

By the Committee on Regulated Industries; and Senator Gardiner

580-03626-10

20102358c1

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 action or a trustee  
7           procedure 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 the application of certain  
13          provisions with respect to judicial foreclosure  
14          actions; amending s. 721.85, F.S.; conforming  
15          provisions to changes made by the act; creating s.  
16          721.855, F.S.; establishing procedure for the trustee  
17          foreclosure of assessment liens; providing for the  
18          appointment of a trustee; providing recording  
19          requirements for such liens; providing procedures for  
20          the initiation of a trustee foreclosure procedure  
21          against a timeshare interest; providing procedures for  
22          an obligor's objection to the trustee foreclosure  
23          procedure; providing conditions to a trustee's  
24          exercise of power of sale; providing requirements for  
25          a notice of default and intent to sell; providing  
26          requirements for a notice of sale; providing  
27          requirements for the sale by auction of foreclosed  
28          encumbered timeshare interests; providing requirements  
29          for a trustee's certificate of compliance; providing

580-03626-10

20102358c1

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

580-03626-10

20102358c1

59 conflict; amending s. 721.20, F.S.; conforming  
60 terminology; providing an effective date.

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

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

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

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

78 (jj) The following statement in conspicuous type:

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

580-03626-10

20102358c1

88 to the use of the trustee foreclosure procedure and  
89 the managing entity may only proceed by filing a  
90 judicial foreclosure action.

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

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

95 (2) The managing entity may bring a judicial ~~an~~ action in  
96 its name to foreclose a lien under subsection (1) in the manner  
97 a mortgage of real property is foreclosed and may also bring an  
98 action to recover a money judgment for the unpaid assessments  
99 without waiving any claim of lien. As an alternative to  
100 initiating a judicial action, the managing entity may initiate a  
101 trustee procedure to foreclose an assessment lien under s.  
102 721.855.

103 (3) The lien is effective from the date of recording a  
104 claim of lien in the official ~~public~~ records of the county or  
105 counties in which the timeshare interest is accommodations and  
106 ~~facilities constituting the timeshare plan~~ are located. The  
107 claim of lien shall state the name of the timeshare plan and  
108 identify the timeshare interest for which the lien is effective,  
109 state the name of the purchaser, state the assessment amount  
110 due, and state the due dates. Notwithstanding any provision of  
111 s. 718.116(5) ~~s. 718.116(5)(a)~~ or s. 719.108(4) to the contrary,  
112 the lien is effective until satisfied or until 5 years have  
113 expired after the date the claim of lien is recorded unless,  
114 within that time, an action to enforce the lien is commenced  
115 pursuant to subsection (2). A claim of lien for assessments may  
116 include only assessments which are due when the claim is

580-03626-10

20102358c1

117 recorded. A claim of lien shall be signed and acknowledged by an  
118 officer or agent of the managing entity. Upon full payment, the  
119 person making the payment is entitled to receive a satisfaction  
120 of the lien.

121 Section 3. Part III of chapter 721, Florida Statutes,  
122 entitled "Foreclosure of Liens on Timeshare Estates," is renamed  
123 "Foreclosure of Liens on Timeshare Interests."

124 Section 4. Section 721.81, Florida Statutes, is amended to  
125 read:

126 721.81 Legislative purpose.—The purposes of this part are  
127 to:

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

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

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

140 (4) Improve judicial economy and reduce court congestion  
141 and the cost to taxpayers by establishing streamlined procedures  
142 for the judicial and trustee foreclosure of assessment liens and  
143 mortgage liens against timeshare interests ~~estates~~.

144 (5) Recognize that nearly all timeshare interest  
145 foreclosures are uncontested.

580-03626-10

20102358c1

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

150 (7) Recognize that the use of the trustee foreclosure  
 151 procedure established by ss. 721.855 and 721.856 shall have the  
 152 same force and effect as the use of the judicial foreclosure  
 153 procedure against a timeshare interest with respect to the  
 154 provisions of this chapter or any other applicable law. However,  
 155 obligors shall not be subject to a deficiency judgment even if  
 156 the proceeds from the sale of the timeshare interest are  
 157 insufficient to offset the amounts secured by the lien.

158 Section 5. Section 721.82, Florida Statutes, is amended to  
 159 read:

160 721.82 Definitions.—As used in this part, the term:

161 (1) "Amounts secured by the lien" means all amounts secured  
 162 by an assessment lien or mortgage lien, including, but not  
 163 limited to, all past due amounts, accrued interest, late fees,  
 164 taxes, advances for the payment of taxes, insurance and  
 165 maintenance of the timeshare interest, and any fees or costs  
 166 incurred by the lienholder or trustee, including any reasonable  
 167 attorney's fees, trustee's fees, and costs incurred in  
 168 connection with the default.

169 (2) ~~(1)~~ "Assessment lien" means:

170 (a) A lien for delinquent assessments as provided in ss.  
 171 ~~721.16, 718.116, and 719.108,~~ and 721.16 ~~as to timeshare~~  
 172 ~~condominiums;~~ or

173 (b) A lien for unpaid ad valorem assessments, tax  
 174 assessments, ~~taxes~~ and special assessments as provided in s.

580-03626-10

20102358c1

175 192.037(8).

176 (3)~~(2)~~ "Junior interestholder" means any person who has a  
177 lien or interest of record against a timeshare interest estate  
178 in the county or counties in which the timeshare interest estate  
179 is located, which is inferior to the mortgage lien or assessment  
180 lien being foreclosed under this part.

181 (4)~~(3)~~ "Lienholder" means a holder of an assessment lien or  
182 a holder of a mortgage lien, as applicable. A receiver appointed  
183 under s. 721.26 is a lienholder for purposes of foreclosure of  
184 assessment liens under this part.

185 (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.  
186 697.01.

187 (6)~~(5)~~ "Mortgage lien" means a security interest in a  
188 timeshare interest estate created by a mortgage encumbering the  
189 timeshare interest estate.

190 (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

191 (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien  
192 or a person who has assumed the obligation secured by a mortgage  
193 lien.

194 (9)~~(8)~~ "Notice address" means:

195 (a) As to an assessment lien, the address of the ~~current~~  
196 owner of a timeshare interest estate as reflected by the books  
197 and records of the timeshare plan under ss. 721.13(4) and  
198 721.15(7).

199 (b) As to a mortgage lien:

200 1. The address of the mortgagor as set forth in the  
201 mortgage, the promissory note or a separate document executed by  
202 the mortgagor at the time the mortgage lien was created, or the  
203 most current address of the mortgagor according to the records

580-03626-10

20102358c1

204 of the mortgagee; and

205 2. If the ~~current~~ owner of the timeshare interest ~~estate~~ is  
206 different from the mortgagor, the address of the ~~current~~ owner  
207 of the timeshare interest ~~estate~~ as reflected by the books and  
208 records of the mortgagee.

