

By the Committees on Judiciary; and Regulated Industries; and
Senator Gardiner

590-04406A-10

20102358c2

1 A bill to be entitled
2 An act relating to foreclosures; amending s. 721.07,
3 F.S.; providing lien disclosure requirements for filed
4 public offering statements for certain timeshare
5 plans; amending s. 721.13, F.S.; requiring officers,
6 directors, and agents of a timeshare owners'
7 association to act in good faith; providing for
8 damages; providing exceptions; amending s. 721.16,
9 F.S.; authorizing a managing entity to bring a
10 judicial action or a trustee procedure to foreclose
11 certain liens under specified conditions; revising
12 when a lien is effective; providing a directive to the
13 Division of Statutory Revision to rename part III of
14 ch. 721, F.S., to conform to changes made by the act;
15 amending s. 721.81, F.S.; revising and providing
16 legislative purposes of part III; amending s. 721.82,
17 F.S.; revising and providing definitions; amending s.
18 721.83, F.S., relating to consolidation of foreclosure
19 actions; clarifying application to judicial
20 foreclosure actions; amending s. 721.85, F.S.,
21 relating to service to notice address or on registered
22 agent; conforming provisions to changes made by the
23 act; creating s. 721.855, F.S.; establishing
24 procedures for the trustee foreclosure of assessment
25 liens; providing for the appointment of a trustee;
26 providing recording requirements for such liens;
27 providing procedures for the initiation of a trustee
28 foreclosure procedure against a timeshare interest;
29 providing procedures for an obligor's objection to the

590-04406A-10

20102358c2

30 trustee foreclosure procedure; providing conditions to
31 a trustee's exercise of power of sale; providing
32 requirements for a notice of default and intent to
33 sell; providing requirements for a notice of sale;
34 providing requirements for the sale by auction of
35 foreclosed encumbered timeshare interests; providing
36 requirements for a trustee's certificate of
37 compliance; providing for the effect of a trustee's
38 sale; providing requirements for a trustee's deed;
39 providing for the disposition of proceeds of the sale;
40 providing that the trustee foreclosure procedure does
41 not impair or otherwise affect the right to bring
42 certain actions; providing for application; providing
43 for actions for failure to follow the trustee
44 foreclosure procedure; creating s. 721.856, F.S.;

45 establishing procedures for the trustee foreclosure of
46 mortgage liens; providing for the appointment of a
47 trustee; providing recording requirements for such
48 liens; providing procedures for the initiation of a
49 trustee foreclosure procedure against a timeshare
50 interest; providing procedures for an obligor's
51 objection to the trustee foreclosure procedure;
52 providing conditions to a trustee's exercise of power
53 of sale; providing requirements for a notice of
54 default and intent to sell; providing requirements for
55 a notice of sale; providing requirements for the sale
56 by auction of foreclosed encumbered timeshare
57 interests; providing requirements for a trustee's
58 certificate of compliance; providing for the effect of

590-04406A-10

20102358c2

59 a trustee's sale; providing requirements for a
60 trustee's deed; providing for the disposition of
61 proceeds of the sale; providing that the trustee
62 foreclosure procedure does not impair or otherwise
63 affect the right to bring certain actions; providing
64 for actions for failure to follow the trustee
65 foreclosure procedure; amending s. 721.86, F.S.;
66 providing for priority of application in case of
67 conflict; conforming terminology to changes made by
68 the act; amending s. 721.20, F.S.; revising exemptions
69 from certain licensing requirements; providing an
70 effective date.

71
72 Be It Enacted by the Legislature of the State of Florida:

73
74 Section 1. Paragraph (jj) is added to subsection (5) of
75 section 721.07, Florida Statutes, to read:

76 721.07 Public offering statement.—Prior to offering any
77 timeshare plan, the developer must submit a filed public
78 offering statement to the division for approval as prescribed by
79 s. 721.03, s. 721.55, or this section. Until the division
80 approves such filing, any contract regarding the sale of that
81 timeshare plan is subject to cancellation by the purchaser
82 pursuant to s. 721.10.

83 (5) Every filed public offering statement for a timeshare
84 plan which is not a multisite timeshare plan shall contain the
85 information required by this subsection. The division is
86 authorized to provide by rule the method by which a developer
87 must provide such information to the division.

