

By Senator Gardiner

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1                   A bill to be entitled  
2           An act relating to timeshares; amending s. 721.07,  
3           F.S.; providing lien disclosure requirements for filed  
4           public offering statements for certain timeshare  
5           plans; amending s. 721.16, F.S.; authorizing a  
6           managing entity to bring judicial and nonjudicial  
7           actions to foreclose certain liens under specified  
8           conditions; renaming part III of ch. 721, F.S.;  
9           amending s. 721.81, F.S.; revising and providing  
10          legislative purposes of the part; amending s. 721.82  
11          F.S.; revising and providing definitions; amending s.  
12          721.83, F.S.; revising application to apply to  
13          judicial foreclosure actions; amending s. 721.85,  
14          F.S.; conforming provisions to changes made by this  
15          act; creating s. 721.855, F.S.; establishing procedure  
16          for the nonjudicial foreclosure of assessment liens;  
17          providing for the appointment of a trustee; providing  
18          recording requirements for such liens; providing  
19          procedures for the initiation of a nonjudicial  
20          foreclosure procedure against a timeshare interest;  
21          providing procedures for an obligor's objection to the  
22          nonjudicial foreclosure procedure; providing  
23          conditions to a trustee's exercise of power of sale;  
24          providing requirements for a notice of default and  
25          intent to sell; providing requirements for a notice of  
26          sale; providing requirements for a trustee's  
27          certificate of compliance; providing requirements for  
28          the sale by auction of foreclosed encumbered timeshare  
29          interests; providing for the effect of a trustee's

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30 sale; providing requirements for a trustee's deed;  
31 providing for the disposition of proceeds of the sale;  
32 providing that the nonjudicial foreclosure procedure  
33 does not impair or otherwise affect the right to bring  
34 certain actions; providing application; providing for  
35 actions for failure to follow the nonjudicial  
36 foreclosure procedure; creating s. 721.856, F.S.;  
37 establishing procedure for the nonjudicial foreclosure  
38 of mortgage liens; providing for the appointment of a  
39 trustee; providing recording requirements for such  
40 liens; providing procedures for the initiation of a  
41 nonjudicial foreclosure procedure against a timeshare  
42 interest; providing procedures for an obligor's  
43 objection to the nonjudicial foreclosure procedure;  
44 providing conditions to a trustee's exercise of power  
45 of sale; providing requirements for a notice of  
46 default and intent to sell; providing requirements for  
47 a notice of sale; providing requirements for a  
48 trustee's certificate of compliance; providing  
49 requirements for the sale by auction of foreclosed  
50 encumbered timeshare interests; providing for the  
51 effect of a trustee's sale; providing requirements for  
52 a trustee's deed; providing for the disposition of  
53 proceeds of the sale; providing that the nonjudicial  
54 foreclosure procedure does not impair or otherwise  
55 affect the right to bring certain actions; providing  
56 for actions for failure to follow the nonjudicial  
57 foreclosure procedure; amending s. 721.86, F.S.;  
58 providing for priority of application in case of

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59 conflict; providing an effective date.

60  
61 Be It Enacted by the Legislature of the State of Florida:

62  
63 Section 1. Paragraph (jj) is added to subsection (5) of  
64 section 721.07, Florida Statutes, to read:

65 721.07 Public offering statement.—Prior to offering any  
66 timeshare plan, the developer must submit a filed public  
67 offering statement to the division for approval as prescribed by  
68 s. 721.03, s. 721.55, or this section. Until the division  
69 approves such filing, any contract regarding the sale of that  
70 timeshare plan is subject to cancellation by the purchaser  
71 pursuant to s. 721.10.

72 (5) Every filed public offering statement for a timeshare  
73 plan which is not a multisite timeshare plan shall contain the  
74 information required by this subsection. The division is  
75 authorized to provide by rule the method by which a developer  
76 must provide such information to the division.

77 (jj) The following statement in conspicuous type:

78  
79 The managing entity has a lien against each timeshare  
80 interest to secure the payment of regular or special  
81 assessments and ad valorem taxes. Your failure to make  
82 any required payments may result in the judicial or  
83 nonjudicial foreclosure of an assessment lien and the  
84 loss of your timeshare interest. If the managing  
85 entity initiates a nonjudicial procedure, you shall  
86 have the option to object to the use of the  
87 nonjudicial foreclosure procedure and the managing

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88 entity may only proceed by filing a judicial  
89 foreclosure action.

90 Section 2. Subsection (2) of section 721.16, Florida  
91 Statutes, is amended to read:

92 721.16 Liens for overdue assessments; liens for labor  
93 performed on, or materials furnished to, a timeshare unit.—

94 (2) The managing entity may bring a judicial ~~an~~ action in  
95 its name to foreclose a lien under subsection (1) in the manner  
96 a mortgage of real property is foreclosed and may also bring an  
97 action to recover a money judgment for the unpaid assessments  
98 without waiving any claim of lien. As an alternative to  
99 initiating a judicial action, the managing entity may initiate a  
100 nonjudicial procedure to foreclose an assessment lien under s.  
101 721.855.

102 Section 3. Part III of chapter 721, Florida Statutes,  
103 entitled "Foreclosure of Liens on Timeshare Estates," is renamed  
104 "Foreclosure of Liens on Timeshare Interests."

105 Section 4. Section 721.81, Florida Statutes, is amended to  
106 read:

107 721.81 Legislative purpose.—The purposes of this part are  
108 to:

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

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

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117 (3) Recognize the need to assist both owners' associations  
118 and mortgagees by simplifying and expediting the process for the  
119 judicial and nonjudicial ~~of~~ foreclosure of assessment liens and  
120 mortgage liens against timeshare interests ~~estates~~.

121 (4) Improve judicial economy and reduce court congestion  
122 and the cost to taxpayers by establishing streamlined procedures  
123 for the judicial and nonjudicial foreclosure of assessment liens  
124 and mortgage liens against timeshare interests ~~estates~~.

125 (5) Recognize that nearly all timeshare interest  
126 foreclosures are uncontested.

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

131 (7) Recognize that the use of the nonjudicial foreclosure  
132 procedure established by ss. 721.855 and 721.856 shall have the  
133 same force and effect as the use of the judicial foreclosure  
134 procedure against a timeshare interest with respect to the  
135 provisions of this chapter or any other applicable law. However,  
136 obligors shall not be subject to a deficiency judgment even if  
137 the proceeds from the sale of the timeshare interest are  
138 insufficient to offset the amounts secured by the lien.

139 Section 5. Section 721.82, Florida Statutes, is amended to  
140 read:

141 721.82 Definitions.—As used in this part, the term:

142 (1) "Amounts secured by the lien" means all amounts secured  
143 by an assessment lien or mortgage lien, including, but not  
144 limited to, all past due amounts, accrued interest, late fees,  
145 taxes, advances for the payment of taxes, insurance and

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146 maintenance of the timeshare interest, and any fees or costs  
 147 incurred by the lienholder or trustee, including any reasonable  
 148 attorney's fees, trustee's fees, and costs incurred in  
 149 connection with the default.

150 (2)~~(1)~~ "Assessment lien" means:

151 (a) A lien for delinquent assessments as provided in ss.  
 152 ~~721.16, 718.116, and 719.108, and 721.16 as to timeshare~~  
 153 ~~condominiums; or~~

154 (b) A lien for unpaid taxes and special assessments as  
 155 provided in s. 192.037(8).