209 (c) As to a junior interestholder, the address as set forth  
210 in the recorded instrument creating the junior lien ~~interest~~ or  
211 interest lien, or in any recorded amendment ~~supplement~~ thereto  
212 changing the address, or in any written notification by the  
213 junior interestholder to the foreclosing lienholder changing the  
214 ~~of such change in~~ address.

215 ~~(10)~~(9) "Obligor" means the mortgagor, the person subject  
216 to an assessment lien, or the record owner of the timeshare  
217 interest ~~estate~~.

218 (11) "Permitted delivery service" means any nationally  
219 recognized common carrier delivery service or international  
220 airmail service that allows for return receipt service.

221 ~~(12)~~(10) "Registered agent" means an agent duly appointed  
222 by the obligor under s. 721.84 for the purpose of accepting all  
223 notices and service of process under this part. A registered  
224 agent may be an individual resident in this state whose business  
225 office qualifies as a registered office, or a domestic or  
226 foreign corporation or a not-for-profit corporation as defined  
227 in chapter 617 authorized to transact business or to conduct its  
228 affairs in this state, whose business office qualifies as a  
229 registered office. A registered agent for any obligor may not be  
230 the lienholder or the attorney for the lienholder.

231 ~~(13)~~(11) "Registered office" means the street address of  
232 the business office of the registered agent appointed under s.



580-03626-10

20102358c1

233 721.84, located in this state.

234 (14) "Trustee" means an attorney who is a member in good  
235 standing of The Florida Bar or his or her law firm, or a title  
236 insurer authorized to transact business in this state under s.  
237 624.401, appointed as trustee or as substitute trustee in  
238 accordance with s. 721.855 or s. 721.856. A receiver appointed  
239 under s. 721.26 may act as a trustee under s. 721.855. A trustee  
240 must be independent as required by s. 721.05(20).

241 Section 6. Section 721.83, Florida Statutes, is amended to  
242 read:

243 721.83 Consolidation of judicial foreclosure actions.—

244 (1) A complaint in a foreclosure proceeding involving  
245 timeshare interests ~~estates~~ may join in the same action multiple  
246 defendant obligors and junior interestholders of separate  
247 timeshare interests ~~estates~~, provided:

248 (a) The foreclosure proceeding involves a single timeshare  
249 property.

250 (b) The foreclosure proceeding is filed by a single  
251 plaintiff.

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

255 (d) The nature of the defaults alleged is the same for each  
256 defendant.

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

260 (2) In any foreclosure proceeding involving multiple  
261 defendants filed under subsection (1), the court shall sever for

580-03626-10

20102358c1

262 separate trial any count of the complaint in which a defense or  
263 counterclaim is timely raised by a defendant.

264 (3) A consolidated timeshare foreclosure action shall be  
265 considered a single action, suit, or proceeding for the payment  
266 of filing fees and service charges pursuant to general law. In  
267 addition to the payment of such filing fees and service charges,  
268 an additional filing fee of up to \$10 for each timeshare  
269 interest estate joined in that action shall be paid to the clerk  
270 of court.

271 Section 7. Section 721.85, Florida Statutes, is amended to  
272 read:

273 721.85 Service to notice address or on registered agent.—

274 (1) Service of process for a foreclosure proceeding  
275 involving a timeshare interest estate may be made by any means  
276 recognized by law. In addition, substituted service on an  
277 obligor ~~a party~~ who has appointed a registered agent under s.  
278 721.84 may be made on such registered agent at the registered  
279 office. Also, when using s. 48.194 where in rem or quasi in rem  
280 relief only is sought, such service of process provisions are  
281 modified in connection with a foreclosure proceeding against a  
282 timeshare interest estate to provide that:

283 (a) Such service of process may be made on any person  
284 whether the person is located inside or outside this state, by  
285 certified mail, ~~or~~ registered mail, or permitted delivery  
286 service, return receipt requested, addressed to the person to be  
287 served at the notice address, or on the person's ~~party's~~  
288 registered agent duly appointed under s. 721.84, at the  
289 registered office; and

290 (b) Service shall be considered obtained upon the signing

580-03626-10

20102358c1

291 of the return receipt by any person at the notice address, or by  
292 the registered agent.

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

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

299 Section 8. Section 721.855, Florida Statutes, is created to  
300 read:

301 721.855 Procedure for the trustee foreclosure of assessment  
302 liens.—The provisions of this section establish a trustee  
303 foreclosure procedure for assessment liens.

304 (1) APPOINTMENT OF TRUSTEE.—

305 (a) A trustee or a substitute trustee may be appointed by a  
306 lienholder at any time by recording a notice of appointment of  
307 trustee or notice of substitution of trustee in the official  
308 records of the county or counties in which the timeshare  
309 interest is located. A lienholder may appoint multiple trustees  
310 in a single appointment, and any appointed trustee may be used  
311 by the lienholder regarding the trustee foreclosure of any  
312 assessment lien under any timeshare plan for which the trustee  
313 is appointed.

314 (b) The recorded notice of appointment of trustee or notice  
315 of substitution of trustee shall contain the name and address of  
316 the trustee or substitute trustee, the name and address of the  
317 lienholder, and the name and address of the timeshare plan.

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

319 (a) Before initiating the trustee foreclosure procedure

580-03626-10

20102358c1

320 against any timeshare interest in a given timeshare plan, the  
321 managing entity shall inform owners of timeshare interests in  
322 the timeshare plan in writing that the managing entity has the  
323 right to elect to use the trustee foreclosure procedure with  
324 respect to foreclosure of assessment liens as established in  
325 this section. The managing entity shall be deemed to have  
326 complied with the requirements of this paragraph if the owners  
327 of timeshare interests in the given timeshare plan are informed  
328 by mail sent to each owner's notice address, in the notice of an  
329 annual or special meeting of the owners, by posting on the  
330 website of the applicable timeshare plan, or by any owner  
331 communication used by the managing entity.

332 (b) Before initiating the trustee foreclosure procedure  
333 against any timeshare interest, a claim of lien against the  
334 timeshare interest shall be recorded under s. 721.16 or, if  
335 applicable, s. 718.116 or s. 719.108, and the notice of the  
336 intent to file a lien shall be given under s. 718.121 for  
337 timeshare condominiums and s. 719.108 for timeshare  
338 cooperatives.