590-04406A-10

20102358c2

88 (jj) The following statement in conspicuous type:

89
90 The managing entity has a lien against each timeshare
91 interest to secure the payment of assessments, ad
92 valorem assessments, tax assessments, and special
93 assessments. Your failure to make required payments
94 may result in the judicial or trustee foreclosure of
95 an assessment lien and the loss of your timeshare
96 interest. If the managing entity initiates a trustee
97 foreclosure procedure, you have the option of
98 objecting to the use of the trustee foreclosure
99 procedure and the managing entity may proceed only by
100 filing a judicial foreclosure action.

101
102 Section 2. Subsection (13) is added to section 721.13,
103 Florida Statutes, to read:

104 721.13 Management.—

105 (13) Notwithstanding any provision of chapter 607, chapter
106 617, or chapter 718, an officer, director, or agent of an
107 owners' association shall discharge his or her duties in good
108 faith, with the care an ordinarily prudent person in a like
109 position would exercise under similar circumstances, and in a
110 manner he or she reasonably believes to be in the interests of
111 the owners' association. An officer, director, or agent of an
112 owners' association is exempt from liability for monetary
113 damages in the same manner as provided in s. 617.0834 unless
114 such officer, director, or agent breached or failed to perform
115 his or her duties and such breach or failure constitutes a
116 violation of criminal law as provided in s. 617.0834;

590-04406A-10

20102358c2

117 constitutes a transaction from which the officer or director
 118 derived an improper personal benefit, directly or indirectly; or
 119 constitutes recklessness or an act or omission that was in bad
 120 faith, with malicious purpose, or in a manner exhibiting wanton
 121 and willful disregard of human rights, safety, or property.

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

124 721.16 Liens for overdue assessments; liens for labor
 125 performed on, or materials furnished to, a timeshare unit.—

126 (2) The managing entity may bring a judicial ~~an~~ action in
 127 its name to foreclose a lien under subsection (1) in the manner
 128 a mortgage of real property is foreclosed and may also bring an
 129 action to recover a money judgment for the unpaid assessments
 130 without waiving any claim of lien. As an alternative to the
 131 judicial action, the managing entity may initiate a trustee
 132 procedure to foreclose an assessment lien pursuant to s.
 133 721.855.

134 (3) The lien is effective from the date of recording a
 135 claim of lien in the official ~~public~~ records of the county or
 136 counties in which the timeshare interest is accommodations and
 137 ~~facilities constituting the timeshare plan are~~ located. The
 138 claim of lien must ~~shall~~ state the name of the timeshare plan
 139 and identify the timeshare interest for which the lien is
 140 effective, ~~state~~ the name of the purchaser, ~~state~~ the assessment
 141 amount due, and ~~state~~ the due dates. Notwithstanding any
 142 provision of s. 718.116(5) ~~(a)~~ or s. 719.108(4) ~~to the contrary,~~
 143 the lien is effective until satisfied or until 5 years ~~have~~
 144 ~~expired~~ after the date the claim of lien is recorded unless,
 145 within that time, an action to enforce the lien is commenced

590-04406A-10

20102358c2

146 pursuant to subsection (2). A claim of lien for assessments may
147 include only assessments that ~~which~~ are due when the claim is
148 recorded. A claim of lien must ~~shall~~ be signed and acknowledged
149 by an officer or agent of the managing entity. Upon full
150 payment, the person making the payment is entitled to receive a
151 satisfaction of the lien.

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

155 Section 5. Section 721.81, Florida Statutes, is amended to
156 read:

157 721.81 Legislative purpose.—The purposes of this part are
158 to:

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

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

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

171 (4) Improve judicial economy and reduce court congestion
172 and the cost to taxpayers by establishing streamlined procedures
173 for the judicial and trustee foreclosure of assessment liens and
174 mortgage liens against timeshare interests ~~estates~~.

590-04406A-10

20102358c2

175 (5) Recognize that nearly all timeshare interest
176 foreclosures are uncontested.

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

181 (7) Recognize that the use of the trustee foreclosure
182 procedure established under ss. 721.855 and 721.856 has the same
183 force and effect as the use of the judicial foreclosure
184 procedure against a timeshare interest with respect to the
185 provisions of this chapter or any other applicable law. However,
186 obligors are not subject to a deficiency judgment even if the
187 proceeds from the sale of the timeshare interest are
188 insufficient to offset the amounts secured by the lien.