156 (3)~~(2)~~ "Junior interestholder" means any person who has a  
 157 lien or interest of record against a timeshare interest estate  
 158 in the county or counties in which the timeshare interest estate  
 159 is located, which is inferior to the mortgage lien or assessment  
 160 lien being foreclosed under this part.

161 (4)~~(3)~~ "Lienholder" means a holder of an assessment lien or  
 162 a holder of a mortgage lien, as applicable. A receiver appointed  
 163 under s. 721.26 is a lienholder for purposes of foreclosure of  
 164 assessment liens under this part.

165 (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.  
 166 697.01.

167 (6)~~(5)~~ "Mortgage lien" means a security interest in a  
 168 timeshare interest estate created by a mortgage encumbering the  
 169 timeshare interest estate.

170 (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

171 (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien  
 172 or a person who has assumed the obligation secured by a mortgage  
 173 lien.

174 (9)~~(8)~~ "Notice address" means:

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175 (a) As to an assessment lien, the address of the ~~current~~  
176 owner of a timeshare interest estate as reflected by the books  
177 and records of the timeshare plan under ss. 721.13(4) and  
178 721.15(7).

179 (b) As to a mortgage lien:

180 1. The address of the mortgagor as set forth in the  
181 mortgage, the promissory note or a separate document executed by  
182 the mortgagor at the time the mortgage lien was created, or the  
183 most current address of the mortgagor according to the records  
184 of the mortgagee; and

185 2. If the ~~current~~ owner of the timeshare interest estate is  
186 different from the mortgagor, the address of the ~~current~~ owner  
187 of the timeshare interest estate as reflected by the books and  
188 records of the mortgagee.

189 (c) As to a junior interestholder, the address as set forth  
190 in the recorded instrument creating the junior lien interest or  
191 interest lien, or in any recorded amendment supplement thereto  
192 changing the address, or in any written notification by the  
193 junior interestholder to the foreclosing lienholder changing the  
194 ~~of such change in~~ address.

195 (10) ~~(9)~~ "Obligor" means the mortgagor, the person subject  
196 to an assessment lien, or the record owner of the timeshare  
197 interest estate.

198 (11) "Permitted delivery service" means any nationally  
199 recognized common carrier delivery service or international  
200 airmail service requiring a signed return receipt.

201 (12) ~~(10)~~ "Registered agent" means an agent duly appointed  
202 by the obligor under s. 721.84 for the purpose of accepting all  
203 notices and service of process under this part. A registered

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204 agent may be an individual resident in this state whose business  
205 office qualifies as a registered office, or a domestic or  
206 foreign corporation or a not-for-profit corporation as defined  
207 in chapter 617 authorized to transact business or to conduct its  
208 affairs in this state, whose business office qualifies as a  
209 registered office. A registered agent for any obligor may not be  
210 the lienholder or the attorney for the lienholder.

211 (13)~~(11)~~ "Registered office" means the street address of  
212 the business office of the registered agent appointed under s.  
213 721.84, located in this state.

214 (14) "Trustee" means an attorney who is a member in good  
215 standing of The Florida Bar or his or her law firm, or a title  
216 insurer authorized to transact business in this state under s.  
217 624.401, appointed as trustee or as substitute trustee in  
218 accordance with s. 721.855 or s. 721.856. A receiver appointed  
219 under s. 721.26 may act as a trustee under s. 721.855. A trustee  
220 must be independent as required by s. 721.05(20).

221 Section 6. Section 721.83, Florida Statutes, is amended to  
222 read:

223 721.83 Consolidation of judicial foreclosure actions.—

224 (1) A complaint in a foreclosure proceeding involving  
225 timeshare interests ~~estates~~ may join in the same action multiple  
226 defendant obligors and junior interestholders of separate  
227 timeshare interests ~~estates~~, provided:

228 (a) The foreclosure proceeding involves a single timeshare  
229 property.

230 (b) The foreclosure proceeding is filed by a single  
231 plaintiff.

232 (c) The default and remedy provisions in the written



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233 instruments on which the foreclosure proceeding is based are  
234 substantially the same for each defendant.

235 (d) The nature of the defaults alleged is the same for each  
236 defendant.

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

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

244 (3) A consolidated timeshare foreclosure action shall be  
245 considered a single action, suit, or proceeding for the payment  
246 of filing fees and service charges pursuant to general law. In  
247 addition to the payment of such filing fees and service charges,  
248 an additional filing fee of up to \$10 for each timeshare  
249 interest ~~estate~~ joined in that action shall be paid to the clerk  
250 of court.

251 Section 7. Section 721.85, Florida Statutes, is amended to  
252 read:

253 721.85 Service to notice address or on registered agent.—

254 (1) Service of process for a foreclosure proceeding  
255 involving a timeshare interest ~~estate~~ may be made by any means  
256 recognized by law. In addition, substituted service on an  
257 obligor ~~a party~~ who has appointed a registered agent under s.  
258 721.84 may be made on such registered agent at the registered  
259 office. Also, when using s. 48.194 where in rem or quasi in rem  
260 relief only is sought, such service of process provisions are  
261 modified in connection with a foreclosure proceeding against a

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262 timeshare interest estate to provide that:

263 (a) Such service of process may be made on any person  
264 whether the person is located inside or outside this state, by  
265 certified or registered mail, return receipt requested, or by a  
266 permitted delivery service, return receipt requested, addressed  
267 to the person to be served at the notice address, or on the  
268 person's ~~party's~~ registered agent duly appointed under s.  
269 721.84, at the registered office; and

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

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

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

279 Section 8. Section 721.855, Florida Statutes, is created to  
280 read:

281 721.855 Procedure for the nonjudicial foreclosure of  
282 assessment liens.—The provisions of this section establish a  
283 nonjudicial foreclosure procedure for assessment liens.

284 (1) APPOINTMENT OF TRUSTEE.—

285 (a) A trustee or a substitute trustee may be appointed by a  
286 lienholder at any time by recording a notice of appointment of  
287 trustee or notice of substitution of trustee in the public  
288 records of the county or counties in which the timeshare  
289 interest is located. A lienholder may appoint multiple trustees  
290 in a single appointment, and any appointed trustee may be used

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291 by the lienholder regarding the nonjudicial foreclosure of any  
292 assessment lien under any timeshare plan for which the trustee  
293 is appointed.

294 (b) The recorded notice of appointment of trustee or notice  
295 of substitution of trustee shall contain the name and address of  
296 the trustee or substitute trustee, the name and address of the  
297 lienholder, and the name and address of the timeshare plan.

298 (c) The lienholder shall maintain a list of all trustees  
299 and substitute trustees appointed by the lienholder and shall  
300 provide an obligor with verification that a particular person is  
301 an appointed trustee or substitute trustee within 3 business  
302 days following receipt of a written request for such  
303 verification from the obligor.

304 (2) INITIATING THE USE OF A NONJUDICIAL FORECLOSURE  
305 PROCEDURE.—

306 (a) Before initiating the nonjudicial foreclosure procedure  
307 against any timeshare interest in a given timeshare plan, the  
308 managing entity shall inform owners of timeshare interests in  
309 the timeshare plan in writing that the managing entity has the  
310 right to elect to use the nonjudicial foreclosure procedure with  
311 respect to foreclosure of assessment liens as established in  
312 this section. The managing entity shall be deemed to have  
313 complied with the requirements of this paragraph if the owners  
314 of timeshare interests in the given timeshare plan are informed  
315 by mail sent to each owner's notice address, in the notice of an  
316 annual or special meeting of the owners, by posting on the  
317 website of the applicable timeshare plan, or by any owner  
318 communication used by the managing entity.

