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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2010	.	
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The Committee on Judiciary (Haridopolos) 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 required payments
25 may result in the judicial or trustee foreclosure of
26 an assessment lien and the loss of your timeshare
27 interest. If the managing entity initiates a trustee
28 foreclosure procedure, you have the option of
29 objecting to the use of the trustee foreclosure
30 procedure and the managing entity may proceed only by
31 filing a judicial foreclosure action.

32
33 Section 2. Subsection (13) is added to section 721.13,
34 Florida Statutes, to read:

35 721.13 Management.—

36 (13) Notwithstanding any provision of chapter 607, chapter
37 617, or chapter 718, an officer, director, or agent of an
38 owners' association shall discharge his or her duties in good
39 faith, with the care an ordinarily prudent person in a like
40 position would exercise under similar circumstances, and in a
41 manner he or she reasonably believes to be in the interests of



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42 the owners' association. An officer, director, or agent of an
43 owners' association is exempt from liability for monetary
44 damages in the same manner as provided in s. 617.0834 unless
45 such officer, director, or agent breached or failed to perform
46 his or her duties and such breach or failure constitutes a
47 violation of criminal law as provided in s. 617.0834;
48 constitutes a transaction from which the officer or director
49 derived an improper personal benefit, directly or indirectly; or
50 constitutes recklessness or an act or omission that was in bad
51 faith, with malicious purpose, or in a manner exhibiting wanton
52 and willful disregard of human rights, safety, or property.

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

55 721.16 Liens for overdue assessments; liens for labor
56 performed on, or materials furnished to, a timeshare unit.—

57 (2) The managing entity may bring a judicial ~~an~~ action in
58 its name to foreclose a lien under subsection (1) in the manner
59 a mortgage of real property is foreclosed and may also bring an
60 action to recover a money judgment for the unpaid assessments
61 without waiving any claim of lien. As an alternative to the
62 judicial action, the managing entity may initiate a trustee
63 procedure to foreclose an assessment lien pursuant to s.
64 721.855.

65 (3) The lien is effective from the date of recording a
66 claim of lien in the official ~~public~~ records of the county or
67 counties in which the timeshare interest is ~~accommodations and~~
68 ~~facilities constituting the timeshare plan~~ are located. The
69 claim of lien must ~~shall~~ state the name of the timeshare plan
70 and identify the timeshare interest for which the lien is



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71 effective, ~~state~~ the name of the purchaser, ~~state~~ the assessment
72 amount due, and ~~state~~ the due dates. Notwithstanding any
73 provision of s. 718.116(5)~~(a)~~ or s. 719.108(4) ~~to the contrary~~,
74 the lien is effective until satisfied or until 5 years ~~have~~
75 ~~expired~~ after the date the claim of lien is recorded unless,
76 within that time, an action to enforce the lien is commenced
77 pursuant to subsection (2). A claim of lien for assessments may
78 include only assessments that ~~which~~ are due when the claim is
79 recorded. A claim of lien must ~~shall~~ be signed and acknowledged
80 by an officer or agent of the managing entity. Upon full
81 payment, the person making the payment is entitled to receive a
82 satisfaction of the lien.

83 Section 4. The Division of Statutory Revision is requested
84 to rename part III of chapter 721, Florida Statutes, as
85 "Foreclosure of Liens on Timeshare Interests."

86 Section 5. Section 721.81, Florida Statutes, is amended to
87 read:

88 721.81 Legislative purpose.—The purposes of this part are
89 to:

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

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

98 (3) Recognize the need to assist both owners' associations
99 and mortgagees by simplifying and expediting the process for the



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100 judicial and trustee ~~of~~ foreclosure of assessment liens and
101 mortgage liens against timeshare interests ~~estates~~.

102 (4) Improve judicial economy and reduce court congestion
103 and the cost to taxpayers by establishing streamlined procedures
104 for the judicial and trustee foreclosure of assessment liens and
105 mortgage liens against timeshare interests ~~estates~~.

106 (5) Recognize that nearly all timeshare interest
107 foreclosures are uncontested.

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

112 (7) Recognize that the use of the trustee foreclosure
113 procedure established under ss. 721.855 and 721.856 has the same
114 force and effect as the use of the judicial foreclosure
115 procedure against a timeshare interest with respect to the
116 provisions of this chapter or any other applicable law. However,
117 obligors are not subject to a deficiency judgment even if the
118 proceeds from the sale of the timeshare interest are
119 insufficient to offset the amounts secured by the lien.

120 Section 6. Section 721.82, Florida Statutes, is amended to
121 read:

122 721.82 Definitions.—As used in this part, the term:

123 (1) "Amounts secured by the lien" means all amounts secured
124 by an assessment lien or mortgage lien, including, but not
125 limited to, all past due amounts, accrued interest, late fees,
126 taxes, advances for the payment of taxes, insurance and
127 maintenance of the timeshare interest, and any fees or costs
128 incurred by the lienholder or trustee, including any reasonable



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129 attorney's fees, trustee's fees, and costs incurred in
130 connection with the default.

131 (2)~~(1)~~ "Assessment lien" means:

132 (a) A lien for delinquent assessments as provided in ss.
133 ~~721.16, 718.116, and 719.108, and 721.16 as to timeshare~~
134 ~~condominiums~~; or

135 (b) A lien for unpaid ad valorem assessments, tax
136 assessments, taxes and special assessments as provided in s.
137 192.037(8).

138 (3)~~(2)~~ "Junior interestholder" means any person who has a
139 lien or interest of record against a timeshare interest estate
140 in the county or counties in which the timeshare interest estate
141 is located, which is inferior to the mortgage lien or assessment
142 lien being foreclosed under this part.

143 (4)~~(3)~~ "Lienholder" means a holder of an assessment lien or
144 a holder of a mortgage lien, as applicable. A receiver appointed
145 under s. 721.26 is a lienholder for purposes of foreclosure of
146 assessment liens under this part.

147 (5)~~(4)~~ "Mortgage" has the same meaning as ~~set forth~~ in s.
148 697.01.

149 (6)~~(5)~~ "Mortgage lien" means a security interest in a
150 timeshare interest estate created by a mortgage encumbering the
151 timeshare interest estate.

152 (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

153 (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien
154 or a person who has assumed the obligation secured by a mortgage
155 lien.

156 (9)~~(8)~~ "Notice address" means:

157 (a) As to an assessment lien, the address of the ~~current~~



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158 owner of a timeshare interest ~~estate~~ as reflected by the books
159 and records of the timeshare plan under ss. 721.13(4) and
160 721.15(7).

161 (b) As to a mortgage lien:

162 1. The address of the mortgagor as set forth in the
163 mortgage, the promissory note, or a separate document executed
164 by the mortgagor at the time the mortgage lien was created, or
165 the most current address of the mortgagor according to the
166 records of the mortgagee; and

167 2. If the ~~current~~ owner of the timeshare interest ~~estate~~ is
168 different from the mortgagor, the address of the ~~current~~ owner
169 of the timeshare interest ~~estate~~ as reflected by the books and
170 records of the mortgagee.