189 Section 6. Section 721.82, Florida Statutes, is amended to
190 read:

191 721.82 Definitions.—As used in this part, the term:

192 (1) "Amounts secured by the lien" means all amounts secured
193 by an assessment lien or mortgage lien, including, but not
194 limited to, all past due amounts, accrued interest, late fees,
195 taxes, advances for the payment of taxes, insurance and
196 maintenance of the timeshare interest, and any fees or costs
197 incurred by the lienholder or trustee, including any reasonable
198 attorney's fees, trustee's fees, and costs incurred in
199 connection with the default.

200 (2) ~~(1)~~ "Assessment lien" means:

201 (a) A lien for delinquent assessments as provided in ss.
202 721.16, 718.116, and 719.108, and 721.16 as to timeshare
203 condominiums; or

590-04406A-10

20102358c2

204 (b) A lien for unpaid ad valorem assessments, tax
205 assessments, taxes and special assessments as provided in s.
206 192.037(8).

207 (3)-(2) "Junior interestholder" means any person who has a
208 lien or interest of record against a timeshare interest estate
209 in the county or counties in which the timeshare interest estate
210 is located, which is inferior to the mortgage lien or assessment
211 lien being foreclosed under this part.

212 (4)-(3) "Lienholder" means a holder of an assessment lien or
213 a holder of a mortgage lien, as applicable. A receiver appointed
214 under s. 721.26 is a lienholder for purposes of foreclosure of
215 assessment liens under this part.

216 (5)-(4) "Mortgage" has the same meaning as ~~set forth~~ in s.
217 697.01.

218 (6)-(5) "Mortgage lien" means a security interest in a
219 timeshare interest estate created by a mortgage encumbering the
220 timeshare interest estate.

221 (7)-(6) "Mortgagee" means a person holding a mortgage lien.

222 (8)-(7) "Mortgagor" means a person granting a mortgage lien
223 or a person who has assumed the obligation secured by a mortgage
224 lien.

225 (9)-(8) "Notice address" means:

226 (a) As to an assessment lien, the address of the ~~current~~
227 owner of a timeshare interest estate as reflected by the books
228 and records of the timeshare plan under ss. 721.13(4) and
229 721.15(7).

230 (b) As to a mortgage lien:

231 1. The address of the mortgagor as set forth in the
232 mortgage, the promissory note, or a separate document executed

590-04406A-10

20102358c2

233 by the mortgagor at the time the mortgage lien was created, or
234 the most current address of the mortgagor according to the
235 records of the mortgagee; and

236 2. If the ~~current~~ owner of the timeshare interest ~~estate~~ is
237 different from the mortgagor, the address of the ~~current~~ owner
238 of the timeshare interest ~~estate~~ as reflected by the books and
239 records of the mortgagee.

240 (c) As to a junior interestholder, the address as set forth
241 in the recorded instrument creating the junior lien ~~interest~~ or
242 interest ~~lien~~, or in any recorded amendment ~~supplement~~ thereto
243 changing the address, or in any written notification by the
244 junior interestholder to the foreclosing lienholder changing the
245 ~~of such change in~~ address.

246 (10) ~~(9)~~ "Obligor" means the mortgagor, the person subject
247 to an assessment lien, or the record owner of the timeshare
248 interest ~~estate~~.

249 (11) "Permitted delivery service" means any nationally
250 recognized common carrier delivery service or international
251 airmail service that allows for return receipt service.

252 (12) ~~(10)~~ "Registered agent" means an agent duly appointed
253 by the obligor under s. 721.84 for the purpose of accepting all
254 notices and service of process under this part. A registered
255 agent may be an individual resident in this state whose business
256 office qualifies as a registered office, or a domestic or
257 foreign corporation or a not-for-profit corporation as defined
258 in chapter 617 authorized to transact business or to conduct its
259 affairs in this state, whose business office qualifies as a
260 registered office. A registered agent ~~for any obligor~~ may not be
261 the lienholder or the attorney for the lienholder.