319 (b) Before initiating the nonjudicial foreclosure procedure

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320 against any timeshare interest, a claim of lien against the  
321 timeshare interest shall be recorded pursuant to s. 721.16 or,  
322 if applicable, s. 718.116 or s. 719.108, and the notice of the  
323 intent to file a lien shall be given pursuant to s. 718.121 for  
324 timeshare condominiums and s. 719.108 for timeshare  
325 cooperatives.

326 (c)1. In order to initiate a nonjudicial foreclosure  
327 procedure against a timeshare interest, the lienholder shall  
328 deliver an affidavit to the trustee that identifies the obligor,  
329 the notice address of the obligor, the timeshare interest, the  
330 official records book and page number where the claim of lien is  
331 recorded, and the name and notice address of any junior  
332 interestholder. The affidavit shall be accompanied by a title  
333 search of the timeshare interest identifying any junior  
334 interestholders of record, and the title search must be  
335 performed within 60 calendar days before the date of the  
336 affidavit.

337 2. The affidavit shall also state that the obligor has  
338 defaulted in the obligation to make a payment under a specified  
339 provision of the timeshare instrument or applicable law.

340 3. The affidavit shall also specify the amounts secured by  
341 the lien as of the date of the affidavit and a per diem amount  
342 to account for further accrual of the amounts secured by the  
343 lien.

344 (3) OBLIGOR'S RIGHT TO OBJECT TO USE OF THE NONJUDICIAL  
345 FORECLOSURE PROCEDURE.—

346 (a) The obligor may object to the lienholder's use of the  
347 nonjudicial foreclosure procedure for a specific default at any  
348 time before the sale of the timeshare interest under subsection

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349 (8) by delivering a written objection to the trustee using the  
350 objection form provided for in subsection (5). If the trustee  
351 receives the written objection from the obligor, the trustee may  
352 not proceed with the nonjudicial foreclosure procedure as to the  
353 default specified in the notice of default and intent to sell  
354 under subsection (5), and the lienholder may proceed thereafter  
355 only with a judicial foreclosure action as to that specified  
356 default.

357 (b) If the obligor delivers the written objection  
358 authorized in paragraph (a) to the trustee more than 30 calendar  
359 days after the notice of default and intent to sell is deemed  
360 perfected under subsection (5), the lienholder is entitled to  
361 collect from the obligor in a judicial foreclosure procedure all  
362 of the costs incurred in the nonjudicial foreclosure procedure.

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

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

368 (b) The trustee has not received a written objection to the  
369 use of the nonjudicial foreclosure procedure under subsection  
370 (3);

371 (c) There is no lis pendens recorded and pending against  
372 the same timeshare interest and the trustee has not been served  
373 notice of the filing of any action to enjoin the nonjudicial  
374 foreclosure sale;

375 (d) The trustee has provided written notice of default and  
376 intent to sell as required by subsection (5) and a period of at  
377 least 30 calendar days has elapsed after such notice is deemed

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378 perfected under subsection (5); and

379 (e) The notice of sale required by subsection (6) has been  
380 recorded in the public records of the county or counties in  
381 which the timeshare interest is located.

382 (5) NOTICE OF DEFAULT AND INTENT TO SELL.—

383 (a) In any foreclosure proceeding under this section, the  
384 trustee is required to notify the obligor of the proceeding by  
385 sending the obligor a written notice of default and intent to  
386 sell to the notice address of the obligor by certified or  
387 registered mail, return receipt requested, or by a permitted  
388 delivery service, return receipt requested, as follows:

389 1. The notice of default and intent to sell shall identify  
390 the obligor, the notice address of the obligor, the legal  
391 description of the timeshare interest, the nature of the  
392 default, the amounts secured by the lien, and a per diem amount  
393 to account for further accrual of the amounts secured by the  
394 lien and shall state the method by which the obligor may cure  
395 the default.

396 2. The notice of default and intent to sell shall include  
397 an objection form with which the obligor can object to the use  
398 of the nonjudicial procedure by signing and returning the  
399 objection form to the trustee. The objection form shall identify  
400 the obligor, the notice address of the obligor, the timeshare  
401 interest, and the return address of the trustee and shall state:  
402 "The undersigned obligor exercises the obligor's right to object  
403 to the use of the nonjudicial foreclosure procedure contained in  
404 section 721.855, Florida Statutes."

405 3. The notice of default and intent to sell shall also  
406 contain a statement in substantially the following form:

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407  
408 If you fail to cure the default as set forth in this  
409 notice or take other appropriate action with regard to  
410 this foreclosure matter, you risk losing ownership of  
411 your timeshare interest through the nonjudicial  
412 foreclosure procedure established in section 721.855,  
413 Florida Statutes. You may choose to sign and send to  
414 the trustee the enclosed objection form, exercising  
415 your right to object to the use of the nonjudicial  
416 procedure. If you do not object to the use of the  
417 nonjudicial foreclosure procedure, you shall not be  
418 subject to a deficiency judgment even if the proceeds  
419 from the sale of your timeshare interest are  
420 insufficient to offset the amounts secured by the  
421 lien, which may include all past due amounts, accrued  
422 interest, late fees, taxes, advances for the payment  
423 of taxes, insurance and maintenance of the timeshare  
424 interest, and any fees or costs incurred by the  
425 lienholder or trustee, including any reasonable  
426 attorney's fees, trustee's fees, and costs incurred in  
427 connection with the default. Upon the trustee's  
428 receipt of your signed objection form, the foreclosure  
429 of the lien with respect to the default specified in  
430 this notice shall be subject to the judicial  
431 foreclosure procedure only. You have the right to cure  
432 your default in the manner set forth in this notice at  
433 any time before the trustee's sale of your timeshare  
434 interest. If you object to the use of the nonjudicial  
435 foreclosure procedure, you may be subject to a

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436 deficiency judgment under any subsequent judicial  
437 foreclosure action. In addition, if you deliver your  
438 written objection to the trustee more than 30 calendar  
439 days after the notice of default and intent to sell  
440 has been delivered, the lienholder is entitled to  
441 collect from you in a judicial foreclosure procedure  
442 all of the costs incurred in the nonjudicial  
443 foreclosure procedure.

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

450 5. Notice under this paragraph is considered perfected upon  
451 the trustee receiving the return receipt bearing the signature  
452 of the obligor.

453 (b) If a signed return receipt from the certified or  
454 registered mail or the permitted delivery service is received by  
455 the trustee within 30 calendar days after the trustee sent the  
456 notice under paragraph (a), but the trustee cannot ascertain  
457 from the receipt that the obligor is the person who signed the  
458 receipt, the trustee shall send a second notice in the form  
459 required under paragraph (a) to the notice address of the  
460 obligor by certified or registered mail, return receipt  
461 requested, or by a permitted delivery service, return receipt  
462 requested. Notice under this paragraph is considered perfected  
463 upon the trustee receiving the return receipt for the second  
464 notice bearing the signature of the obligor. Unless the trustee



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465 receives a signed return receipt from the certified or  
466 registered mail or the permitted delivery service for the second  
467 notice within 30 calendar days after the trustee sent the notice  
468 under this paragraph and the trustee can ascertain from the  
469 receipt that the obligor is the person who signed the receipt,  
470 the trustee shall perfect service in the manner set forth in  
471 either paragraph (c) or paragraph (d).