339 (c)1. In order to initiate the trustee foreclosure  
340 procedure against a timeshare interest, the lienholder shall  
341 deliver an affidavit to the trustee that identifies the obligor,  
342 the notice address of the obligor, the timeshare interest, the  
343 date that the notice of the intent to file a lien was given, if  
344 applicable, the official records book and page number where the  
345 claim of lien is recorded, and the name and notice address of  
346 any junior interestholder. The affidavit shall be accompanied by  
347 a title search of the timeshare interest identifying any junior  
348 interestholders of record, and the effective date of the title

580-03626-10

20102358c1

349 search must be a date that is within 60 calendar days before the  
350 date of the affidavit.

351 2. The affidavit shall also state the facts that establish  
352 that the obligor has defaulted in the obligation to make a  
353 payment under a specified provision of the timeshare instrument  
354 or applicable law.

355 3. The affidavit shall also specify the amounts secured by  
356 the lien as of the date of the affidavit and a per diem amount  
357 to account for further accrual of the amounts secured by the  
358 lien.

359 (3) OBLIGOR'S RIGHTS.—

360 (a) The obligor may object to the lienholder's use of the  
361 trustee foreclosure procedure for a specific default any time  
362 before the sale of the timeshare interest under subsection (7)  
363 by delivering a written objection to the trustee using the  
364 objection form provided for in subsection (5). If the trustee  
365 receives the written objection from the obligor, the trustee may  
366 not proceed with the trustee foreclosure procedure as to the  
367 default specified in the notice of default and intent to  
368 foreclose under subsection (5), and the lienholder may proceed  
369 thereafter only with a judicial foreclosure action as to that  
370 specified default.

371 (b) At any time before the trustee issues the certificate  
372 of sale under paragraph (7) (f), the obligor may cure the default  
373 and redeem the timeshare interest by paying to the trustee the  
374 amounts secured by the lien in cash or in certified funds. From  
375 the time the trustee issues the certificate of sale, there is no  
376 right of redemption.

377 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A

580-03626-10

20102358c1

378 trustee may sell an encumbered timeshare interest foreclosed  
379 under this section if:

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

382 (b) The trustee has not received a written objection to the  
383 use of the trustee foreclosure procedure under paragraph (3) (a)  
384 and the timeshare interest was not redeemed under paragraph  
385 (3) (b);

386 (c) There is no lis pendens recorded and pending against  
387 the same timeshare interest and the trustee has not been served  
388 notice of the filing of any action to enjoin the trustee  
389 foreclosure sale;

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

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

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

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

405 1. The notice of default and intent to foreclose shall  
406 identify the obligor, the notice address of the obligor, the

580-03626-10

20102358c1

407 legal description of the timeshare interest, the nature of the  
408 default, the amounts secured by the lien, and a per diem amount  
409 to account for further accrual of the amounts secured by the  
410 lien and shall state the method by which the obligor may cure  
411 the default, including the period of time following the date of  
412 the notice of default and intent to foreclose within which the  
413 obligor may cure the default.

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

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

425  
426 If you fail to cure the default as set forth in this  
427 notice or take other appropriate action with regard to  
428 this foreclosure matter, you risk losing ownership of  
429 your timeshare interest through the trustee  
430 foreclosure procedure established in section 721.855,  
431 Florida Statutes. You may choose to sign and send to  
432 the trustee the enclosed objection form, exercising  
433 your right to object to the use of the trustee  
434 foreclosure procedure. Upon the trustee's receipt of  
435 your signed objection form, the foreclosure of the

580-03626-10

20102358c1

436 lien with respect to the default specified in this  
437 notice shall be subject to the judicial foreclosure  
438 procedure only. You have the right to cure your  
439 default in the manner set forth in this notice at any  
440 time before the trustee's sale of your timeshare  
441 interest. If you do not object to the use of the  
442 trustee foreclosure procedure, you will not be subject  
443 to a deficiency judgment even if the proceeds from the  
444 sale of your timeshare interest are insufficient to  
445 offset the amounts secured by the lien.

446  
447 4. The trustee shall also mail a copy of the notice of  
448 default and intent to foreclose, without the objection form, to  
449 the notice address of any junior interestholder by certified  
450 mail, registered mail, or permitted delivery service, return  
451 receipt requested, and by first-class mail or permitted delivery  
452 service, postage prepaid.

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



580-03626-10

20102358c1

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

475 1. If the trustee's diligent search and inquiry produces an  
476 address different from the notice address, the trustee shall  
477 mail a copy of the notice by certified mail, registered mail, or  
478 permitted delivery service, return receipt requested, and by  
479 first-class mail or permitted delivery service, postage prepaid  
480 to the new address. Notice under this subparagraph is considered  
481 perfected upon the trustee receiving the return receipt bearing  
482 the signature of the obligor or junior interestholder, as  
483 applicable, within 30 calendar days after the trustee sent the  
484 notice under this paragraph. Notice under this subparagraph is  
485 not perfected if the trustee cannot ascertain from the receipt  
486 that the obligor or junior interestholder, as applicable, is the  
487 person who signed the receipt or the receipt from the obligor or  
488 junior interestholder, as applicable, is returned refused.  
489 Unless the trustee perfects notice under this subparagraph, the  
490 trustee shall perfect service in the manner set forth in  
491 paragraph (c).

492 2. If the trustee's diligent search and inquiry does not  
493 locate a different address for the obligor or junior

580-03626-10

20102358c1

494 interestholder, as applicable, the trustee may perfect notice  
495 against that person under paragraph (c).

496 (c) If the notice is not perfected under subparagraph  
497 (a)5., and such notice was not returned as undeliverable, or if  
498 the notice was not perfected under subparagraph (b)1. or  
499 subparagraph (b)2., the trustee may perfect notice by  
500 publication in a newspaper of general circulation in the county  
501 or counties in which the timeshare interest is located. The  
502 notice shall appear at least once a week for 2 consecutive  
503 weeks. The trustee may group an unlimited number of notices in  
504 the same publication, provided that all of the notices pertain  
505 to the same timeshare plan. Notice under this paragraph is  
506 considered perfected upon publication as required in this  
507 paragraph.

508 (d) If notice is perfected under subparagraph (a)5., 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 shall state the nature of the  
513 notice, the date on which the notice was mailed, the name and  
514 address on the envelope containing the notice, the manner in  
515 which the notice was mailed, and the basis for that knowledge.

516 (e) If notice is perfected under subparagraph (b)1., the  
517 trustee shall execute an affidavit in recordable form setting  
518 forth the manner in which notice was perfected and attach the  
519 affidavit to the certificate of compliance set forth in  
520 subsection (9). The affidavit shall state the nature of the  
521 notice, the dates on which the notice was mailed, the name and  
522 addresses on the envelopes containing the notice, the manner in

580-03626-10

20102358c1

523 which the notices were mailed, the fact that a signed receipt  
524 from the certified mail, registered mail, or permitted delivery  
525 service was not timely received, and the name and address on the  
526 envelopes containing the notice.