171 (c) As to a junior interestholder, the address as set forth
172 in the recorded instrument creating the junior lien ~~interest~~ or
173 interest ~~lien~~, or in any recorded amendment ~~supplement~~ thereto
174 changing the address, or in any written notification by the
175 junior interestholder to the foreclosing lienholder changing the
176 ~~of such change in~~ address.

177 ~~(10)~~(9) "Obligor" means the mortgagor, the person subject
178 to an assessment lien, or the record owner of the timeshare
179 interest ~~estate~~.

180 (11) "Permitted delivery service" means any nationally
181 recognized common carrier delivery service or international
182 airmail service that allows for return receipt service.

183 ~~(12)~~(10) "Registered agent" means an agent duly appointed
184 by the obligor under s. 721.84 for the purpose of accepting all
185 notices and service of process under this part. A registered
186 agent may be an individual resident in this state whose business



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187 office qualifies as a registered office, or a domestic or
188 foreign corporation or a not-for-profit corporation as defined
189 in chapter 617 authorized to transact business or to conduct its
190 affairs in this state, whose business office qualifies as a
191 registered office. A registered agent ~~for any obligor~~ may not be
192 the lienholder or the attorney for the lienholder.

193 (13)~~(11)~~ "Registered office" means the street address of
194 the business office of the registered agent appointed under s.
195 721.84, located in this state.

196 (14) "Trustee" means an attorney who is a member in good
197 standing of The Florida Bar and who has been practicing law for
198 at least 5 years or that attorney's law firm, or a title insurer
199 authorized to transact business in this state under s. 624.401
200 for at least 5 years, and who is appointed as trustee or as
201 substitute trustee in accordance with s. 721.855 or s. 721.856.
202 A receiver appointed under s. 721.26 may act as a trustee under
203 s. 721.855. A trustee must be independent as defined in s.
204 721.05.

205 Section 7. Section 721.83, Florida Statutes, is amended to
206 read:

207 721.83 Consolidation of judicial foreclosure actions.-

208 (1) A complaint in a foreclosure proceeding involving
209 timeshare interests ~~estates~~ may join in the same action multiple
210 defendant obligors and junior interestholders of separate
211 timeshare interests if estates, ~~provided:~~

212 (a) The foreclosure proceeding involves a single timeshare
213 property.

214 (b) The foreclosure proceeding is filed by a single
215 plaintiff.



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

219 (d) The nature of the defaults alleged is the same for each
220 defendant.

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

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

228 (3) A consolidated timeshare foreclosure action is ~~shall be~~
229 considered a single action, suit, or proceeding for the payment
230 of filing fees and service charges pursuant to general law. ~~In~~
231 ~~addition to the payment of such filing fees and service charges,~~
232 An additional filing fee of up to \$10 for each timeshare
233 interest ~~estate~~ joined in that action shall be paid to the clerk
234 of court.

235 Section 8. Section 721.85, Florida Statutes, is amended to
236 read:

237 721.85 Service to notice address or on registered agent.—

238 (1) Service of process for a foreclosure proceeding
239 involving a timeshare interest ~~estate~~ may be made by any means
240 recognized by law. In addition, substituted service on an
241 obligor ~~a party~~ who has appointed a registered agent under s.
242 721.84 may be made on such registered agent at the registered
243 office. ~~If Also, when~~ using s. 48.194 where in rem or quasi in
244 rem relief only is sought, such service of process provisions



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245 are modified in connection with a foreclosure proceeding against
246 a timeshare interest ~~estate~~ to provide that:

247 (a) Such service of process may be made on any person
248 whether the person is located inside or outside this state, by
249 certified mail, ~~or~~ registered mail, or permitted delivery
250 service, return receipt requested, addressed to the person to be
251 served at the notice address, or on the person's ~~party's~~
252 registered agent duly appointed under s. 721.84, at the
253 registered office; and

254 (b) Service is ~~shall be~~ considered obtained upon the
255 signing of the return receipt by any person at the notice
256 address, or by the registered agent.

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

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

263 Section 9. Section 721.855, Florida Statutes, is created to
264 read:

265 721.855 Procedure for the trustee foreclosure of assessment
266 liens.—This section establishes a trustee foreclosure procedure
267 for assessment liens.

268 (1) APPOINTMENT OF TRUSTEE.—

269 (a) A trustee or a substitute trustee may be appointed by a
270 lienholder at any time by recording a notice of appointment of
271 trustee or notice of substitution of trustee in the official
272 records of the county or counties in which the timeshare
273 interest is located. A lienholder may appoint multiple trustees



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274 in a single appointment, and an appointed trustee may be used by
275 the lienholder regarding the trustee foreclosure of an
276 assessment lien under the timeshare plan for which the trustee
277 is appointed.

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

281 (c) The recorded notice of appointment of trustee or notice
282 of substitution of trustee must contain the name and address of
283 the trustee or substitute trustee, the name and address of the
284 lienholder, and the name and address of the timeshare plan.

285 (2) INITIATING A TRUSTEE FORECLOSURE PROCEDURE.-

286 (a) Before initiating a trustee foreclosure procedure
287 against a timeshare interest in a given timeshare plan:

288 1. If a timeshare instrument contains any provision that
289 specifically prevents the use of the trustee foreclosure
290 procedure, or if the managing entity otherwise determines that
291 the timeshare instrument should be amended to specifically
292 provide for the use of the trustee foreclosure procedure, an
293 amendment to the timeshare instrument permitting the use of the
294 trustee foreclosure procedure set forth in this section must be
295 adopted and recorded before the use of the trustee foreclosure
296 procedure. Such amendment to the timeshare instrument,
297 containing a statement in substantially the following form, may
298 be adopted by a majority of those present and voting at a duly
299 called meeting of the owners' association at which at least 15
300 percent of the voting interest are present in person or by
301 proxy:

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303 If a timeshare owner fails to make timely payments of
304 timeshare plan common expenses, ad valorem taxes, or
305 special assessments, an assessment lien against the
306 timeshare owner's timeshare interest may be foreclosed
307 in accordance with a judicial foreclosure procedure or
308 a trustee foreclosure procedure, either of which may
309 result in the loss of the timeshare owner's timeshare
310 interest. If the managing entity initiates a trustee
311 foreclosure procedure, the timeshare owner may object
312 pursuant to state law, and, in such event, the
313 managing entity may proceed only by filing a judicial
314 foreclosure action.

315
316 2. The managing entity shall inform owners of timeshare
317 interests in the timeshare plan in writing that the managing
318 entity has the right to elect to use the trustee foreclosure
319 procedure with respect to foreclosure of assessment liens as
320 established in this section. The managing entity is deemed to
321 have complied with this subparagraph if the owners of timeshare
322 interests in the given timeshare plan are informed by mail sent
323 to each owner's notice address, in the notice of an annual or
324 special meeting of the owners, by posting on the website of the
325 applicable timeshare plan, or by any owner communication used by
326 the managing entity.