472 (c) If a signed return receipt from the certified or  
473 registered mail or the permitted delivery service is not  
474 received by the trustee within 30 calendar days after the  
475 trustee sent the notice under paragraph (a) or the second notice  
476 under paragraph (b), if applicable, the trustee shall mail a  
477 copy of the notice required by paragraph (a) by first class  
478 mail, postage prepaid, to the notice address of the person with  
479 the return address of the trustee on the envelope. Notice under  
480 this paragraph is considered perfected upon the mailing of the  
481 copy of the notice to the person.

482 (d)1. If the notice required by paragraph (a) or the second  
483 notice required by paragraph (b), if applicable, is returned as  
484 undeliverable within 30 calendar days after the trustee sent the  
485 notice and if by a diligent search and inquiry the trustee  
486 cannot obtain a different address for the obligor or junior  
487 interestholder, the trustee may perfect notice against that  
488 person by publication in a newspaper of general circulation in  
489 the county or counties in which the timeshare interest is  
490 located. The notice shall appear at least once a week for 2  
491 consecutive weeks. The trustee may group an unlimited number of  
492 notices in the same publication, provided that all of the  
493 notices pertain to the same timeshare plan. Notice under this

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494 subparagraph is considered perfected upon publication as  
495 required in this subparagraph.

496 2. If the trustee's diligent search and inquiry produces an  
497 address different from the notice address, the trustee shall  
498 mail a copy of the notice by first class mail, postage prepaid,  
499 to the new address with the return address of the trustee on the  
500 envelope. Notice under this subparagraph is considered perfected  
501 upon the mailing of the copy of the notice to the new address.

502 (e) If notice is perfected under paragraph (a) or paragraph  
503 (b), the trustee shall execute an affidavit in recordable form  
504 setting forth the manner in which notice was perfected and  
505 attach the affidavit to the certificate of compliance set forth  
506 in subsection (7). The affidavit shall state the nature of the  
507 notice, the date on which the notice was mailed, the name and  
508 address on the envelope containing the notice, the manner in  
509 which the notice was mailed, and the basis for that knowledge.  
510 The signed return receipt from the certified or registered mail  
511 or the permitted delivery service shall be attached to the  
512 affidavit.

513 (f) If notice is perfected under paragraph (c), the trustee  
514 shall execute an affidavit in recordable form setting forth the  
515 manner in which notice was perfected and attach the affidavit to  
516 the certificate of compliance set forth in subsection (7). The  
517 affidavit shall state the nature of the notice, the date on  
518 which the notice was mailed, the name and address on the  
519 envelope containing the notice, the manner in which the notice  
520 was mailed, the fact that a signed receipt from the certified or  
521 registered mail or the permitted delivery service was not timely  
522 received, the date on which a copy of the notice was mailed

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523 again by first class mail with the return address of the trustee  
524 on the envelope, and the name and address on the envelope  
525 containing the notice. The envelopes from the attempts to mail  
526 notice, if available, shall also be attached to the affidavit.

527 (g) If notice is perfected by publication under paragraph  
528 (d), the trustee shall execute an affidavit in recordable form  
529 setting forth the manner in which notice was perfected and  
530 attach the affidavit to the certificate of compliance set forth  
531 in subsection (7). The affidavit shall include all the  
532 information contained in paragraph (f) and shall also state that  
533 the notice was perfected by publication after diligent search  
534 and inquiry was made for the current address for the obligor.  
535 The returned envelope from the attempt to mail notice of the  
536 publication, if available, shall be attached to the affidavit.  
537 No other action of the trustee is necessary to perfect notice.

538 (6) NOTICE OF SALE.—

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

- 540 1. The name and notice addresses of the obligor and any  
541 junior interestholder.
- 542 2. The legal description of the timeshare interest.
- 543 3. The name and address of the trustee.
- 544 4. A description of the default that is the basis for the  
545 foreclosure.
- 546 5. The official records book and page numbers where the  
547 claim of lien is recorded.
- 548 6. The amounts secured by the lien and a per diem amount to  
549 account for further accrual of the amounts secured by the lien.
- 550 7. The date, location, and starting time of the trustee's  
551 sale.

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

556       (b) The trustee shall send a copy of the notice of sale on  
557 the date it is submitted for recording, by first class mail,  
558 postage prepaid, to the notice addresses of the obligor and any  
559 junior interestholder.

560       (c) Subsequent to the date of recording of the notice of  
561 sale, no notice is required to be given to any person claiming  
562 an interest in the timeshare interest except as provided in this  
563 section. The recording of the notice of sale has the same force  
564 and effect as the filing of a lis pendens in a judicial  
565 proceeding under s. 48.23.

566       (d)1. The trustee shall publish the notice of sale in a  
567 newspaper of general circulation in the county or counties in  
568 which the timeshare interest is located at least once a week for  
569 2 consecutive weeks before the date of the sale. The last  
570 publication shall occur at least 5 calendar days before the  
571 sale.

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

575       (7) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

576       (a) Within 3 business days after the trustee conducts a  
577 sale, the trustee shall execute and acknowledge a certificate of  
578 compliance and record it in the public records of the county or  
579 counties in which the timeshare interest is located.

580       (b) In the certificate of compliance, the trustee shall:

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581 1. Confirm delivery of the notice of default and intent to  
582 sell and attach the affidavit required by subsection (5).

583 2. State that the default was not cured and the timeshare  
584 interest was not redeemed, and state that the trustee did not  
585 receive any written objection pursuant to subsection (3).

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

589 4. Confirm that the notice of sale was mailed pursuant to  
590 paragraph (6) (b) together with a list of the parties to whom the  
591 notice of sale was mailed.

592 (c) In furtherance of the execution and recording of the  
593 certificate of compliance required under this subsection, the  
594 trustee is entitled to rely upon an affidavit or certification  
595 from the lienholder as to the facts and circumstances of default  
596 and failure to cure the default.

597 (8) MANNER OF SALE.—

598 (a) The sale of a timeshare interest by the trustee in a  
599 public auction shall be held in the county in which the  
600 timeshare interest is located, on the date, location, and  
601 starting time designated in the notice of sale, which shall be  
602 after 9 a.m. but before 4 p.m. on a business day not less than  
603 30 calendar days after the recording of the notice of sale. The  
604 trustee's sale may occur online at a specific website on the  
605 Internet or in any other manner used by the clerk of the court  
606 for a judicial foreclosure sales procedure in the county or  
607 counties in which the timeshare interest is located.

608 (b) The trustee shall conduct the sale and act as the  
609 auctioneer.

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

614 (d) The trustee may postpone the sale from time to time. In  
615 such case, notice of postponement must be given by the trustee  
616 at the date, time, and location contained in the notice of sale.  
617 The notice of sale for the postponed sale shall be mailed  
618 pursuant to paragraph (6) (b), recorded pursuant to paragraph  
619 (4) (e), and published pursuant to paragraph (6) (d). The  
620 effective date of the initial notice of sale for purposes of  
621 paragraph (4) (b) is not affected by a postponed sale.

622 (e) The highest bidder of the timeshare interest shall pay  
623 the price bid to the trustee in cash or certified funds on the  
624 day of the sale. If the lienholder is the highest bidder, the  
625 lienholder shall receive a credit up to the amount set forth in  
626 the notice of sale as required by subparagraph (6) (a) 6.