590-04406A-10

20102358c2

262 (13)~~(11)~~ "Registered office" means the street address of
263 the business office of the registered agent appointed under s.
264 721.84, located in this state.

265 (14) "Trustee" means an attorney who is a member in good
266 standing of The Florida Bar and who has been practicing law for
267 at least 5 years or that attorney's law firm, or a title insurer
268 authorized to transact business in this state under s. 624.401
269 for at least 5 years, and who is appointed as trustee or as
270 substitute trustee in accordance with s. 721.855 or s. 721.856.
271 A receiver appointed under s. 721.26 may act as a trustee under
272 s. 721.855. A trustee must be independent as defined in s.
273 721.05.

274 Section 7. Section 721.83, Florida Statutes, is amended to
275 read:

276 721.83 Consolidation of judicial foreclosure actions.—

277 (1) A complaint in a foreclosure proceeding involving
278 timeshare interests ~~estates~~ may join in the same action multiple
279 defendant obligors and junior interestholders of separate
280 timeshare interests if ~~estates, provided:~~

281 (a) The foreclosure proceeding involves a single timeshare
282 property.

283 (b) The foreclosure proceeding is filed by a single
284 plaintiff.

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

288 (d) The nature of the defaults alleged is the same for each
289 defendant.

290 (e) No more than 15 timeshare interests ~~estates~~, without

590-04406A-10

20102358c2

291 regard to the number of defendants, are joined within the same
292 consolidated foreclosure action.

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

297 (3) A consolidated timeshare foreclosure action is ~~shall be~~
298 considered a single action, suit, or proceeding for the payment
299 of filing fees and service charges pursuant to general law. ~~In~~
300 ~~addition to the payment of such filing fees and service charges,~~
301 An additional filing fee of up to \$10 for each timeshare
302 interest estate joined in that action shall be paid to the clerk
303 of court.

304 Section 8. Section 721.85, Florida Statutes, is amended to
305 read:

306 721.85 Service to notice address or on registered agent.—

307 (1) Service of process for a foreclosure proceeding
308 involving a timeshare interest estate may be made by any means
309 recognized by law. In addition, substituted service on an
310 obligor a party who has appointed a registered agent under s.
311 721.84 may be made on such registered agent at the registered
312 office. ~~If Also, when~~ using s. 48.194 where in rem or quasi in
313 rem relief only is sought, such service of process provisions
314 are modified in connection with a foreclosure proceeding against
315 a timeshare interest estate to provide that:

316 (a) Such service of process may be made on any person
317 whether the person is located inside or outside this state, by
318 certified mail, ~~or~~ registered mail, or permitted delivery
319 service, return receipt requested, addressed to the person to be

590-04406A-10

20102358c2

320 served at the notice address, or on the person's ~~party's~~
321 registered agent duly appointed under s. 721.84, at the
322 registered office; and

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

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

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

332 Section 9. Section 721.855, Florida Statutes, is created to
333 read:

334 721.855 Procedure for the trustee foreclosure of assessment
335 liens.—This section establishes a trustee foreclosure procedure
336 for assessment liens.

337 (1) APPOINTMENT OF TRUSTEE.—

338 (a) A trustee or a substitute trustee may be appointed by a
339 lienholder at any time by recording a notice of appointment of
340 trustee or notice of substitution of trustee in the official
341 records of the county or counties in which the timeshare
342 interest is located. A lienholder may appoint multiple trustees
343 in a single appointment, and an appointed trustee may be used by
344 the lienholder regarding the trustee foreclosure of an
345 assessment lien under the timeshare plan for which the trustee
346 is appointed.

347 (b) A trustee shall use good faith, skill, care, and
348 diligence in discharging all of the trustee duties under this

590-04406A-10

20102358c2

349 section and shall deal honestly and fairly with all parties.

350 (c) The recorded notice of appointment of trustee or notice
351 of substitution of trustee must contain the name and address of
352 the trustee or substitute trustee, the name and address of the
353 lienholder, and the name and address of the timeshare plan.