327 (b) Before initiating the trustee foreclosure procedure
328 against a timeshare interest, a claim of lien against the
329 timeshare interest must be recorded under s. 721.16 or, if
330 applicable, s. 718.116 or s. 719.108, and the notice of the
331 intent to file a lien must be given under s. 718.121 for



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332 timeshare condominiums and s. 719.108 for timeshare
333 cooperatives.

334 (c) In order to initiate a trustee foreclosure procedure
335 against a timeshare interest, the lienholder shall deliver an
336 affidavit to the trustee that identifies the obligor; the notice
337 address of the obligor; the timeshare interest; the date that
338 the notice of the intent to file a lien was given, if
339 applicable; the official records book and page number where the
340 claim of lien is recorded; and the name and notice address of
341 any junior interestholder. The affidavit must be accompanied by
342 a title search of the timeshare interest identifying any junior
343 interestholders of record, and the effective date of the title
344 search must be a date that is within 60 calendar days before the
345 date of the affidavit. The affidavit must also:

346 1. State the facts that establish that the obligor has
347 defaulted in the obligation to make a payment under a specified
348 provision of the timeshare instrument or applicable law.

349 2. Specify the amounts secured by the lien as of the date
350 of the affidavit and a per diem amount to account for further
351 accrual of the amounts secured by the lien.

352 3. State that the assessment lien was properly created and
353 authorized pursuant to the timeshare instrument and applicable
354 law.

355 (3) OBLIGOR'S RIGHTS.-

356 (a) The obligor may object to the lienholder's use of the
357 trustee foreclosure procedure for a specific default any time
358 before the sale of the timeshare interest under subsection (7)
359 by delivering a written objection to the trustee using the
360 objection form provided in subsection (5). If the trustee



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361 receives the written objection from the obligor, the trustee may
362 not proceed with the trustee foreclosure procedure as to the
363 default specified in the notice of default and intent to
364 foreclose under subsection (5), and the lienholder may proceed
365 only with a judicial foreclosure action as to that specified
366 default.

367 (b) At any time before the trustee issues the certificate
368 of sale under paragraph (7) (f), the obligor may cure the default
369 and redeem the timeshare interest by paying the amounts secured
370 by the lien in cash or certified funds to the trustee. There is
371 no right of redemption after the trustee issues the certificate
372 of sale.

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

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

378 (b) The trustee has not received a written objection to the
379 use of the trustee foreclosure procedure under paragraph (3) (a)
380 and the timeshare interest was not redeemed under paragraph
381 (3) (b);

382 (c) There is no lis pendens recorded and pending against
383 the same timeshare interest and the trustee has not been served
384 notice of the filing of any action to enjoin the trustee
385 foreclosure sale;

386 (d) The trustee has provided written notice of default and
387 intent to foreclose as required under subsection (5) and at
388 least 30 calendar days has elapsed after such notice is deemed
389 perfected under subsection (5); and



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

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

394 (a) In any foreclosure proceeding under this section, the
395 trustee must notify the obligor of the proceeding by sending the
396 obligor a written notice of default and intent to foreclose to
397 the notice address of the obligor by certified mail, registered
398 mail, or permitted delivery service, return receipt requested,
399 and by first-class mail or permitted delivery service, postage
400 prepaid, as follows:

401 1. The notice of default and intent to foreclose must
402 identify the obligor, the notice address of the obligor, the
403 legal description of the timeshare interest, the nature of the
404 default, the amounts secured by the lien, and a per diem amount
405 to account for further accrual of the amounts secured by the
406 lien and state the method by which the obligor may cure the
407 default, including the period of time after the date of the
408 notice of default and intent to foreclose within which the
409 obligor may cure the default.

410 2. The notice of default and intent to foreclose must
411 include an objection form with which the obligor can object to
412 the use of the trustee foreclosure procedure by signing and
413 returning the objection form to the trustee. The objection form
414 must identify the obligor, the notice address of the obligor,
415 the timeshare interest, and the return address of the trustee
416 and state: "The undersigned obligor exercises the obligor's
417 right to object to the use of the trustee foreclosure procedure
418 contained in s. 721.855, Florida Statutes."



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

421
422 If you fail to cure the default as set forth in this
423 notice or take other appropriate action with regard to
424 this foreclosure matter, you risk losing ownership of
425 your timeshare interest through the trustee
426 foreclosure procedure established in section 721.855,
427 Florida Statutes. You may choose to sign and send to
428 the trustee the enclosed objection form, exercising
429 your right to object to the use of the trustee
430 foreclosure procedure. Upon the trustee's receipt of
431 your signed objection form, the foreclosure of the
432 lien with respect to the default specified in this
433 notice shall be subject to the judicial foreclosure
434 procedure only. You have the right to cure your
435 default in the manner set forth in this notice at any
436 time before the trustee's sale of your timeshare
437 interest. If you do not object to the use of the
438 trustee foreclosure procedure, you will not be subject
439 to a deficiency judgment even if the proceeds from the
440 sale of your timeshare interest are insufficient to
441 offset the amounts secured by the lien.

442
443 4. The trustee shall also mail a copy of the notice of
444 default and intent to foreclose, without the objection form, to
445 the notice address of any junior interestholder by certified
446 mail, registered mail, or permitted delivery service, return
447 receipt requested, and by first-class mail or permitted delivery



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448 service, postage prepaid.

449 5. Notice under this paragraph is considered perfected upon
450 the trustee receiving the return receipt bearing the signature
451 of the obligor or junior interestholder, as applicable, within
452 30 calendar days after the trustee sent the notice. Notice is
453 not perfected if the notice is returned as undeliverable within
454 30 calendar days after the trustee sent the notice, if the
455 trustee cannot ascertain from the receipt that the obligor or
456 junior interestholder is the person who signed the receipt, or
457 if the receipt from the obligor or junior interestholder is
458 returned or refused within 30 calendar days after the trustee
459 sent the notice.

460 (b) If the notice required by paragraph (a) is returned as
461 undeliverable within 30 calendar days after the trustee sent the
462 notice, the trustee shall perform a diligent search and inquiry
463 to obtain a different address for the obligor or junior
464 interestholder. For purposes of this paragraph, any address
465 known and used by the lienholder for sending regular mailings or
466 other communications from the lienholder to the obligor or
467 junior interestholder, as applicable, shall be included with
468 other addresses produced from the diligent search and inquiry,
469 if any.

470 1. If the trustee's diligent search and inquiry produces an
471 address different from the notice address, the trustee shall
472 mail a copy of the notice by certified mail, registered mail, or
473 permitted delivery service, return receipt requested, and by
474 first-class mail or permitted delivery service, postage prepaid,
475 to the new address. Notice is considered perfected upon the
476 trustee receiving the return receipt bearing the signature of



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477 the obligor or junior interestholder, as applicable, within 30
478 calendar days after the trustee sent the notice under this
479 subparagraph. Notice is not perfected if the trustee cannot
480 ascertain from the receipt that the obligor or junior
481 interestholder is the person who signed the receipt or the
482 receipt from the obligor or junior interestholder is returned
483 refused. If the trustee does not perfect notice under this
484 subparagraph, the trustee shall perfect service under paragraph
485 (c).