627 (f) On the date of the sale and upon receipt of the cash or  
628 certified funds due from the highest bidder, the trustee shall  
629 issue to the highest bidder a certificate of sale stating that a  
630 foreclosure conforming to the requirements of this section has  
631 occurred, including the time, location, and date of the sale,  
632 that the timeshare interest was sold, the amounts secured by the  
633 lien, and the amount of the highest bid. A copy of the  
634 certificate of sale shall be mailed by certified or registered  
635 mail, return receipt requested, or by a permitted delivery  
636 service, return receipt requested, to all persons entitled to  
637 receive a notice of sale under subsection (6).

638 (9) EFFECT OF TRUSTEE'S SALE.—

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639       (a) A sale conducted under subsection (8) forecloses and  
640 terminates all interests of any person to whom notice is given  
641 under paragraph (4) (d) and paragraph (6) (b), and of any other  
642 person claiming by, through, or under any such person, in the  
643 affected timeshare interest. The assessment lien does not merge  
644 into the trustee's deed to any extent that a subsequent judicial  
645 foreclosure or reforeclosure of the assessment lien becomes  
646 necessary or required. A failure to give notice to any person  
647 entitled to notice does not affect the validity of the sale as  
648 to the interests of any person properly notified. A person  
649 entitled to notice but not given notice has the rights of a  
650 person not made a defendant in a judicial foreclosure.

651       (b) A lienholder may conduct a subsequent foreclosure of a  
652 timeshare interest to correct any failure to meet the  
653 requirements of this section before the issuance of a  
654 certificate of sale under paragraph (8) (f).

655       (c) On the issuance of a certificate of sale under  
656 paragraph (8) (f), all rights of redemption that have been  
657 foreclosed under this section shall terminate.

658       (d) A sale conducted under subsection (8) extinguishes the  
659 assessment lien and the obligor's liability for all amounts  
660 secured by the lien. The lienholder has no right to any  
661 deficiency judgment against the obligor after a sale of the  
662 obligor's timeshare interest under this section.

663       (e) The issuance and recording of the trustee's deed is  
664 presumed valid and may be relied upon by third parties without  
665 actual knowledge of irregularities in the sale.

666       (10) TRUSTEE'S DEED.—

667       (a) The trustee's deed shall include the name and address

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668 of the trustee, the name and address of the highest bidder, the  
669 name of the former owner, a legal description of the timeshare  
670 interest, and the name and address of the preparer of the  
671 trustee's deed. The trustee's deed shall recite that the  
672 certificate of compliance was recorded, and shall contain no  
673 warranties of title from the trustee.

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

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

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

681 (c)1. The certificate of compliance and trustee's deed  
682 together are presumptive evidence of the truth of the matters  
683 set forth in them, and no action to set aside the sale and void  
684 the trustee's deed may be filed or otherwise pursued against any  
685 person acquiring the timeshare interest for value, including any  
686 subsequent mortgagee or buyer.

687 2. 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 3. The issuance and recording of a trustee's deed shall  
694 have the same force and effect as the issuance and recording of  
695 a certificate of title by the clerk of the court in a judicial  
696 foreclosure action.



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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 of  
706 competent jurisdiction, name the competing junior  
707 interestholders, and ask the court to determine the proper  
708 distribution of the surplus. In any interpleader action, the  
709 trustee shall recover reasonable 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 1 year after the sale, the surplus, if any, shall be  
714 deposited with the Chief Financial Officer pursuant to chapter  
715 717.

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

723 (12) JUDICIAL FORECLOSURE ACTIONS.-The nonjudicial  
724 foreclosure procedure established in this section does not  
725 impair or otherwise affect the lienholder's continuing right to

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726 bring a judicial foreclosure action, in lieu of using the  
727 nonjudicial foreclosure procedure, with respect to any  
728 assessment lien.

729 (13) APPLICATION.—This section applies to any default  
730 giving rise to the imposition of an assessment lien which occurs  
731 after the effective date of this section. An amendment to a  
732 timeshare instrument is not required to permit a managing entity  
733 lienholder to use the nonjudicial foreclosure procedures of this  
734 section. If a timeshare instrument contains any provision that  
735 prevents the use of nonjudicial foreclosure procedures, an  
736 amendment to the timeshare instrument permitting the use of the  
737 nonjudicial foreclosure procedure set forth in this section may  
738 be adopted by a majority of those present and voting at a duly  
739 called meeting of the owners' association at which at least 15  
740 percent of the voting interests are present in person or by  
741 proxy.

742 (14) ACTIONS FOR FAILURE TO FOLLOW THE NONJUDICIAL  
743 FORECLOSURE PROCEDURE.—An action for actual damages for a  
744 material violation of this section may be brought by an obligor  
745 against the lienholder for the failure to follow the nonjudicial  
746 foreclosure procedure contained in this section.

747 Section 9. Section 721.856, Florida Statutes, is created to  
748 read:

749 721.856 Procedure for the nonjudicial foreclosure of  
750 mortgage liens.—The provisions of this section establish a  
751 nonjudicial foreclosure procedure for mortgage liens.

752 (1) APPOINTMENT OF TRUSTEE.—

753 (a) A trustee or a substitute trustee may be appointed by a  
754 lienholder at any time by recording a notice of appointment of

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755 trustee or notice of substitution of trustee in the public  
756 records of the county or counties in which the timeshare  
757 interest is located. A lienholder may appoint multiple trustees  
758 in a single appointment, and any appointed trustee may be used  
759 by the lienholder regarding the nonjudicial foreclosure of any  
760 mortgage lien.

761 (b) The recorded notice of appointment of trustee or notice  
762 of substitution of trustee shall contain the name and address of  
763 the trustee or substitute trustee, the name and address of the  
764 lienholder, and the name and address of the timeshare plan.

765 (c) The lienholder shall maintain a list of all trustees  
766 and substitute trustees appointed by the lienholder and shall  
767 provide an obligor with verification that a particular person is  
768 an appointed trustee or substitute trustee within 3 business  
769 days after receipt of a written request for such verification  
770 from the obligor.

771 (2) INITIATING THE NONJUDICIAL FORECLOSURE OF MORTGAGE  
772 LIENS.-

773 (a) Before initiating the nonjudicial foreclosure against a  
774 timeshare interest, the mortgage, or an amendment to a mortgage  
775 executed by the obligor before the effective date of this  
776 section, must contain a statement in substantially the following  
777 form:

778  
779 If the mortgagor fails to make timely payments under  
780 the obligation secured by this mortgage, or is  
781 otherwise deemed in uncured default of this mortgage,  
782 the lien against the mortgagor's timeshare interest  
783 created by this mortgage may be foreclosed in

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784 accordance with either a judicial foreclosure  
785 procedure or a nonjudicial procedure and may result in  
786 the loss of your timeshare interest. If the mortgagee  
787 initiates a nonjudicial foreclosure procedure, the  
788 mortgagor shall have the option to object and the  
789 mortgagee may proceed only by filing a judicial  
790 foreclosure action.

791  
792 (b)1. In order to initiate a nonjudicial foreclosure  
793 procedure against a timeshare interest, the lienholder shall  
794 deliver an affidavit to the trustee that identifies the obligor,  
795 the notice address of the obligor, the timeshare interest, the  
796 official records book and page number where the mortgage is  
797 recorded, and the name and notice address of any junior  
798 interestholder. The affidavit shall be accompanied by a title  
799 search of the timeshare interest identifying any junior  
800 interestholders of record, and the title search must be  
801 performed within 60 calendar days before the date of the  
802 affidavit.