354 (2) INITIATING A TRUSTEE FORECLOSURE PROCEDURE.—

355 (a) Before initiating a trustee foreclosure procedure
356 against a timeshare interest in a given timeshare plan:

357 1. If a timeshare instrument contains any provision that
358 specifically prevents the use of the trustee foreclosure
359 procedure, or if the managing entity otherwise determines that
360 the timeshare instrument should be amended to specifically
361 provide for the use of the trustee foreclosure procedure, an
362 amendment to the timeshare instrument permitting the use of the
363 trustee foreclosure procedure set forth in this section must be
364 adopted and recorded before the use of the trustee foreclosure
365 procedure. Such amendment to the timeshare instrument,
366 containing a statement in substantially the following form, may
367 be adopted by a majority of those present and voting at a duly
368 called meeting of the owners' association at which at least 15
369 percent of the voting interest are present in person or by
370 proxy:

371

372 If a timeshare owner fails to make timely payments of
373 timeshare plan common expenses, ad valorem taxes, or
374 special assessments, an assessment lien against the
375 timeshare owner's timeshare interest may be foreclosed
376 in accordance with a judicial foreclosure procedure or
377 a trustee foreclosure procedure, either of which may

590-04406A-10

20102358c2

378 result in the loss of the timeshare owner's timeshare
379 interest. If the managing entity initiates a trustee
380 foreclosure procedure, the timeshare owner may object
381 pursuant to state law, and, in such event, the
382 managing entity may proceed only by filing a judicial
383 foreclosure action.

384
385 2. The managing entity shall inform owners of timeshare
386 interests in the timeshare plan in writing that the managing
387 entity has the right to elect to use the trustee foreclosure
388 procedure with respect to foreclosure of assessment liens as
389 established in this section. The managing entity is deemed to
390 have complied with this subparagraph if the owners of timeshare
391 interests in the given timeshare plan are informed by mail sent
392 to each owner's notice address, in the notice of an annual or
393 special meeting of the owners, by posting on the website of the
394 applicable timeshare plan, or by any owner communication used by
395 the managing entity.

396 (b) Before initiating the trustee foreclosure procedure
397 against a timeshare interest, a claim of lien against the
398 timeshare interest must be recorded under s. 721.16 or, if
399 applicable, s. 718.116 or s. 719.108, and the notice of the
400 intent to file a lien must be given under s. 718.121 for
401 timeshare condominiums and s. 719.108 for timeshare
402 cooperatives.

403 (c) In order to initiate a trustee foreclosure procedure
404 against a timeshare interest, the lienholder shall deliver an
405 affidavit to the trustee that identifies the obligor; the notice
406 address of the obligor; the timeshare interest; the date that

590-04406A-10

20102358c2

407 the notice of the intent to file a lien was given, if
408 applicable; the official records book and page number where the
409 claim of lien is recorded; and the name and notice address of
410 any junior interestholder. The affidavit must be accompanied by
411 a title search of the timeshare interest identifying any junior
412 interestholders of record, and the effective date of the title
413 search must be a date that is within 60 calendar days before the
414 date of the affidavit. The affidavit must also:

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

418 2. Specify the amounts secured by the lien as of the date
419 of the affidavit and a per diem amount to account for further
420 accrual of the amounts secured by the lien.

421 3. State that the assessment lien was properly created and
422 authorized pursuant to the timeshare instrument and applicable
423 law.

424 (3) OBLIGOR'S RIGHTS.—

425 (a) The obligor may object to the lienholder's use of the
426 trustee foreclosure procedure for a specific default any time
427 before the sale of the timeshare interest under subsection (7)
428 by delivering a written objection to the trustee using the
429 objection form provided in subsection (5). If the trustee
430 receives the written objection from the obligor, the trustee may
431 not proceed with the trustee foreclosure procedure as to the
432 default specified in the notice of default and intent to
433 foreclose under subsection (5), and the lienholder may proceed
434 only with a judicial foreclosure action as to that specified
435 default.

590-04406A-10

20102358c2

436 (b) At any time before the trustee issues the certificate
437 of sale under paragraph (7) (f), the obligor may cure the default
438 and redeem the timeshare interest by paying the amounts secured
439 by the lien in cash or certified funds to the trustee. There is
440 no right of redemption after the trustee issues the certificate
441 of sale.