527 (f) If notice is perfected under paragraph (c), the trustee  
528 shall execute an affidavit in recordable form setting forth the  
529 manner in which notice was perfected and attach the affidavit to  
530 the certificate of compliance set forth in subsection (9). The  
531 affidavit shall state the nature of the notice, the date on  
532 which the notice was mailed, the name and address on the  
533 envelope containing the notice, the manner in which the notice  
534 was mailed, the fact that a signed receipt from the certified or  
535 registered mail or the permitted delivery service was not timely  
536 received, the date on which a copy of the notice was mailed  
537 again by first-class mail with the return address of the trustee  
538 on the envelope, and the name and address on the envelope  
539 containing the notice. The envelopes from the attempts to mail  
540 notice, if available, shall also be attached to the affidavit.

541 (g) If notice is perfected by publication under paragraph  
542 (d), the trustee shall execute an affidavit in recordable form  
543 setting forth the manner in which notice was perfected and  
544 attach the affidavit to the certificate of compliance set forth  
545 in subsection (7). The affidavit shall include all the  
546 information contained in either paragraph (d) or paragraph (e),  
547 as applicable, shall state that the notice was perfected by  
548 publication after diligent search and inquiry was made for the  
549 current address for the person, and shall include a statement  
550 that notice was perfected by publication, and shall set forth  
551 the information required by s. 49.041 in the case of a natural

580-03626-10

20102358c1

552 person, or s. 49.051 in the case of a corporation, whichever is  
553 applicable. No other action of the trustee is necessary to  
554 perfect notice.

555 (6) NOTICE OF SALE.—

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

557 1. The name and notice addresses of the obligor and any  
558 junior interestholder.

559 2. The legal description of the timeshare interest.

560 3. The name and address of the trustee.

561 4. A description of the default that is the basis for the  
562 foreclosure.

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

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

567 7. The date, location, and starting time of the trustee's  
568 sale.

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

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

578 (c) Subsequent to the date of recording of the notice of  
579 sale, no notice is required to be given to any person claiming  
580 an interest in the timeshare interest except as provided in this

580-03626-10

20102358c1

581 section. The recording of the notice of sale has the same force  
582 and effect as the filing of a lis pendens in a judicial  
583 proceeding under s. 48.23.

584 (d)1. The trustee shall publish the notice of sale in a  
585 newspaper of general circulation in the county or counties in  
586 which the timeshare interest is located at least once a week for  
587 2 consecutive weeks before the date of the sale. The last  
588 publication shall occur at least 5 calendar days before the  
589 sale.

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

593 (7) MANNER OF SALE.—

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

604 (b) The trustee shall conduct the sale and act as the  
605 auctioneer.

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

580-03626-10

20102358c1

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

618       (e) The highest bidder of the timeshare interest shall pay  
619 the price bid to the trustee in cash or certified funds on the  
620 day of the sale. If the lienholder is the highest bidder, the  
621 lienholder shall receive a credit up to the amount set forth in  
622 the notice of sale under subparagraph (6) (a) 6.

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

633       (g) Before a sale conducted under this subsection (7), a  
634 junior interestholder may pursue adjudication by court, by  
635 interpleader, or otherwise respecting any matter that is  
636 disputed by the junior interestholder.

637       (8) EFFECT OF TRUSTEE'S SALE.—

638       (a) A sale conducted under subsection (7) forecloses and

580-03626-10

20102358c1

639 terminates all interests of any person to whom notice is given  
640 under paragraph (4) (d) and under paragraph (6) (b), and of any  
641 other person claiming by, through, or under any such person, in  
642 the affected timeshare interest. A failure to give notice to any  
643 person entitled to notice does not affect the validity of the  
644 sale as to the interests of any person properly notified. A  
645 person entitled to notice but not given notice has the rights of  
646 a person not made a defendant in a judicial foreclosure.

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

650 (c) A sale conducted under subsection (7) releases the  
651 obligor's liability for all amounts secured by the lien. The  
652 lienholder has no right to any deficiency judgment against the  
653 obligor after a sale of the obligor's timeshare interest under  
654 this section.

655 (d) The issuance and recording of the trustee's deed is  
656 presumed valid and may be relied upon by third parties without  
657 actual knowledge of irregularities in the foreclosure  
658 proceedings. If for any reason there is an irregularity in the  
659 foreclosure proceedings, a purchaser becomes subrogated to all  
660 the rights of the lienholder to the indebtedness that it secured  
661 to the extent necessary to reforeclose the assessment lien in  
662 order to correct the irregularity, and becomes entitled to an  
663 action de novo for the foreclosure of such assessment lien. Any  
664 subsequent reforeclosure required to correct an irregularity may  
665 be conducted under this section.

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

667 (a) Within 10 calendar days after the trustee conducts a

580-03626-10

20102358c1

668 sale, the trustee shall execute and acknowledge a certificate of  
669 compliance which shall:

670 1. Confirm delivery of the notice of default and intent to  
671 foreclose and attach the affidavit required under subsection  
672 (5).

673 2. State that the default was not cured, that the trustee  
674 did not receive any written objection under paragraph (3) (a),  
675 and that the timeshare interest was not redeemed under paragraph  
676 (3) (b).

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

680 4. Confirm that the notice of sale was mailed under  
681 paragraph (6) (b) together with a list of the parties to whom the  
682 notice of sale was mailed.

683 (b) In furtherance of the execution the certificate of  
684 compliance required under this subsection, the trustee is  
685 entitled to rely upon an affidavit or certification from the  
686 lienholder as to the facts and circumstances of default and  
687 failure to cure the default.

688 (10) TRUSTEE'S DEED.—

689 (a) The trustee's deed shall include the name and address  
690 of the trustee, the name and address of the highest bidder, the  
691 name of the former owner, a legal description of the timeshare  
692 interest, and the name and address of the preparer of the  
693 trustee's deed. The trustee's deed shall recite that the  
694 certificate of compliance was recorded, and shall contain no  
695 warranties of title from the trustee. The certificate of  
696 compliance shall be attached as an exhibit to the trustee's



580-03626-10

20102358c1

697 deed.

698 (b) Ten calendar days after a sale, absent the prior filing  
699 and service on the trustee of a judicial action to enjoin  
700 issuance of the trustee's deed to the timeshare interest, the  
701 trustee shall:

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

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

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

710 2. The trustee's deed conveys to the highest bidder all  
711 rights, title, and interest in the timeshare interest that the  
712 former owner had, or had the power to convey, at the time of the  
713 recording of the claim of lien, together with all rights, title,  
714 and interest that the former owner or his or her successors in  
715 interest acquired after the recording of the claim of lien.