803 2. The affidavit shall also state that the obligor has  
804 defaulted in the obligation to make a payment under a specified  
805 provision of the mortgage or is otherwise deemed in uncured  
806 default under a specified provision of the mortgage.

807 3. The affidavit shall also specify the amounts secured by  
808 the lien as of the date of the affidavit and a per diem amount  
809 to account for further accrual of the amounts secured by the  
810 lien.

811 (3) OBLIGOR'S RIGHT TO OBJECT TO USE OF THE NONJUDICIAL  
812 FORECLOSURE PROCEDURE.-

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813       (a) The obligor may object to the lienholder's use of the  
814 nonjudicial foreclosure procedure for a specific default at any  
815 time before the sale of the timeshare interest under subsection  
816 (8) by delivering a written objection to the trustee using the  
817 objection form provided for in subsection (5). If the trustee  
818 receives the written objection from the obligor, the trustee may  
819 not proceed with the nonjudicial foreclosure procedure as to the  
820 default specified in the notice of default and intent to sell  
821 under subsection (5), and the lienholder may proceed thereafter  
822 only with a judicial foreclosure action as to that specified  
823 default.

824       (b) If the obligor delivers the written objection  
825 authorized in paragraph (a) to the trustee more than 30 calendar  
826 days after the notice of default and intent to sell is deemed  
827 perfected under subsection (5), the lienholder is entitled to  
828 collect from the obligor in a judicial foreclosure procedure all  
829 of the costs incurred in the nonjudicial foreclosure procedure.

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

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

835       (b) The trustee has not received a written objection to the  
836 use of the nonjudicial foreclosure procedure under subsection  
837 (3);

838       (c) There is no lis pendens recorded and pending against  
839 the same timeshare interest, and the trustee has not been served  
840 notice of the filing of any action to enjoin the nonjudicial  
841 foreclosure sale;

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

844 (e) The trustee has provided written notice of default and  
845 intent to sell as required by subsection (5) and a period of at  
846 least 30 calendar days has elapsed after such notice is deemed  
847 perfected under subsection (5); and

848 (f) The notice of sale required by subsection (6) has been  
849 recorded in the public records of the county in which the  
850 mortgage was recorded.

851 (5) NOTICE OF DEFAULT AND INTENT TO SELL.—

852 (a) In any foreclosure proceeding under this section, the  
853 trustee is required to notify the obligor of the proceeding by  
854 sending the obligor a written notice of default and intent to  
855 sell to the notice address of the obligor by certified or  
856 registered mail, return receipt requested, or by a permitted  
857 delivery service, return receipt requested, as follows:

858 1. The notice of default and intent to sell shall identify  
859 the obligor, the notice address of the obligor, the legal  
860 description of the timeshare interest, the nature of the  
861 default, the amounts secured by the lien, and a per diem amount  
862 to account for further accrual of the amounts secured by the  
863 lien and shall state the method by which the obligor may cure  
864 the default.

865 2. The notice of default and intent to sell shall include  
866 an objection form with which the obligor can object to the use  
867 of the nonjudicial procedure by signing and returning the  
868 objection form to the trustee. The objection form shall identify  
869 the obligor, the notice address of the obligor, the timeshare  
870 interest, and the return address of the trustee and shall state:

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871 "The undersigned obligor exercises the obligor's right to object  
872 to the use of the nonjudicial foreclosure procedure contained in  
873 section 721.856, Florida Statutes."

874 3. The notice of default and intent to sell shall also  
875 contain a statement in substantially the following form:

876  
877 If you fail to cure the default as set forth in this  
878 notice or take other appropriate action with regard to  
879 this foreclosure matter, you risk losing ownership of  
880 your timeshare interest through the nonjudicial  
881 foreclosure procedure established in section 721.856,  
882 Florida Statutes. You may choose to sign and send to  
883 the trustee the enclosed objection form, exercising  
884 your right to object to the use of the nonjudicial  
885 procedure. If you do not object to the use of the  
886 nonjudicial foreclosure procedure, you shall not be  
887 subject to a deficiency judgment even if the proceeds  
888 from the sale of your timeshare interest are  
889 insufficient to offset the amounts secured by the  
890 lien, which may include all past due amounts, accrued  
891 interest, late fees, taxes, advances for the payment  
892 of taxes, insurance, and maintenance of the timeshare  
893 interest, and any fees or costs incurred by the  
894 lienholder or trustee, including any reasonable  
895 attorney's fees, trustee's fees and costs incurred in  
896 connection with the default. Upon the trustee's  
897 receipt of your signed objection form, the foreclosure  
898 of the lien with respect to the default specified in  
899 this notice shall be subject to the judicial

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900       foreclosure procedure only. You have the right to cure  
901       your default in the manner set forth in this notice at  
902       any time before the trustee's sale of your timeshare  
903       interest. If you object to the use of the nonjudicial  
904       foreclosure procedure, you may be subject to a  
905       deficiency judgment under any subsequent judicial  
906       foreclosure action. In addition, if you deliver your  
907       written objection to the trustee more than 30 calendar  
908       days after the notice of default and intent to sell  
909       has been delivered, the lienholder is entitled to  
910       collect from you in a judicial foreclosure procedure  
911       all of the costs incurred in the nonjudicial  
912       foreclosure procedure.

913  
914       4. The trustee shall also mail a copy of the notice of  
915       default and intent to sell, without the objection form, to the  
916       notice address of any junior interestholder by certified or  
917       registered mail, return receipt requested, or by a permitted  
918       delivery service, return receipt requested.

919       5. Notice under this paragraph is considered perfected upon  
920       the trustee receiving the return receipt bearing the signature  
921       of the obligor.

922       (b) If a signed return receipt from the certified or  
923       registered mail or the permitted delivery service is received by  
924       the trustee within 30 calendar days after the trustee sent the  
925       notice under paragraph (a), but the trustee cannot ascertain  
926       from the receipt that the obligor is the person who signed the  
927       receipt, the trustee shall send a second notice in the form  
928       required under paragraph (a) to the notice address of the



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929 obligor by certified or registered mail, return receipt  
930 requested, or by a permitted delivery service, return receipt  
931 requested. Notice under this paragraph is considered perfected  
932 upon the trustee receiving the return receipt for the second  
933 notice bearing the signature of the obligor. Unless the trustee  
934 receives a signed return receipt from the certified or  
935 registered mail or the permitted delivery service for the second  
936 notice within 30 calendar days after the trustee sent the notice  
937 under this paragraph and the trustee can ascertain from the  
938 receipt that the obligor is the person who signed the receipt,  
939 the trustee shall perfect service in the manner set forth in  
940 either paragraph (c) or paragraph (d).

941 (c) If a signed return receipt from the certified or  
942 registered mail or the permitted delivery service is not  
943 received by the trustee within 30 calendar days after the  
944 trustee sent the notice under paragraph (a) or the second notice  
945 under paragraph (b), if applicable, the trustee shall mail a  
946 copy of the notice required by paragraph (a) by first class  
947 mail, postage prepaid, to the notice address of the person with  
948 the return address of the trustee on the envelope. Notice under  
949 this paragraph is considered perfected upon the mailing of the  
950 copy of the notice to the person.