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

490 (c) If the notice is not perfected under subparagraph (a)5.
491 and was not returned as undeliverable, or if the notice was not
492 perfected under subparagraph (b)1., the trustee may perfect
493 notice by publication in a newspaper of general circulation in
494 the county or counties in which the timeshare interest is
495 located. The notice must appear at least once a week for 2
496 consecutive weeks. The trustee may group an unlimited number of
497 notices in the same publication, if all of the notices pertain
498 to the same timeshare plan. Notice is considered perfected upon
499 publication as required in this paragraph.

500 (d) If notice is perfected under subparagraph (a)5., the
501 trustee shall execute an affidavit in recordable form setting
502 forth the manner in which notice was perfected and attach the
503 affidavit to the certificate of compliance set forth in
504 subsection (9). The affidavit must state the nature of the
505 notice, the date on which the notice was mailed, the name and



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506 address on the envelope containing the notice, the manner in
507 which the notice was mailed, and the basis for that knowledge.

508 (e) If notice is perfected under subparagraph (b)1., the
509 trustee shall execute an affidavit in recordable form setting
510 forth the manner in which notice was perfected and attach the
511 affidavit to the certificate of compliance set forth in
512 subsection (9). The affidavit must state the nature of the
513 notice, the dates on which the notice was mailed, the name and
514 addresses on the envelopes containing the notice, the manner in
515 which the notices were mailed, the fact that a signed receipt
516 from the certified mail, registered mail, or permitted delivery
517 service was timely received, and the name and address on the
518 envelopes containing the notice.

519 (f) If notice is perfected by publication under paragraph
520 (c), the trustee shall execute an affidavit in recordable form
521 setting forth the manner in which notice was perfected and
522 attach the affidavit to the certificate of compliance set forth
523 in subsection (9). The affidavit must include all the
524 information contained in paragraph (d) or paragraph (e), as
525 applicable, state that the notice was perfected by publication
526 after diligent search and inquiry was made for the current
527 address for the person, include a statement that notice was
528 perfected by publication, and shall set forth the information
529 required by s. 49.041 in the case of a natural person or s.
530 49.051 in the case of a corporation, as applicable. No other
531 action of the trustee is necessary to perfect notice.

532 (6) NOTICE OF SALE.—

533 (a) The notice of sale must include:

534 1. The name and notice addresses of the obligor and any



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535 junior interestholder.

536 2. The legal description of the timeshare interest.

537 3. The name and address of the trustee.

538 4. A description of the default that is the basis for the
539 foreclosure.

540 5. The official records book and page numbers where the
541 claim of lien is recorded.

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

544 7. The date, location, and starting time of the trustee's
545 sale.

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

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

555 (c) After the date of recording the notice of sale, notice
556 does not have to be given to any person claiming an interest in
557 the timeshare interest except as provided in this section. The
558 recording of the notice of sale has the same force and effect as
559 the filing of a lis pendens in a judicial proceeding under s.
560 48.23.

561 (d) The trustee shall publish the notice of sale in a
562 newspaper of general circulation in the county or counties in
563 which the timeshare interest is located at least once a week for



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564 2 consecutive weeks before the date of the sale. The last
565 publication must occur at least 5 calendar days before the sale.
566 The trustee may group an unlimited number of notices of sale in
567 the same publication, if all of the notices of sale pertain to
568 the same timeshare plan.

569 (7) MANNER OF SALE.—

570 (a) The sale of a timeshare interest by the trustee in a
571 public auction shall be held in the county in which the
572 timeshare interest is located, on the date, location, and
573 starting time designated in the notice of sale, which must be
574 after 9:00 a.m. but before 4:00 p.m. on a business day at least
575 30 calendar days after the recording of the notice of sale. The
576 trustee's sale may occur online at a specific website on the
577 Internet or in any other manner used by the clerk of the court
578 for a judicial foreclosure sales procedure in the county or
579 counties in which the timeshare interest is located.

580 (b) The trustee shall conduct the sale and act as the
581 auctioneer.

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

586 (d) The trustee may postpone the sale, in which case,
587 notice of postponement must be given by the trustee at the date,
588 time, and location contained in the notice of sale. The notice
589 of sale for the postponed sale must be mailed under paragraph
590 (6) (b), recorded under paragraph (4) (e), and published under
591 paragraph (6) (d). The effective date of the initial notice of
592 sale is not affected by a postponed sale.



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

598 (f) On the date of the sale and upon receipt of the cash or
599 certified funds due from the highest bidder, the trustee shall
600 issue to the highest bidder a certificate of sale stating that a
601 foreclosure conforming to the requirements of this section has
602 occurred, including the time, location, and date of the sale,
603 that the timeshare interest was sold, the amounts secured by the
604 lien, and the amount of the highest bid. A copy of the
605 certificate of sale shall be mailed by certified mail,
606 registered mail, or permitted delivery service, return receipt
607 requested, to all persons entitled to receive a notice of sale
608 under subsection (6).

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

613 (8) EFFECT OF TRUSTEE'S SALE.—

614 (a) A sale conducted under subsection (7) forecloses and
615 terminates all interests of any person with notice to whom
616 notice is given under paragraph (4) (d) and paragraph (6) (b), and
617 any other person claiming interests by, through, or under any
618 such person, in the affected timeshare interest. A failure to
619 give notice to any person entitled to notice does not affect the
620 validity of the sale as to the interests of persons properly
621 notified. A person entitled to notice but not given notice has



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622 the rights of a person not made a defendant in a judicial
623 foreclosure.

624 (b) On the issuance of a certificate of sale under
625 paragraph (7)(f), all rights of redemption that are foreclosed
626 under this section terminate.

627 (c) A sale conducted under subsection (7) releases the
628 obligor's liability for all amounts secured by the lien. The
629 lienholder does not have a right to any deficiency judgment
630 against the obligor after a sale of the obligor's timeshare
631 interest under this section.

632 (d) The issuance and recording of the trustee's deed is
633 presumed valid and may be relied upon by third parties without
634 actual knowledge of irregularities in the foreclosure
635 proceedings. If for any reason there is an irregularity in the
636 foreclosure proceedings, a purchaser becomes subrogated to all
637 the rights of the lienholder to the indebtedness that it secured
638 to the extent necessary to reforeclose the assessment lien in
639 order to correct the irregularity and becomes entitled to an
640 action de novo for the foreclosure of the assessment lien. Any
641 subsequent reforeclosure required to correct an irregularity may
642 be conducted under this section.

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

644 (a) Within 10 calendar days after the trustee conducts a
645 sale, the trustee shall execute and acknowledge a certificate of
646 compliance that:

647 1. Confirms delivery of the notice of default and intent to
648 foreclose and attaches the affidavit required under subsection
649 (5).

650 2. States that the default was not cured, that the trustee



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651 did not receive any written objection under paragraph (3) (a),
652 and that the timeshare interest was not redeemed under paragraph
653 (3) (b) .

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

657 4. Confirms that the notice of sale was mailed under
658 paragraph (6) (b) together with a list of the parties to whom the
659 notice of sale was mailed.