716 3. The issuance and recording of a trustee's deed shall  
717 have the same force and effect as the issuance and recording of  
718 a certificate of title by the clerk of the court in a judicial  
719 foreclosure action.

720 (11) DISPOSITION OF PROCEEDS OF SALE.-

721 (a) The trustee shall apply the proceeds of the sale as  
722 follows:

723 1. To the expenses of the sale, including compensation of  
724 the trustee.

725 2. To the amount owed and set forth in the notice as

580-03626-10

20102358c1

726 required in subparagraph (6)(a)6.

727 3. If there are junior interestholders, the trustee may  
728 file an action in interpleader, pay the surplus to a court of  
729 competent jurisdiction, name the competing junior  
730 interestholders, and ask the court to determine the proper  
731 distribution of the surplus. In any interpleader action, the  
732 trustee shall recover reasonable attorney's fees and costs.

733 4. If there are no junior interestholders, or if all junior  
734 interestholders have been paid, any surplus shall be paid to the  
735 former owner. If the trustee is unable to locate the former  
736 owner 1 year after the sale, the surplus, if any, shall be  
737 deposited with the Chief Financial Officer under chapter 717.

738 (b) In disposing of the proceeds of the sale, the trustee  
739 may rely on the information provided in the affidavit of the  
740 lienholder under paragraph (2)(c) and, in the event of a dispute  
741 or uncertainty over such claims, the trustee has the discretion  
742 to submit the matter to adjudication by court, by interpleader,  
743 or otherwise and shall recover reasonable attorney's fees and  
744 costs.

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

750 (13) APPLICATION.—This section applies to any default  
751 giving rise to the imposition of an assessment lien which occurs  
752 after the effective date of this section. An amendment to a  
753 timeshare instrument is not required to permit a managing entity  
754 lienholder to use the trustee foreclosure procedures of this

580-03626-10

20102358c1

755 section. If a timeshare instrument contains any provision that  
756 prevents the use of the trustee foreclosure procedures, an  
757 amendment to the timeshare instrument permitting the use of the  
758 trustee foreclosure procedure set forth in this section may be  
759 adopted by a majority of those present and voting at a duly  
760 called meeting of the owners' association at which at least 15  
761 percent of the voting interests are present in person or by  
762 proxy.

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

768 Section 9. Section 721.856, Florida Statutes, is created to  
769 read:

770 721.856 Procedure for the trustee foreclosure of mortgage  
771 liens.—The provisions of this section establish a trustee  
772 foreclosure procedure for mortgage liens.

773 (1) APPOINTMENT OF TRUSTEE.—

774 (a) A trustee or a substitute trustee may be appointed by a  
775 lienholder at any time by recording a notice of appointment of  
776 trustee or notice of substitution of trustee in the official  
777 records of the county or counties in which the timeshare  
778 interest is located. A lienholder may appoint multiple trustees  
779 in a single appointment, and any appointed trustee may be used  
780 by the lienholder regarding the trustee foreclosure of any  
781 mortgage lien.

782 (b) The recorded notice of appointment of trustee or notice  
783 of substitution of trustee shall contain the name and address of

580-03626-10

20102358c1

784 the trustee or substitute trustee, the name and address of the  
785 lienholder, and the name and address of the timeshare plan.

786 (2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.-

787 (a) Before initiating the trustee foreclosure against a  
788 timeshare interest, the mortgage, or an amendment to a mortgage  
789 executed by the obligor before the effective date of this  
790 section, must contain a statement in substantially the following  
791 form:

792  
793 If the mortgagor fails to make timely payments under  
794 the obligation secured by this mortgage, or is  
795 otherwise deemed in uncured default of this mortgage,  
796 the lien against the mortgagor's timeshare interest  
797 created by this mortgage may be foreclosed in  
798 accordance with either a judicial foreclosure  
799 procedure or a trustee foreclosure procedure and may  
800 result in the loss of your timeshare interest. If the  
801 mortgagee initiates a trustee foreclosure procedure,  
802 the mortgagor shall have the option to object and the  
803 mortgagee may proceed only by filing a judicial  
804 foreclosure action.

805  
806 (b)1. In order to initiate a trustee foreclosure procedure  
807 against a timeshare interest, the lienholder shall deliver an  
808 affidavit to the trustee that identifies the obligor, the notice  
809 address of the obligor, the timeshare interest, the official  
810 records book and page number where the mortgage is recorded, and  
811 the name and notice address of any junior interestholder. The  
812 affidavit shall be accompanied by a title search of the

580-03626-10

20102358c1

813 timeshare interest identifying any junior interestholders of  
814 record, and the effective date of the title search must be a  
815 date that is within 60 calendar days before the date of the  
816 affidavit.

817 2. The affidavit shall also state the facts that establish  
818 that the obligor has defaulted in the obligation to make a  
819 payment under a specified provision of the mortgage or is  
820 otherwise deemed in uncured default under a specified provision  
821 of the mortgage.

822 3. The affidavit shall also specify the amounts secured by  
823 the lien as of the date of the affidavit and a per diem amount  
824 to account for further accrual of the amounts secured by the  
825 lien.

826 (3) OBLIGOR'S RIGHTS.—

827 (a) The obligor may object to the lienholder's use of the  
828 trustee's foreclosure procedure for a specific default any time  
829 before the sale of the timeshare interest under subsection (8)  
830 by delivering a written objection to the trustee using the  
831 objection form provided for in subsection (5). If the trustee  
832 receives the written objection from the obligor, the trustee may  
833 not proceed with the trustee foreclosure procedure as to the  
834 default specified in the notice of default and intent to  
835 foreclose under subsection (5), and the lienholder may proceed  
836 thereafter only with a judicial foreclosure action as to that  
837 specified default.

838 (b) At any time before the trustee issues the certificate  
839 of sale under paragraph (7) (f), the obligor may cure the default  
840 and redeem the timeshare interest by paying the amounts secured  
841 by the lien in cash or certified funds to the trustee.

580-03626-10

20102358c1

842 Otherwise, once the trustee issues the certificate of sale,  
843 there is no right of redemption.

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

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

849 (b) The trustee has not received a written objection to the  
850 use of the trustee foreclosure procedure under paragraph (3) (a)  
851 and the timeshare interest was not redeemed under paragraph  
852 (3) (b);

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

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

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

863 (f) The notice of sale required by subsection (6) has been  
864 recorded in the official records of the county in which the  
865 mortgage was recorded.