951 (d)1. If the notice required by paragraph (a) or the second  
952 notice required by paragraph (b), if applicable, is returned as  
953 undeliverable within 30 calendar days after the trustee sent the  
954 notice and if by a diligent search and inquiry the trustee  
955 cannot obtain a different address for the obligor or junior  
956 interestholder, the trustee may perfect notice against that  
957 person by publication in a newspaper of general circulation in

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958 the county or counties in which the timeshare interest is  
959 located. The notice shall appear at least once a week for 2  
960 consecutive weeks. The trustee may group an unlimited number of  
961 notices in the same publication, provided that all of the  
962 notices pertain to the same timeshare plan. Notice under this  
963 subparagraph is considered perfected upon publication as  
964 required in this subparagraph.

965 2. If the trustee's diligent search and inquiry produces an  
966 address different from the notice address, the trustee shall  
967 mail a copy of the notice by first class mail, postage prepaid,  
968 to the new address with the return address of the trustee on the  
969 envelope. Notice under this subparagraph is considered perfected  
970 upon the mailing of the copy of the notice to the new address.

971 (e) If notice is perfected under paragraph (a) or paragraph  
972 (b), the trustee shall execute an affidavit in recordable form  
973 setting forth the manner in which notice was perfected and  
974 attach the affidavit to the certificate of compliance set forth  
975 in subsection (7). The affidavit shall state the nature of the  
976 notice, the date on which the notice was mailed, the name and  
977 address on the envelope containing the notice, the manner in  
978 which the notice was mailed, and the basis for that knowledge.  
979 The signed return receipt from the certified or registered mail  
980 or the permitted delivery service shall be attached to the  
981 affidavit.

982 (f) If notice is perfected under paragraph (c), the trustee  
983 shall execute an affidavit in recordable form setting forth the  
984 manner in which notice was perfected and attach the affidavit to  
985 the certificate of compliance set forth in subsection (7). The  
986 affidavit shall state the nature of the notice, the date on

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987 which the notice was mailed, the name and address on the  
988 envelope containing the notice, the manner in which the notice  
989 was mailed, the fact that a signed receipt from the certified or  
990 registered mail or the permitted delivery service was not timely  
991 received, the date on which a copy of the notice was mailed  
992 again by first class mail with the return address of the trustee  
993 on the envelope, and the name and address on the envelope  
994 containing the notice. The envelopes from the attempts to mail  
995 notice, if available, shall also be attached to the affidavit.

996 (g) If notice is perfected by publication under paragraph  
997 (d), the trustee shall execute an affidavit in recordable form  
998 setting forth the manner in which notice was perfected and  
999 attach the affidavit to the certificate of compliance set forth  
1000 in subsection (7). The affidavit shall include all the  
1001 information contained in paragraph (f) and shall also state that  
1002 the notice was perfected by publication after diligent search  
1003 and inquiry was made for the current address for the obligor.  
1004 The returned envelope from the attempt to mail notice of the  
1005 publication, if available, shall be attached to the affidavit.  
1006 No other action of the trustee is necessary to perfect notice.

1007 (6) NOTICE OF SALE.—

1008 (a) The notice of sale shall set forth:

- 1009 1. The name and notice addresses of the obligor and any  
1010 junior interestholder.
- 1011 2. The legal description of the timeshare interest.
- 1012 3. The name and address of the trustee.
- 1013 4. A description of the default that is the basis for the  
1014 foreclosure.
- 1015 5. The official records book and page numbers where the

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1016 mortgage is recorded.

1017 6. The amounts secured by the lien and a per diem amount to  
1018 account for further accrual of the amounts secured by the lien.

1019 7. The date, location, and starting time of the trustee's  
1020 sale.

1021 8. The right of and the method by which the obligor may  
1022 cure the default or the right of any junior interestholder to  
1023 redeem its interest up to the date the trustee issues the  
1024 certificate of sale in accordance with paragraph (8) (f).

1025 (b) The trustee shall send a copy of the notice of sale on  
1026 the date it is submitted for recording, by first class mail,  
1027 postage prepaid, to the notice addresses of the obligor and any  
1028 junior interestholder.

1029 (c) Subsequent to the date of recording of the notice of  
1030 sale, no notice is required to be given to any person claiming  
1031 an interest in the timeshare interest except as provided in this  
1032 section. The recording of the notice of sale has the same force  
1033 and effect as the filing of a lis pendens in a judicial  
1034 proceeding under s. 48.23.

1035 (d)1. The trustee shall publish the notice of sale in a  
1036 newspaper of general circulation in the county or counties in  
1037 which the timeshare interest is located at least once a week for  
1038 two consecutive weeks before the date of the sale. The last  
1039 publication shall occur at least 5 calendar days before the  
1040 sale.

1041 2. The trustee may group an unlimited number of notices of  
1042 sale in the same publication, provided that all of the notices  
1043 of sale pertain to the same timeshare plan.

1044 (7) TRUSTEE'S CERTIFICATE OF COMPLIANCE.-

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1045 (a) Within 3 business days after the trustee conducts a  
1046 sale, the trustee shall execute and acknowledge a certificate of  
1047 compliance and record it in the public records of the county or  
1048 counties in which the timeshare interest is located.

1049 (b) In the certificate of compliance, the trustee shall:

1050 1. Confirm delivery of the notice of default and intent to  
1051 sell and attach the affidavit required by subsection (5).

1052 2. State that the default was not cured and the timeshare  
1053 interest was not redeemed, and state that the trustee did not  
1054 receive any written objection pursuant to subsection (3).

1055 3. State that the trustee is in possession of the original  
1056 promissory note executed by the mortgagor and secured by the  
1057 mortgage lien.

1058 4. Confirm that the notice of sale was published as  
1059 required under (6) (d) and attach an affidavit of publication for  
1060 the notice of sale.

1061 5. Confirm that the notice of sale was mailed pursuant to  
1062 paragraph (6) (b) together with a list of the parties to whom the  
1063 notice of sale was mailed.

1064 (c) In furtherance of the execution and recording of the  
1065 certificate of compliance required under this subsection, the  
1066 trustee is entitled to rely upon an affidavit or certification  
1067 from the lienholder as to the facts and circumstances of default  
1068 and failure to cure the default.

1069 (8) MANNER OF SALE.—

1070 (a) The sale of a timeshare interest by the trustee in a  
1071 public auction shall be held in the county in which the  
1072 timeshare interest is located, on the date, location, and  
1073 starting time designated in the notice of sale, which shall be

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1074 after 9 a.m. but before 4 p.m. on a business day not less than  
1075 30 calendar days after the recording of the notice of sale. The  
1076 trustee's sale may occur online at a specific website on the  
1077 Internet or in any other manner used by the clerk of the court  
1078 for a judicial foreclosure sales procedure in the county or  
1079 counties in which the timeshare interest is located.

1080 (b) The trustee shall conduct the sale and act as the  
1081 auctioneer.

1082 (c) The lienholder and any person other than the trustee  
1083 may bid at the sale. In lieu of participating in the sale, the  
1084 lienholder may send the trustee written bidding instructions  
1085 that the trustee shall announce as appropriate during the sale.

1086 (d) The trustee may postpone the sale from time to time. In  
1087 such case, notice of postponement must be given by the trustee  
1088 at the date, time, and location contained in the notice of sale.  
1089 The notice of sale for the postponed sale shall be mailed  
1090 pursuant to paragraph (6) (b), recorded pursuant to paragraph  
1091 (4) (f), and published pursuant to paragraph (6) (d). The  
1092 effective date of the initial notice of sale for purposes of  
1093 paragraph (4) (b) is not affected by a postponed sale.