660 (b) In furtherance of the execution of the certificate of
661 compliance required under this subsection, the trustee is
662 entitled to rely upon an affidavit or certification from the
663 lienholder as to the facts and circumstances of default and
664 failure to cure the default.

665 (10) TRUSTEE'S DEED.—

666 (a) The trustee's deed must include the name and address of
667 the trustee, the name and address of the highest bidder, the
668 name of the former owner, a legal description of the timeshare
669 interest, and the name and address of the preparer of the
670 trustee's deed. The trustee's deed must recite that the
671 certificate of compliance was recorded and may not contain
672 warranties of title from the trustee. The certificate of
673 compliance shall be attached as an exhibit to the trustee's
674 deed.

675 (b) Ten calendar days after a sale, absent the prior filing
676 and service on the trustee of a judicial action to enjoin
677 issuance of the trustee's deed to the timeshare interest, the
678 trustee shall:

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



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

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

687 1. The trustee's deed conveys to the highest bidder all
688 rights, title, and interest in the timeshare interest that the
689 former owner had, or had the power to convey, at the time of the
690 recording of the claim of lien, together with all rights, title,
691 and interest that the former owner or his or her successors in
692 interest acquired after the recording of the claim of lien.

693 2. The issuance and recording of a trustee's deed has the
694 same force and effect as the issuance and recording of a
695 certificate of title by the clerk of the court in a judicial
696 foreclosure action.

697 (11) DISPOSITION OF PROCEEDS OF SALE.-

698 (a) The trustee shall apply the proceeds of the sale as
699 follows:

700 1. To the expenses of the sale, including compensation of
701 the trustee.

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

704 3. If there are junior interestholders, the trustee may
705 file an action in interpleader, pay the surplus to a court, name
706 the competing junior interestholders, and ask the court to
707 determine the proper distribution of the surplus. In an
708 interpleader action, the trustee shall recover reasonable



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709 attorney's fees and costs.

710 4. If there are no junior interestholders, or if all junior
711 interestholders have been paid, any surplus shall be paid to the
712 former owner. If the trustee is unable to locate the former
713 owner within 1 year after the sale, the surplus, if any, shall
714 be deposited with the Chief Financial Officer under chapter 717.

715 (b) In disposing of the proceeds of the sale, the trustee
716 may rely on the information provided in the affidavit of the
717 lienholder under paragraph (2)(c) and, if there is a dispute or
718 uncertainty over such claims, the trustee may submit the matter
719 to adjudication by court, by interpleader, or in any other
720 authorized manner and shall recover reasonable attorney's fees
721 and costs.

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

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

730 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
731 PROCEDURE.—An action for actual damages for a material violation
732 of this section may be brought by an obligor against the
733 lienholder for the failure to follow the trustee foreclosure
734 procedure contained in this section.

735 Section 10. Section 721.856, Florida Statutes, is created
736 to read:

737 721.856 Procedure for the trustee foreclosure of mortgage



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738 liens.—This section establishes a trustee foreclosure procedure
739 for mortgage liens.

740 (1) APPOINTMENT OF TRUSTEE.—

741 (a) A trustee or a substitute trustee may be appointed by a
742 lienholder by recording a notice of appointment of trustee or
743 notice of substitution of trustee in the official records of the
744 county or counties in which the timeshare interest is located. A
745 lienholder may appoint multiple trustees in a single
746 appointment, and an appointed trustee may be used by the
747 lienholder regarding the trustee foreclosure of any mortgage
748 lien.

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

752 (c) The recorded notice of appointment of trustee or notice
753 of substitution of trustee must contain the name and address of
754 the trustee or substitute trustee, the name and address of the
755 lienholder, and the name and address of the timeshare plan.

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

757 (a) Before initiating the trustee foreclosure against a
758 timeshare interest, the mortgage, or an amendment to a mortgage
759 executed by the obligor before the effective date of this
760 section, must contain a statement in substantially the following
761 form:

762
763 If the mortgagor fails to make timely payments under
764 the obligation secured by this mortgage, or is
765 otherwise deemed in uncured default of this mortgage,
766 the lien against the mortgagor's timeshare interest



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767 created by this mortgage may be foreclosed in
768 accordance with a judicial foreclosure procedure or a
769 trustee foreclosure procedure and may result in the
770 loss of your timeshare interest. If the mortgagee
771 initiates a trustee foreclosure procedure, the
772 mortgagor may object and the mortgagee may proceed
773 only by filing a judicial foreclosure action.

774
775 (b) In order to initiate a trustee foreclosure procedure
776 against a timeshare interest, the lienholder shall deliver an
777 affidavit to the trustee that identifies the obligor, the notice
778 address of the obligor, the timeshare interest, the official
779 records book and page number where the mortgage is recorded, and
780 the name and notice address of any junior interestholder. The
781 affidavit must be accompanied by a title search of the timeshare
782 interest identifying any junior interestholders of record, and
783 the effective date of the title search must be a date that is
784 within 60 calendar days before the date of the affidavit. The
785 affidavit must also:

786 1. State the facts that establish that the obligor has
787 defaulted in the obligation to make a payment under a specified
788 provision of the mortgage or is otherwise deemed in uncured
789 default under a specified provision of the mortgage.

790 2. Specify the amounts secured by the lien as of the date
791 of the affidavit and a per diem amount to account for further
792 accrual of the amounts secured by the lien.

793 3. State that the appropriate amount of documentary stamp
794 tax and intangible taxes has been paid upon recording the
795 mortgage, or otherwise paid to the state.



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796 4. State that the lienholder is the holder of the note, and
797 has complied with all preconditions in the note and mortgage to
798 determine the amounts secured by the lien and to initiate the
799 use of the trustee foreclosure procedure.

800 (3) OBLIGOR'S RIGHTS.—

801 (a) The obligor may object to the lienholder's use of the
802 trustee foreclosure procedure for a specific default before the
803 sale of the timeshare interest under subsection (7) by
804 delivering a written objection to the trustee using the
805 objection form provided in subsection (5). If the trustee
806 receives the written objection from the obligor, the trustee may
807 not proceed with the trustee foreclosure procedure as to the
808 default specified in the notice of default and intent to
809 foreclose under subsection (5), and the lienholder may proceed
810 only with a judicial foreclosure action as to that specified
811 default.

812 (b) Before the trustee issues the certificate of sale under
813 paragraph (7) (f), the obligor may cure the default and redeem
814 the timeshare interest by paying the amounts secured by the lien
815 in cash or certified funds to the trustee. There is no right of
816 redemption after the trustee issues the certificate of sale.

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

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

822 (b) The trustee has not received a written objection to the
823 use of the trustee foreclosure procedure under paragraph (3) (a)
824 and the timeshare interest was not redeemed under paragraph



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825 (3) (b) ;

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

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

832 (e) The trustee has provided written notice of default and
833 intent to foreclose as required under subsection (5) and at
834 least 30 calendar days have elapsed after the notice is deemed
835 perfected under subsection (5); and

836 (f) The notice of sale required under subsection (6) has
837 been recorded in the official records of the county in which the
838 mortgage was recorded.