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

867 (a) In any foreclosure proceeding under this section, the  
868 trustee is required to notify the obligor of the proceeding by  
869 sending the obligor a written notice of default and intent to  
870 foreclose to the notice address of the obligor by certified

580-03626-10

20102358c1

871 mail, registered mail, or permitted delivery service, return  
872 receipt requested, and by first-class mail or permitted service,  
873 postage prepaid, as follows:

874 1. The notice of default and intent to foreclose shall  
875 identify the obligor, the notice address of the obligor, the  
876 legal description of the timeshare interest, the nature of the  
877 default, the amounts secured by the lien, and a per diem amount  
878 to account for further accrual of the amounts secured by the  
879 lien and shall state the method by which the obligor may cure  
880 the default, including the period of time following the date of  
881 the notice of default and intent to foreclose within which the  
882 obligor may cure the default.

883 2. The notice of default and intent to foreclose shall  
884 include an objection form with which the obligor can object to  
885 the use of the trustee foreclosure procedure by signing and  
886 returning the objection form to the trustee. The objection form  
887 shall identify the obligor, the notice address of the obligor,  
888 the timeshare interest, and the return address of the trustee  
889 and shall state: "The undersigned obligor exercises the  
890 obligor's right to object to the use of the trustee foreclosure  
891 procedure contained in section 721.856, Florida Statutes."

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

894  
895 If you fail to cure the default as set forth in this  
896 notice or take other appropriate action with regard to  
897 this foreclosure matter, you risk losing ownership of  
898 your timeshare interest through the trustee  
899 foreclosure procedure established in section 721.856,

580-03626-10

20102358c1

900 Florida Statutes. You may choose to sign and send to  
901 the trustee the enclosed objection form, exercising  
902 your right to object to the use of the trustee  
903 foreclosure procedure. Upon the trustee's receipt of  
904 your signed objection form, the foreclosure of the  
905 lien with respect to the default specified in this  
906 notice shall be subject to the judicial foreclosure  
907 procedure only. You have the right to cure your  
908 default in the manner set forth in this notice at any  
909 time before the trustee's sale of your timeshare  
910 interest. If you do not object to the use of the  
911 trustee foreclosure procedure, you will not be subject  
912 to a deficiency judgment even if the proceeds from the  
913 sale of your timeshare interest are insufficient to  
914 offset the amounts secured by the lien.

915  
916 4. The trustee shall also mail a copy of the notice of  
917 default and intent to foreclose, without the objection form, to  
918 the notice address of any junior interestholder by certified  
919 mail, registered mail, or permitted delivery service, return  
920 receipt requested, and by first-class mail or permitted delivery  
921 service, postage prepaid.

922 5. Notice under this paragraph is considered perfected upon  
923 the trustee receiving the return receipt bearing the signature  
924 of the obligor or junior interestholder, as applicable, within  
925 30 calendar days after the trustee sent the notice under this  
926 paragraph. Notice under this paragraph is not perfected if the  
927 notice is returned as undeliverable within 30 calendar days  
928 after the trustee sent the notice, if the trustee cannot



580-03626-10

20102358c1

929 ascertain from the receipt that the obligor or junior  
930 interestholder, as applicable, is the person who signed the  
931 receipt, or if the receipt from the obligor or junior  
932 interestholder, as applicable, is returned or refused within 30  
933 calendar days after the trustee sent the notice.

934 (b) If the notice required by paragraph (a) is returned as  
935 undeliverable within 30 calendar days after the trustee sent the  
936 notice, the trustee shall perform a diligent search and inquiry  
937 to obtain a different address for the obligor or junior  
938 interestholder. For purposes of this paragraph, any address  
939 known and used by the lienholder for sending regular mailings or  
940 other communications from the lienholder to the obligor or  
941 junior interestholder, as applicable, shall be included with  
942 other addresses produced from the diligent search and inquiry,  
943 if any.

944 1. If the trustee's diligent search and inquiry produces an  
945 address different from the notice address, the trustee shall  
946 mail a copy of the notice by certified mail, registered mail, or  
947 permitted delivery service, return receipt requested, and by  
948 first-class mail or permitted delivery service, postage prepaid  
949 to the new address. Notice under this subparagraph is considered  
950 perfected upon the trustee receiving the return receipt bearing  
951 the signature of the obligor or junior interestholder, as  
952 applicable, within 30 calendar days after the trustee sent the  
953 notice under this paragraph. Notice under this subparagraph is  
954 not perfected if the trustee cannot ascertain from the receipt  
955 that the obligor or junior interestholder, as applicable, is the  
956 person who signed the receipt or the receipt from the obligor or  
957 junior interestholder, as applicable, is returned refused.

580-03626-10

20102358c1

958 Unless the trustee perfects notice under this subparagraph, the  
959 trustee shall perfect service in the manner set forth in  
960 paragraph (c).

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

965 (c) If the notice is not perfected under subparagraph  
966 (a)5., and such notice was not returned as undeliverable, or if  
967 the notice was not perfected under subparagraph (b)1. or  
968 subparagraph (b)2., the trustee may perfect notice by  
969 publication in a newspaper of general circulation in the county  
970 or counties in which the timeshare interest is located. The  
971 notice shall appear at least once a week for 2 consecutive  
972 weeks. The trustee may group an unlimited number of notices in  
973 the same publication, provided that all of the notices pertain  
974 to the same timeshare plan. Notice under this paragraph is  
975 considered perfected upon publication as required in this  
976 paragraph.

977 (d) If notice is perfected under subparagraph (a)5., the  
978 trustee shall execute an affidavit in recordable form setting  
979 forth the manner in which notice was perfected and attach the  
980 affidavit to the certificate of compliance set forth in  
981 subsection (9). The affidavit shall state the nature of the  
982 notice, the date on which the notice was mailed, the name and  
983 address on the envelope containing the notice, the manner in  
984 which the notice was mailed, and the basis for that knowledge.

985 (e) If notice is perfected under subparagraph (b)1., the  
986 trustee shall execute an affidavit in recordable form setting

580-03626-10

20102358c1

987 forth the manner in which notice was perfected and attach the  
988 affidavit to the certificate of compliance set forth in  
989 subsection (9). The affidavit shall state the nature of the  
990 notice, the dates on which the notice was mailed, the name and  
991 addresses on the envelopes containing the notice, the manner in  
992 which the notices were mailed, the fact that a signed receipt  
993 from the certified mail, registered mail, or permitted delivery  
994 service was not timely received, and the name and address on the  
995 envelopes containing the notice.