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

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

447 (b) The trustee has not received a written objection to the
448 use of the trustee foreclosure procedure under paragraph (3) (a)
449 and the timeshare interest was not redeemed under paragraph
450 (3) (b);

451 (c) There is no lis pendens recorded and pending against
452 the same timeshare interest and the trustee has not been served
453 notice of the filing of any action to enjoin the trustee
454 foreclosure sale;

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

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

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

463 (a) In any foreclosure proceeding under this section, the
464 trustee must notify the obligor of the proceeding by sending the

590-04406A-10

20102358c2

465 obligor a written notice of default and intent to foreclose to
466 the notice address of the obligor by certified mail, registered
467 mail, or permitted delivery service, return receipt requested,
468 and by first-class mail or permitted delivery service, postage
469 prepaid, as follows:

470 1. The notice of default and intent to foreclose must
471 identify the obligor, the notice address of the obligor, the
472 legal description of the timeshare interest, the nature of the
473 default, the amounts secured by the lien, and a per diem amount
474 to account for further accrual of the amounts secured by the
475 lien and state the method by which the obligor may cure the
476 default, including the period of time after the date of the
477 notice of default and intent to foreclose within which the
478 obligor may cure the default.

479 2. The notice of default and intent to foreclose must
480 include an objection form with which the obligor can object to
481 the use of the trustee foreclosure procedure by signing and
482 returning the objection form to the trustee. The objection form
483 must identify the obligor, the notice address of the obligor,
484 the timeshare interest, and the return address of the trustee
485 and state: "The undersigned obligor exercises the obligor's
486 right to object to the use of the trustee foreclosure procedure
487 contained in s. 721.855, Florida Statutes."

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

490
491 If you fail to cure the default as set forth in this
492 notice or take other appropriate action with regard to
493 this foreclosure matter, you risk losing ownership of

590-04406A-10

20102358c2

494 your timeshare interest through the trustee
495 foreclosure procedure established in section 721.855,
496 Florida Statutes. You may choose to sign and send to
497 the trustee the enclosed objection form, exercising
498 your right to object to the use of the trustee
499 foreclosure procedure. Upon the trustee's receipt of
500 your signed objection form, the foreclosure of the
501 lien with respect to the default specified in this
502 notice shall be subject to the judicial foreclosure
503 procedure only. You have the right to cure your
504 default in the manner set forth in this notice at any
505 time before the trustee's sale of your timeshare
506 interest. If you do not object to the use of the
507 trustee foreclosure procedure, you will not be subject
508 to a deficiency judgment even if the proceeds from the
509 sale of your timeshare interest are insufficient to
510 offset the amounts secured by the lien.

511
512 4. The trustee shall also mail a copy of the notice of
513 default and intent to foreclose, without the objection form, to
514 the notice address of any junior interestholder by certified
515 mail, registered mail, or permitted delivery service, return
516 receipt requested, and by first-class mail or permitted delivery
517 service, postage prepaid.

518 5. Notice under this paragraph is considered perfected upon
519 the trustee receiving the return receipt bearing the signature
520 of the obligor or junior interestholder, as applicable, within
521 30 calendar days after the trustee sent the notice. Notice is
522 not perfected if the notice is returned as undeliverable within

590-04406A-10

20102358c2

523 30 calendar days after the trustee sent the notice, if the
524 trustee cannot ascertain from the receipt that the obligor or
525 junior interestholder is the person who signed the receipt, or
526 if the receipt from the obligor or junior interestholder is
527 returned or refused within 30 calendar days after the trustee
528 sent the notice.

529 (b) If the notice required by paragraph (a) is returned as
530 undeliverable within 30 calendar days after the trustee sent the
531 notice, the trustee shall perform a diligent search and inquiry
532 to obtain a different address for the obligor or junior
533 interestholder. For purposes of this paragraph, any address
534 known and used by the lienholder for sending regular mailings or
535 other communications from the lienholder to the obligor or
536 junior interestholder, as applicable, shall be included with
537 other addresses produced from the diligent search and inquiry,
538 if any.

539 1. If the trustee's diligent search and inquiry produces an
540 address different from the notice address, the trustee shall
541 mail a copy of the notice by certified mail, registered mail, or
542 permitted delivery service, return receipt requested, and by
543 first-class mail or permitted delivery service, postage prepaid,
544 to the new address. Notice is considered perfected upon the
545 trustee receiving the return receipt bearing the signature of
546 the obligor or junior interestholder, as applicable, within 30
547 calendar days after the trustee sent the notice under this
548 subparagraph. Notice is not perfected if the trustee cannot
549 ascertain from the receipt that the obligor or junior
550 interestholder is the person who signed the receipt or the
551 receipt from the obligor or junior interestholder is returned

590-04406A-10

20102358c2

552 refused. If the trustee does not perfect notice under this
553 subparagraph, the trustee shall perfect service under paragraph
554 (c).