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

840 (a) In any foreclosure proceeding under this section, the
841 trustee must notify the obligor of the proceeding by sending the
842 obligor a written notice of default and intent to foreclose to
843 the notice address of the obligor by certified mail, registered
844 mail, or permitted delivery service, return receipt requested,
845 and by first-class mail or permitted delivery service, postage
846 prepaid, as follows:

847 1. The notice of default and intent to foreclose must
848 identify the obligor, the notice address of the obligor, the
849 legal description of the timeshare interest, the nature of the
850 default, the amounts secured by the lien, and a per diem amount
851 to account for further accrual of the amounts secured by the
852 lien and state the method by which the obligor may cure the
853 default, including the period of time after the date of the



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854 notice of default and intent to foreclose within which the
855 obligor may cure the default.

856 2. The notice of default and intent to foreclose must
857 include an objection form with which the obligor can object to
858 the use of the trustee foreclosure procedure by signing and
859 returning the objection form to the trustee. The objection form
860 must identify the obligor, the notice address of the obligor,
861 the timeshare interest, and the return address of the trustee
862 and state: "The undersigned obligor exercises the obligor's
863 right to object to the use of the trustee foreclosure procedure
864 contained in s. 721.856, Florida Statutes."

865 3. The notice of default and intent to foreclose must also
866 contain a statement in substantially the following form:

867
868 If you fail to cure the default as set forth in this
869 notice or take other appropriate action with regard to
870 this foreclosure matter, you risk losing ownership of
871 your timeshare interest through the trustee
872 foreclosure procedure established in s. 721.856,
873 Florida Statutes. You may sign and send the enclosed
874 objection form to the trustee, exercising your right
875 to object to the use of the trustee foreclosure
876 procedure. Upon the trustee's receipt of your signed
877 objection form, the foreclosure of the lien with
878 respect to the default specified in this notice is
879 subject to the judicial foreclosure procedure only.
880 You have the right to cure your default in the manner
881 set forth in this notice at any time before the
882 trustee's sale of your timeshare interest. If you do



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883 not object to the use of the trustee foreclosure
884 procedure, you will not be subject to a deficiency
885 judgment even if the proceeds from the sale of your
886 timeshare interest are insufficient to offset the
887 amounts secured by the lien.

888
889 4. The trustee shall also mail a copy of the notice of
890 default and intent to foreclose, without the objection form, to
891 the notice address of any junior interestholder by certified
892 mail, registered mail, or permitted delivery service, return
893 receipt requested, and by first-class mail or permitted delivery
894 service, postage prepaid.

895 5. Notice under this paragraph is considered perfected upon
896 the trustee receiving the return receipt bearing the signature
897 of the obligor or junior interestholder, as applicable, within
898 30 calendar days after the trustee sent the notice. Notice is
899 not perfected if the notice is returned as undeliverable within
900 30 calendar days after the trustee sent the notice, if the
901 trustee cannot ascertain from the receipt that the obligor or
902 junior interestholder is the person who signed the receipt, or
903 if the receipt from the obligor or junior interestholder is
904 returned or refused within 30 calendar days after the trustee
905 sent the notice.

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



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912 other communications from the lienholder to the obligor or
913 junior interestholder, as applicable, must be included with
914 other addresses produced from the diligent search and inquiry,
915 if any.

916 1. If the trustee's diligent search and inquiry produces an
917 address different from the notice address, the trustee shall
918 mail a copy of the notice by certified mail, registered mail, or
919 permitted delivery service, return receipt requested, and by
920 first-class mail or permitted delivery service, postage prepaid,
921 to the new address. Notice under this subparagraph is considered
922 perfected upon the trustee receiving the return receipt bearing
923 the signature of the obligor or junior interestholder, as
924 applicable, within 30 calendar days after the trustee sent the
925 notice under this subparagraph. Notice is not perfected if the
926 trustee cannot ascertain from the receipt that the obligor or
927 junior interestholder is the person who signed the receipt or
928 the receipt from the obligor or junior interestholder is
929 returned refused. If the trustee does not perfect notice, the
930 trustee shall perfect service under paragraph (c).

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

935 (c) If the notice is not perfected under subparagraph
936 (a)5., and the notice was not returned as undeliverable, or if
937 the notice was not perfected under subparagraph (b)1., the
938 trustee may perfect notice by publication in a newspaper of
939 general circulation in the county or counties in which the
940 timeshare interest is located. The notice must appear at least



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941 once a week for 2 consecutive weeks. The trustee may group an
942 unlimited number of notices in the same publication, if all of
943 the notices pertain to the same timeshare plan. Notice is
944 considered perfected upon publication as required in this
945 paragraph.

946 (d) If notice is perfected under subparagraph (a)5., the
947 trustee shall execute an affidavit in recordable form setting
948 forth the manner in which notice was perfected and attach the
949 affidavit to the certificate of compliance set forth in
950 subsection (9). The affidavit must state the nature of the
951 notice, the date on which the notice was mailed, the name and
952 address on the envelope containing the notice, the manner in
953 which the notice was mailed, and the basis for that knowledge.

954 (e) If notice is perfected under subparagraph (b)1., the
955 trustee shall execute an affidavit in recordable form setting
956 forth the manner in which notice was perfected and attach the
957 affidavit to the certificate of compliance set forth in
958 subsection (9). The affidavit must state the nature of the
959 notice, the dates on which the notice was mailed, the name and
960 addresses on the envelopes containing the notice, the manner in
961 which the notice was mailed, the fact that a signed receipt from
962 the certified mail, registered mail, or permitted delivery
963 service was timely received, and the name and address on the
964 envelopes containing the notice.

965 (f) If notice is perfected under paragraph (c), the trustee
966 shall execute an affidavit in recordable form setting forth the
967 manner in which notice was perfected and attach the affidavit to
968 the certificate of compliance set forth in subsection (9). The
969 affidavit must include all the information contained in



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970 paragraph (d) or paragraph (e), as applicable, state that the
971 notice was perfected by publication after diligent search and
972 inquiry was made for the current address for the person, include
973 a statement that notice was perfected by publication, and set
974 forth the information required by s. 49.041 in the case of a
975 natural person or s. 49.051 in the case of a corporation,
976 whichever is applicable. No other action of the trustee is
977 necessary to perfect notice.

978 (6) NOTICE OF SALE.—

979 (a) The notice of sale must contain:

980 1. The name and notice addresses of the obligor and any
981 junior interestholder.

982 2. The legal description of the timeshare interest.

983 3. The name and address of the trustee.

984 4. A description of the default that is the basis for the
985 foreclosure.

986 5. The official records book and page numbers where the
987 mortgage is recorded.

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

990 7. The date, location, and starting time of the trustee's
991 sale.

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

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



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999 postage prepaid, to the notice addresses of the obligor and any
1000 junior interestholder.

1001 (c) After the date of recording of the notice of sale,
1002 notice is not required to be given to any person claiming an
1003 interest in the timeshare interest except as provided in this
1004 section. The recording of the notice of sale has the same force
1005 and effect as the filing of a lis pendens in a judicial
1006 proceeding under s. 48.23.