996 (f) If notice is perfected under paragraph (c), the trustee  
997 shall execute an affidavit in recordable form setting forth the  
998 manner in which notice was perfected and attach the affidavit to  
999 the certificate of compliance set forth in subsection (9). The  
1000 affidavit shall include all the information contained in either  
1001 paragraph (d) or paragraph (e), as applicable, shall state that  
1002 the notice was perfected by publication after diligent search  
1003 and inquiry was made for the current address for the person,  
1004 shall include a statement that notice was perfected by  
1005 publication, and shall set forth the information required by s.  
1006 49.041 in the case of a natural person, or s. 49.051 in the case  
1007 of a corporation, whichever is applicable. No other action of  
1008 the trustee is necessary to perfect notice.

1009 (6) NOTICE OF SALE.—

1010 (a) The notice of sale shall set forth:

- 1011 1. The name and notice addresses of the obligor and any  
1012 junior interestholder.
- 1013 2. The legal description of the timeshare interest.
- 1014 3. The name and address of the trustee.
- 1015 4. A description of the default that is the basis for the

580-03626-10

20102358c1

1016 foreclosure.

1017 5. The official records book and page numbers where the  
1018 mortgage is recorded.

1019 6. The amounts secured by the lien and a per diem amount to  
1020 account for further accrual of the amounts secured by the lien.

1021 7. The date, location, and starting time of the trustee's  
1022 sale.

1023 8. The right of and the method by which the obligor may  
1024 cure the default or the right of any junior interestholder to  
1025 redeem its interest up to the date the trustee issues the  
1026 certificate of sale in accordance with paragraph (8)(f).

1027 (b) The trustee shall send a copy of the notice of sale  
1028 within 3 business days following the date it is submitted for  
1029 recording, by first-class mail, postage prepaid, to the notice  
1030 addresses of the obligor and any junior interestholder.

1031 (c) Subsequent to the date of recording of the notice of  
1032 sale, no notice is required to be given to any person claiming  
1033 an interest in the timeshare interest except as provided in this  
1034 section. The recording of the notice of sale has the same force  
1035 and effect as the filing of a lis pendens in a judicial  
1036 proceeding under s. 48.23.

1037 (d)1. The trustee shall publish the notice of sale in a  
1038 newspaper of general circulation in the county or counties in  
1039 which the timeshare interest is located at least once a week for  
1040 two consecutive weeks before the date of the sale. The last  
1041 publication shall occur at least 5 calendar days before the  
1042 sale.

1043 2. The trustee may group an unlimited number of notices of  
1044 sale in the same publication, provided that all of the notices

580-03626-10

20102358c1

1045 of sale pertain to the same timeshare plan.

1046 (7) MANNER OF SALE.—

1047 (a) The sale of a timeshare interest by the trustee in a  
1048 public auction shall be held in the county in which the  
1049 timeshare interest is located, on the date, location, and  
1050 starting time designated in the notice of sale, which shall be  
1051 after 9 a.m. but before 4 p.m. on a business day not less than  
1052 30 calendar days after the recording of the notice of sale. The  
1053 trustee's sale may occur online at a specific website on the  
1054 Internet or in any other manner used by the clerk of the court  
1055 for a judicial foreclosure sales procedure in the county or  
1056 counties in which the timeshare interest is located.

1057 (b) The trustee shall conduct the sale and act as the  
1058 auctioneer.

1059 (c) The lienholder and any person other than the trustee  
1060 may bid at the sale. In lieu of participating in the sale, the  
1061 lienholder may send the trustee written bidding instructions  
1062 that the trustee shall announce as appropriate during the sale.

1063 (d) The trustee may postpone the sale from time to time. In  
1064 such case, notice of postponement must be given by the trustee  
1065 at the date, time, and location contained in the notice of sale.  
1066 The notice of sale for the postponed sale shall be mailed under  
1067 paragraph (6) (b), recorded under paragraph (4) (f), and published  
1068 under paragraph (6) (d). The effective date of the initial notice  
1069 of sale for purposes of paragraph (4) (b) is not affected by a  
1070 postponed sale.

1071 (e) The highest bidder of the timeshare interest shall pay  
1072 the price bid to the trustee in cash or certified funds on the  
1073 day of the sale. If the lienholder is the highest bidder, the

580-03626-10

20102358c1

1074 lienholder shall receive a credit up to the amount set forth in  
1075 the notice of sale as required under subparagraph (6) (a)6.

1076 (f) On the date of the sale and upon receipt of the cash or  
1077 certified funds due from the highest bidder, the trustee shall  
1078 issue to the highest bidder a certificate of sale stating that a  
1079 foreclosure conforming to the requirements of this section has  
1080 occurred, including the time, location, and date of the sale,  
1081 that the timeshare interest was sold, the amounts secured by the  
1082 lien, and the amount of the highest bid. A copy of the  
1083 certificate of sale shall be mailed by certified mail,  
1084 registered mail, or permitted delivery service, return receipt  
1085 requested, to all persons entitled to receive a notice of sale  
1086 under subsection (6).

1087 (g) Before a sale conducted under this subsection (7), a  
1088 junior interestholder may pursue adjudication by court, by  
1089 interpleader, or otherwise respecting any matter that is  
1090 disputed by the junior interestholder.

1091 (8) EFFECT OF TRUSTEE'S SALE.—

1092 (a) A sale conducted under subsection (7) forecloses and  
1093 terminates all interests of any person to whom notice is given  
1094 under paragraph (4) (e) or paragraph (6) (b), and of any other  
1095 person claiming by, through, or under any such person, in the  
1096 affected timeshare interest. A failure to give notice to any  
1097 person entitled to notice does not affect the validity of the  
1098 sale as to the interests of any person properly notified. A  
1099 person entitled to notice but not given notice has the rights of  
1100 a person not made a defendant in a judicial foreclosure.

1101 (b) On the issuance of a certificate of sale under  
1102 paragraph (7) (f), all rights of redemption that have been

580-03626-10

20102358c1

1103 foreclosed under this section shall terminate.

1104 (c) A sale conducted under subsection (7) releases the  
1105 obligor's liability for all amounts secured by the lien. The  
1106 lienholder has no right to any deficiency judgment against the  
1107 obligor after a sale of the obligor's timeshare interest under  
1108 this section.

1109 (d) The issuance and recording of the trustee's deed is  
1110 presumed valid and may be relied upon by third parties without  
1111 actual knowledge of any irregularities in the foreclosure  
1112 proceedings. If for any reason there is an irregularity in the  
1113 foreclosure proceedings, a purchaser becomes subrogated to all  
1114 the rights of the lienholder to the indebtedness that it secured  
1115 to the extent necessary to reforeclose the mortgage lien in  
1116 order to correct the irregularity, and becomes entitled to an  
1117 action de novo for the foreclosure of such mortgage lien. Any  
1118 subsequent reforeclosure required to correct an irregularity may  
1119 be conducted under this section.