1094 (e) The highest bidder of the timeshare interest shall pay  
1095 the price bid to the trustee in cash or certified funds on the  
1096 day of the sale. If the lienholder is the highest bidder, the  
1097 lienholder shall receive a credit up to the amount set forth in  
1098 the notice of sale as required by subparagraph (6) (a) 6.

1099 (f) On the date of the sale and upon receipt of the cash or  
1100 certified funds due from the highest bidder, the trustee shall  
1101 issue to the highest bidder a certificate of sale stating that a  
1102 foreclosure conforming to the requirements of this section has

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1103 occurred, including the time, location, and date of the sale,  
1104 that the timeshare interest was sold, the amounts secured by the  
1105 lien, and the amount of the highest bid. A copy of the  
1106 certificate of sale shall be mailed by certified or registered  
1107 mail, return receipt requested, or by a permitted delivery  
1108 service, return receipt requested, to all persons entitled to  
1109 receive a notice of sale under subsection (6).

1110 (9) EFFECT OF TRUSTEE'S SALE.—

1111 (a) A sale conducted under subsection (8) forecloses and  
1112 terminates all interests of any person to whom notice is given  
1113 under paragraph (4) (e) and paragraph (6) (b), and of any other  
1114 person claiming by, through, or under any such person, in the  
1115 affected timeshare interest. The mortgage lien does not merge  
1116 into the trustee's deed to any extent that a subsequent judicial  
1117 foreclosure or reforeclosure of the mortgage lien becomes  
1118 necessary or required. A failure to give notice to any person  
1119 entitled to notice does not affect the validity of the sale as  
1120 to the interests of any person properly notified. A person  
1121 entitled to notice but not given notice has the rights of a  
1122 person not made a defendant in a judicial foreclosure. Any  
1123 subsequent foreclosure required by failure to notify a party  
1124 under paragraph (6) (b) may be conducted under this section.

1125 (b) A lienholder may conduct a subsequent foreclosure of a  
1126 timeshare interest to correct any failure to meet the  
1127 requirements of this section before the issuance of a  
1128 certificate of sale under paragraph (8) (f).

1129 (c) On the issuance of a certificate of sale under  
1130 paragraph (8) (f), all rights of redemption that have been  
1131 foreclosed under this section shall terminate.

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1132 (d) A sale conducted under subsection (8) extinguishes the  
1133 lien and the obligor's liability for all amounts secured by the  
1134 lien. The lienholder has no right to any deficiency judgment  
1135 against the obligor after a sale of the obligor's timeshare  
1136 interest under this section.

1137 (e) The issuance and recording of the trustee's deed is  
1138 presumed valid and may be relied upon by third parties without  
1139 actual knowledge of irregularities in the sale.

1140 (10) TRUSTEE'S DEED.—

1141 (a) The trustee's deed shall include the name and address  
1142 of the trustee, the name and address of the highest bidder, the  
1143 name of the former owner, a legal description of the timeshare  
1144 interest, and the name and address of the preparer of the  
1145 trustee's deed. The trustee's deed shall recite that the  
1146 certificate of compliance was recorded, and shall contain no  
1147 warranties of title from the trustee.

1148 (b) Ten calendar days after a sale, absent the prior filing  
1149 and service on the trustee of a judicial action to enjoin  
1150 issuance of the trustee's deed to the timeshare interest, the  
1151 trustee shall:

1152 1. Cancel the original promissory note executed by the  
1153 mortgagor and secured by the mortgage lien.

1154 2. Issue a trustee's deed to the highest bidder.

1155 3. Record the trustee's deed in the public records of the  
1156 county or counties in which the timeshare interest is located.

1157 (c)1. The certificate of compliance and trustee's deed  
1158 together are presumptive evidence of the truth of the matters  
1159 set forth in them, and no action to set aside the sale and void  
1160 the trustee's deed may be filed or otherwise pursued against any



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1161 person acquiring the timeshare interest for value, including any  
1162 subsequent mortgagee or buyer.

1163 2. The trustee's deed conveys to the highest bidder all  
1164 rights, title, and interest in the timeshare interest that the  
1165 former owner had, or had the power to convey, at the time of the  
1166 execution of the mortgage, together with all rights, title, and  
1167 interest that the former owner or his or her successors in  
1168 interest acquired after the execution of the mortgage.

1169 3. The issuance and recording of a trustee's deed shall  
1170 have the same force and effect as the issuance and recording of  
1171 a certificate of title by the clerk of the court in a judicial  
1172 foreclosure action.

1173 (11) DISPOSITION OF PROCEEDS OF SALE.-

1174 (a) The trustee shall apply the proceeds of the sale as  
1175 follows:

1176 1. To the expenses of the sale, including compensation of  
1177 the trustee.

1178 2. To the amount owed and set forth in the notice as  
1179 required in subparagraph (6) (a) 6.

1180 3. If there are junior interestholders, the trustee may  
1181 file an action in interpleader, pay the surplus to a court of  
1182 competent jurisdiction, name the competing junior  
1183 interestholders, and ask the court to determine the proper  
1184 distribution of the surplus. In any interpleader action, the  
1185 trustee shall recover reasonable attorney's fees and costs.

1186 4. If there are no junior interestholders, or if all junior  
1187 interestholders have been paid, any surplus shall be paid to the  
1188 former owner. If the trustee is unable to locate the former  
1189 owner 1 year after the sale, the surplus, if any, shall be

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1190 deposited with the Chief Financial Officer pursuant to chapter  
1191 717.

1192 (b) In disposing of the proceeds of the sale, the trustee  
1193 may rely on the information provided in the affidavit of the  
1194 lienholder under paragraph (2) (c) and, in the event of a dispute  
1195 or uncertainty over such claims, the trustee has the discretion  
1196 to submit the matter to adjudication by court, by interpleader,  
1197 or otherwise and shall recover reasonable attorney's fees and  
1198 costs.

1199 (12) JUDICIAL FORECLOSURE ACTIONS.—The nonjudicial  
1200 foreclosure procedure established in this section does not  
1201 impair or otherwise affect the lienholder's continuing right to  
1202 bring a judicial foreclosure action, in lieu of using the  
1203 nonjudicial foreclosure procedure, with respect to any mortgage  
1204 lien.

1205 (13) ACTIONS FOR FAILURE TO FOLLOW THE NONJUDICIAL  
1206 FORECLOSURE PROCEDURE.—An action for actual damages for a  
1207 material violation of this section may be brought by an obligor  
1208 against the lienholder for the failure to follow the nonjudicial  
1209 foreclosure procedure contained in this section.

1210 Section 10. Subsection (1) of section 721.86, Florida  
1211 Statutes, is amended to read:

1212 721.86 Miscellaneous provisions.—

1213 (1) In the event of a conflict between the provisions of  
1214 this part and the other provisions of this chapter, chapter 702,  
1215 or other applicable law, the provisions of this part shall  
1216 prevail. ~~The procedures in this part must be given effect in the~~  
1217 ~~context of any foreclosure proceedings against timeshare estates~~  
1218 ~~governed by this chapter, chapter 702, chapter 718, or chapter~~

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1219 ~~719.~~

1220 Section 11. This act shall take effect upon becoming a law.