1007 (d) The trustee shall publish the notice of sale in a
1008 newspaper of general circulation in the county or counties in
1009 which the timeshare interest is located at least once a week for
1010 2 consecutive weeks before the date of the sale. The last
1011 publication must occur at least 5 calendar days before the sale.
1012 The trustee may group an unlimited number of notices of sale in
1013 the same publication, if all of the notices of sale pertain to
1014 the same timeshare plan.

1015 (7) MANNER OF SALE.—

1016 (a) The sale of a timeshare interest by the trustee in a
1017 public auction shall be held in the county in which the
1018 timeshare interest is located, on the date, location, and
1019 starting time designated in the notice of sale, which must be
1020 after 9:00 a.m. but before 4:00 p.m. on a business day at least
1021 30 calendar days after the recording of the notice of sale. The
1022 trustee's sale may occur online at a specific website on the
1023 Internet or in any other manner used by the clerk of the court
1024 for a judicial foreclosure sales procedure in the county or
1025 counties in which the timeshare interest is located.

1026 (b) The trustee shall conduct the sale and act as the
1027 auctioneer.



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1028 (c) The lienholder and any person other than the trustee
1029 may bid at the sale. In lieu of participating in the sale, the
1030 lienholder may send the trustee written bidding instructions
1031 that the trustee shall announce as appropriate during the sale.

1032 (d) The trustee may postpone the sale. In such case, notice
1033 of postponement must be given by the trustee at the date, time,
1034 and location contained in the notice of sale. The notice of sale
1035 for the postponed sale must be mailed under paragraph (6) (b),
1036 recorded under paragraph (4) (f), and published under paragraph
1037 (6) (d). The effective date of the initial notice of sale is not
1038 affected by a postponed sale.

1039 (e) The highest bidder of the timeshare interest shall pay
1040 the price bid to the trustee in cash or certified funds on the
1041 day of the sale. If the lienholder is the highest bidder, the
1042 lienholder shall receive a credit up to the amount set forth in
1043 the notice of sale as required under subparagraph (6) (a) 6.

1044 (f) On the date of the sale and upon receipt of the cash or
1045 certified funds due from the highest bidder, the trustee shall
1046 issue to the highest bidder a certificate of sale stating that a
1047 foreclosure conforming to the requirements of this section has
1048 occurred, including the time, location, and date of the sale,
1049 that the timeshare interest was sold, the amounts secured by the
1050 lien, and the amount of the highest bid. A copy of the
1051 certificate of sale shall be mailed by certified mail,
1052 registered mail, or permitted delivery service, return receipt
1053 requested, to all persons entitled to receive a notice of sale
1054 under subsection (6).

1055 (g) Before a sale conducted pursuant to this subsection, a
1056 junior interestholder may pursue adjudication by court, by



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1057 interpleader, or in any other authorized manner respecting any
1058 matter that is disputed by the junior interestholder.

1059 (8) EFFECT OF TRUSTEE'S SALE.—

1060 (a) A sale conducted under subsection (7) forecloses and
1061 terminates all interests of any person with notice to whom
1062 notice is given under paragraph (4) (e) and paragraph (6) (b), and
1063 of any other person claiming interests by, through, or under any
1064 such person, in the affected timeshare interest. A failure to
1065 give notice to any person entitled to notice does not affect the
1066 validity of the sale as to the interests of any person properly
1067 notified. A person entitled to notice but not given notice has
1068 the rights of a person not made a defendant in a judicial
1069 foreclosure.

1070 (b) All rights of redemption that have been foreclosed
1071 under this section terminate on the issuance of a certificate of
1072 sale under paragraph (7) (f).

1073 (c) A sale conducted under subsection (7) releases the
1074 obligor's liability for all amounts secured by the lien. The
1075 lienholder does not have a right to any deficiency judgment
1076 against the obligor after a sale of the obligor's timeshare
1077 interest under this section.

1078 (d) The issuance and recording of the trustee's deed is
1079 presumed valid and may be relied upon by third parties without
1080 actual knowledge of any irregularities in the foreclosure
1081 proceedings. If for any reason there is an irregularity in the
1082 foreclosure proceedings, a purchaser becomes subrogated to all
1083 the rights of the lienholder to the indebtedness that it secured
1084 to the extent necessary to reforeclose the mortgage lien in
1085 order to correct the irregularity and becomes entitled to an



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1086 action de novo for the foreclosure of such mortgage lien. Any
1087 subsequent reforeclosure required to correct an irregularity may
1088 be conducted under this section.

1089 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1090 (a) Within 10 calendar days after the trustee conducts a
1091 sale, the trustee shall execute and acknowledge a certificate of
1092 compliance which:

1093 1. Confirms delivery of the notice of default and intent to
1094 foreclose and attaches the affidavit required under subsection
1095 (5).

1096 2. States that the default was not cured, that the trustee
1097 did not receive any written objection under paragraph (3) (a),
1098 and that the timeshare interest was not redeemed under paragraph
1099 (3) (b).

1100 3. States that the trustee is in possession of the original
1101 promissory note executed by the mortgagor and secured by the
1102 mortgage lien.

1103 4. Confirms that the notice of sale was published as
1104 required under paragraph (6) (d) and attaches an affidavit of
1105 publication for the notice of sale.

1106 5. Confirms that the notice of sale was mailed under
1107 paragraph (6) (b) together with a list of the parties to whom the
1108 notice of sale was mailed.

1109 (b) In furtherance of the execution of the certificate of
1110 compliance required under this subsection, the trustee is
1111 entitled to rely upon an affidavit or certification from the
1112 lienholder as to the facts and circumstances of default and
1113 failure to cure the default.

1114 (10) TRUSTEE'S DEED.—



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1115 (a) The trustee's deed must include the name and address of
1116 the trustee, the name and address of the highest bidder, the
1117 name of the former owner, a legal description of the timeshare
1118 interest, and the name and address of the preparer of the
1119 trustee's deed. The trustee's deed must recite that the
1120 certificate of compliance was recorded and may not contain
1121 warranties of title from the trustee. The certificate of
1122 compliance must be attached as an exhibit to the trustee's deed.

1123 (b) Ten calendar days after a sale, absent the prior filing
1124 and service on the trustee of a judicial action to enjoin
1125 issuance of the trustee's deed to the timeshare interest, the
1126 trustee shall:

1127 1. Cancel the original promissory note executed by the
1128 mortgagor and secured by the mortgage lien.

1129 2. Issue a trustee's deed to the highest bidder.

1130 3. Record the trustee's deed in the official records of the
1131 county or counties in which the timeshare interest is located.

1132 (c) The certificate of compliance and trustee's deed
1133 together are presumptive evidence of the truth of the matters
1134 set forth in them, and an action to set aside the sale and void
1135 the trustee's deed may not be filed or otherwise pursued against
1136 any person acquiring the timeshare interest for value.

1137 1. The trustee's deed conveys to the highest bidder all
1138 rights, title, and interest in the timeshare interest that the
1139 former owner had, or had the power to convey, together with all
1140 rights, title, and interest that the former owner or his or her
1141 successors in interest acquired after the execution of the
1142 mortgage.