1120 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1121 (a) Within 10 calendar days after the trustee conducts a  
1122 sale, the trustee shall execute and acknowledge a certificate of  
1123 compliance which shall:

1124 1. Confirm delivery of the notice of default and intent to  
1125 foreclose and attach the affidavit required under subsection  
1126 (5);

1127 2. State that the default was not cured, that the trustee  
1128 did not receive any written objection under paragraph (3) (a),  
1129 and that the timeshare interest was not redeemed under paragraph  
1130 (3) (b);

1131 3. State that the trustee is in possession of the original

580-03626-10

20102358c1

1132 promissory note executed by the mortgagor and secured by the  
1133 mortgage lien;

1134 4. Confirm that the notice of sale was published as  
1135 required under paragraph (6) (d) and attach an affidavit of  
1136 publication for the notice of sale; and

1137 5. Confirm that the notice of sale was mailed under  
1138 paragraph (6) (b) together with a list of the parties to whom the  
1139 notice of sale was mailed.

1140 (b) In furtherance of the execution and recording of the  
1141 certificate of compliance required under this subsection, the  
1142 trustee is entitled to rely upon an affidavit or certification  
1143 from the lienholder as to the facts and circumstances of default  
1144 and failure to cure the default.

1145 (10) TRUSTEE'S DEED.—

1146 (a) The trustee's deed shall include the name and address  
1147 of the trustee, the name and address of the highest bidder, the  
1148 name of the former owner, a legal description of the timeshare  
1149 interest, and the name and address of the preparer of the  
1150 trustee's deed. The trustee's deed shall recite that the  
1151 certificate of compliance was recorded, and shall contain no  
1152 warranties of title from the trustee. The certificate of  
1153 compliance shall be attached as an exhibit to the trustee's  
1154 deed.

1155 (b) Ten calendar days after a sale, absent the prior filing  
1156 and service on the trustee of a judicial action to enjoin  
1157 issuance of the trustee's deed to the timeshare interest, the  
1158 trustee shall:

1159 1. Cancel the original promissory note executed by the  
1160 mortgagor and secured by the mortgage lien.



580-03626-10

20102358c1

1161 2. Issue a trustee's deed to the highest bidder.

1162 3. Record the trustee's deed in the official records of the  
1163 county or counties in which the timeshare interest is located.

1164 (c)1. The certificate of compliance and trustee's deed  
1165 together are presumptive evidence of the truth of the matters  
1166 set forth in them, and no action to set aside the sale and void  
1167 the trustee's deed may be filed or otherwise pursued against any  
1168 person acquiring the timeshare interest for value.

1169 2. The trustee's deed conveys to the highest bidder all  
1170 rights, title, and interest in the timeshare interest that the  
1171 former owner had, or had the power to convey together with all  
1172 rights, title, and interest that the former owner or his or her  
1173 successors in interest acquired after the execution of the  
1174 mortgage.

1175 3. The issuance and recording of a trustee's deed shall  
1176 have the same force and effect as the issuance and recording of  
1177 a certificate of title by the clerk of the court in a judicial  
1178 foreclosure action.

1179 (11) DISPOSITION OF PROCEEDS OF SALE.-

1180 (a) The trustee shall apply the proceeds of the sale as  
1181 follows:

1182 1. To the expenses of the sale, including compensation of  
1183 the trustee.

1184 2. To the amount owed and set forth in the notice as  
1185 required under subparagraph (6) (a) 6.

1186 3. If there are junior interestholders, the trustee may  
1187 file an action in interpleader, pay the surplus to a court of  
1188 competent jurisdiction, name the competing junior  
1189 interestholders, and ask the court to determine the proper

580-03626-10

20102358c1

1190 distribution of the surplus. In any interpleader action, the  
1191 trustee shall recover reasonable attorney's fees and costs.

1192 4. If there are no junior interestholders, or if all junior  
1193 interestholders have been paid, any surplus shall be paid to the  
1194 former owner. If the trustee is unable to locate the former  
1195 owner 1 year after the sale, the surplus, if any, shall be  
1196 deposited with the Chief Financial Officer under chapter 717.

1197 (b) In disposing of the proceeds of the sale, the trustee  
1198 may rely on the information provided in the affidavit of the  
1199 lienholder under paragraph (2) (c) and, in the event of a dispute  
1200 or uncertainty over such claims, the trustee has the discretion  
1201 to submit the matter to adjudication by court, by interpleader,  
1202 or otherwise and shall recover reasonable attorney's fees and  
1203 costs.

1204 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure  
1205 procedure established in this section does not impair or  
1206 otherwise affect the lienholder's continuing right to bring a  
1207 judicial foreclosure action, in lieu of using the trustee  
1208 foreclosure procedure, with respect to any mortgage lien.

1209 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE  
1210 PROCEDURE.—An action for actual damages for a material violation  
1211 of this section may be brought by an obligor against the  
1212 lienholder for the failure to follow the trustee foreclosure  
1213 procedure contained in this section.

1214 Section 10. Subsections (1) and (4) of section 721.86,  
1215 Florida Statutes, are amended to read:

1216 721.86 Miscellaneous provisions.—

1217 (1) In the event of a conflict between the provisions of  
1218 this part and the other provisions of this chapter, chapter 702,

580-03626-10

20102358c1

1219 or other applicable law, the provisions of this part shall  
1220 prevail. The procedures in this part must be given effect in the  
1221 context of any foreclosure proceedings against timeshare  
1222 interests ~~estates~~ governed by this chapter, chapter 702, chapter  
1223 718, or chapter 719.

1224 (4) In addition to assessment liens and mortgage liens  
1225 arising after the effective date of this part, except as  
1226 provided in s. 721.855(13), the provisions of this part apply to  
1227 all assessment liens and mortgage liens existing prior to the  
1228 effective date of this act regarding which a foreclosure  
1229 proceeding has not yet commenced.

1230 Section 11. Subsection (2) of section 721.20, Florida  
1231 Statutes, is amended to read:

1232 721.20 Licensing requirements; suspension or revocation of  
1233 license; exceptions to applicability; collection of advance fees  
1234 for listings unlawful.—

1235 (2) Solicitors who engage only in the solicitation of  
1236 prospective purchasers and any purchaser who refers no more than  
1237 20 people to a developer or managing entity per year or who  
1238 otherwise provides testimonials on behalf of a developer or  
1239 managing entity are exempt from the provisions of chapter 475.

1240 Section 12. This act shall take effect upon becoming a law.