1223 procedure; creating s. 721.856, F.S.; establishing  
1224 procedure for the trustee foreclosure of mortgage  
1225 liens; providing for the appointment of a trustee;  
1226 providing recording requirements for such liens;  
1227 providing procedures for the initiation of a trustee  
1228 foreclosure procedure against a timeshare interest;  
1229 providing procedures for an obligor's objection to the  
1230 trustee foreclosure procedure; providing conditions to



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1231 a trustee's exercise of power of sale; providing  
1232 requirements for a notice of default and intent to  
1233 sell; providing requirements for a notice of sale;  
1234 providing requirements for a trustee's certificate of  
1235 compliance; providing requirements for the sale by  
1236 auction of foreclosed encumbered timeshare interests;  
1237 providing for the effect of a trustee's sale;  
1238 providing requirements for a trustee's deed; providing  
1239 for the disposition of proceeds of the sale; providing  
1240 that the trustee foreclosure procedure does not impair  
1241 or otherwise affect the right to bring certain  
1242 actions; providing for actions for failure to follow  
1243 the trustee foreclosure procedure; amending s. 721.86,  
1244 F.S.; providing for priority of application in case of  
1245 conflict; amending s. 721.20, F.S.; conforming  
1246 terminology; providing an effective date.