1143 2. The issuance and recording of a trustee's deed has the



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1144 same force and effect as the issuance and recording of a
1145 certificate of title by the clerk of the court in a judicial
1146 foreclosure action.

1147 (11) DISPOSITION OF PROCEEDS OF SALE.-

1148 (a) The trustee shall apply the proceeds of the sale as
1149 follows:

1150 1. To the expenses of the sale, including compensation of
1151 the trustee.

1152 2. To the amount owed and set forth in the notice as
1153 required under subparagraph (6) (a) 6.

1154 3. If there are junior interestholders, the trustee may
1155 file an action in interpleader, pay the surplus to a court of
1156 competent jurisdiction, name the competing junior
1157 interestholders, and ask the court to determine the proper
1158 distribution of the surplus. In any interpleader action, the
1159 trustee shall recover reasonable attorney's fees and costs.

1160 4. If there are no junior interestholders, or if all junior
1161 interestholders have been paid, any surplus shall be paid to the
1162 former owner. If the trustee is unable to locate the former
1163 owner within 1 year after the sale, the surplus, if any, shall
1164 be deposited with the Chief Financial Officer under chapter 717.

1165 (b) In disposing of the proceeds of the sale, the trustee
1166 may rely on the information provided in the affidavit of the
1167 lienholder under paragraph (2) (b), and if there is a dispute or
1168 uncertainty over such claims, the trustee may submit the matter
1169 to adjudication by court, by interpleader, or in any other
1170 authorized manner and shall recover reasonable attorney's fees
1171 and costs.

1172 (12) JUDICIAL FORECLOSURE ACTIONS.-The trustee foreclosure



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1173 procedure established in this section does not impair or
1174 otherwise affect the lienholder's continuing right to bring a
1175 judicial foreclosure action, in lieu of using the trustee
1176 foreclosure procedure, with respect to any mortgage lien.

1177 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
1178 PROCEDURE.—An action for actual damages for a material violation
1179 of this section may be brought by an obligor against the
1180 lienholder for the failure to follow the trustee foreclosure
1181 procedure contained in this section.

1182 Section 11. Subsections (1) and (4) of section 721.86,
1183 Florida Statutes, are amended to read:

1184 721.86 Miscellaneous provisions.—

1185 (1) If there is a conflict between the provisions of this
1186 part and the other provisions of this chapter, chapter 702, or
1187 other applicable law, the provisions of this part prevail. The
1188 procedures in this part must be given effect in the context of
1189 any foreclosure proceedings against timeshare interests estates
1190 governed by this chapter, chapter 702, chapter 718, or chapter
1191 719.

1192 (4) In addition to assessment liens and mortgage liens
1193 arising after the effective date of this part, except as
1194 provided in s. 721.855(13), the provisions of this part apply to
1195 all assessment liens and mortgage liens existing before ~~prior to~~
1196 the effective date of this act regarding which a foreclosure
1197 proceeding has not yet commenced.

1198 Section 12. Subsection (2) of section 721.20, Florida
1199 Statutes, is amended to read:

1200 721.20 Licensing requirements; suspension or revocation of
1201 license; exceptions to applicability; collection of advance fees



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1202 for listings unlawful.-

1203 (2) Solicitors who engage only in the solicitation of
1204 prospective purchasers and any purchaser who refers no more than
1205 20 people to a developer or managing entity per year or who
1206 otherwise provides testimonials on behalf of a developer or
1207 managing entity are exempt from ~~the provisions of~~ chapter 475.

1208 Section 13. This act shall take effect upon becoming a law.

1209

1210 ===== T I T L E A M E N D M E N T =====

1211 And the title is amended as follows:

1212 Delete everything before the enacting clause
1213 and insert:

1214 A bill to be entitled
1215 An act relating to foreclosures; amending s. 721.07,
1216 F.S.; providing lien disclosure requirements for filed
1217 public offering statements for certain timeshare
1218 plans; amending s. 721.13, F.S.; requiring officers,
1219 directors and agents of a timeshare owners'
1220 association to act in good faith; providing for
1221 damages; providing exceptions; amending s. 721.16,
1222 F.S.; authorizing a managing entity to bring a
1223 judicial action or a trustee procedure to foreclose
1224 certain liens under specified conditions; revising
1225 when a lien is effective; providing a directive to the
1226 Division of Statutory Revision to rename part III of
1227 ch. 721, F.S., to conform to changes made by this act;
1228 amending s. 721.81, F.S.; revising and providing
1229 legislative purposes of part III; amending s. 721.82
1230 F.S.; revising and providing definitions; amending s.



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1231 721.83, F.S., relating to consolidation of foreclosure
1232 actions; clarifying application to judicial
1233 foreclosure actions; amending s. 721.85, F.S.,
1234 relating to service to notice address or on registered
1235 agent; conforming provisions to changes made by this
1236 act; creating s. 721.855, F.S.; establishing procedure
1237 for the trustee foreclosure of assessment liens;
1238 providing for the appointment of a trustee; providing
1239 recording requirements for such liens; providing
1240 procedures for the initiation of a trustee foreclosure
1241 procedure against a timeshare interest; providing
1242 procedures for an obligor's objection to the trustee
1243 foreclosure procedure; providing conditions to a
1244 trustee's exercise of power of sale; providing
1245 requirements for a notice of default and intent to
1246 sell; providing requirements for a notice of sale;
1247 providing requirements for the sale by auction of
1248 foreclosed encumbered timeshare interests; providing
1249 requirements for a trustee's certificate of
1250 compliance; providing for the effect of a trustee's
1251 sale; providing requirements for a trustee's deed;
1252 providing for the disposition of proceeds of the sale;
1253 providing that the trustee foreclosure procedure does
1254 not impair or otherwise affect the right to bring
1255 certain actions; providing application; providing for
1256 actions for failure to follow the trustee foreclosure
1257 procedure; creating s. 721.856, F.S.; establishing
1258 procedure for the trustee foreclosure of mortgage
1259 liens; providing for the appointment of a trustee;



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1260 providing recording requirements for such liens;
1261 providing procedures for the initiation of a trustee
1262 foreclosure procedure against a timeshare interest;
1263 providing procedures for an obligor's objection to the
1264 trustee foreclosure procedure; providing conditions to
1265 a trustee's exercise of power of sale; providing
1266 requirements for a notice of default and intent to
1267 sell; providing requirements for a notice of sale;
1268 providing requirements for the sale by auction of
1269 foreclosed encumbered timeshare interests; providing
1270 requirements for a trustee's certificate of
1271 compliance; providing for the effect of a trustee's
1272 sale; providing requirements for a trustee's deed;
1273 providing for the disposition of proceeds of the sale;
1274 providing that the trustee foreclosure procedure does
1275 not impair or otherwise affect the right to bring
1276 certain actions; providing for actions for failure to
1277 follow the trustee foreclosure procedure; amending s.
1278 721.86, F.S.; providing for priority of application in
1279 case of conflict; conforming terminology to changes
1280 made by this act; amending s. 721.20, F.S.; revising
1281 exemptions from certain licensing requirements;
1282 providing an effective date.