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

559 (c) If the notice is not perfected under subparagraph (a)5.
560 and was not returned as undeliverable, or if the notice was not
561 perfected under subparagraph (b)1., the trustee may perfect
562 notice by publication in a newspaper of general circulation in
563 the county or counties in which the timeshare interest is
564 located. The notice must appear at least once a week for 2
565 consecutive weeks. The trustee may group an unlimited number of
566 notices in the same publication, if all of the notices pertain
567 to the same timeshare plan. Notice is considered perfected upon
568 publication as required in this paragraph.

569 (d) If notice is perfected under subparagraph (a)5., the
570 trustee shall execute an affidavit in recordable form setting
571 forth the manner in which notice was perfected and attach the
572 affidavit to the certificate of compliance set forth in
573 subsection (9). The affidavit must state the nature of the
574 notice, the date on which the notice was mailed, the name and
575 address on the envelope containing the notice, the manner in
576 which the notice was mailed, and the basis for that knowledge.

577 (e) If notice is perfected under subparagraph (b)1., the
578 trustee shall execute an affidavit in recordable form setting
579 forth the manner in which notice was perfected and attach the
580 affidavit to the certificate of compliance set forth in

590-04406A-10

20102358c2

581 subsection (9). The affidavit must state the nature of the
582 notice, the dates on which the notice was mailed, the name and
583 addresses on the envelopes containing the notice, the manner in
584 which the notices were mailed, the fact that a signed receipt
585 from the certified mail, registered mail, or permitted delivery
586 service was timely received, and the name and address on the
587 envelopes containing the notice.

588 (f) If notice is perfected by publication under paragraph
589 (c), the trustee shall execute an affidavit in recordable form
590 setting forth the manner in which notice was perfected and
591 attach the affidavit to the certificate of compliance set forth
592 in subsection (9). The affidavit must include all the
593 information contained in paragraph (d) or paragraph (e), as
594 applicable, state that the notice was perfected by publication
595 after diligent search and inquiry was made for the current
596 address for the person, include a statement that notice was
597 perfected by publication, and shall set forth the information
598 required by s. 49.041 in the case of a natural person or s.
599 49.051 in the case of a corporation, as applicable. No other
600 action of the trustee is necessary to perfect notice.

601 (6) NOTICE OF SALE.—

602 (a) The notice of sale must include:

- 603 1. The name and notice addresses of the obligor and any
604 junior interestholder.
- 605 2. The legal description of the timeshare interest.
- 606 3. The name and address of the trustee.
- 607 4. A description of the default that is the basis for the
608 foreclosure.
- 609 5. The official records book and page numbers where the

590-04406A-10

20102358c2

610 claim of lien is recorded.

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

613 7. The date, location, and starting time of the trustee's
614 sale.

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

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

624 (c) After the date of recording the notice of sale, notice
625 does not have to be given to any person claiming an interest in
626 the timeshare interest except as provided in this section. The
627 recording of the notice of sale has the same force and effect as
628 the filing of a lis pendens in a judicial proceeding under s.
629 48.23.

630 (d) The trustee shall publish the notice of sale in a
631 newspaper of general circulation in the county or counties in
632 which the timeshare interest is located at least once a week for
633 2 consecutive weeks before the date of the sale. The last
634 publication must occur at least 5 calendar days before the sale.
635 The trustee may group an unlimited number of notices of sale in
636 the same publication, if all of the notices of sale pertain to
637 the same timeshare plan.

638 (7) MANNER OF SALE.-

590-04406A-10

20102358c2

639 (a) The sale of a timeshare interest by the trustee in a
640 public auction shall be held in the county in which the
641 timeshare interest is located, on the date, location, and
642 starting time designated in the notice of sale, which must be
643 after 9 a.m. but before 4 p.m. on a business day at least 30
644 calendar days after the recording of the notice of sale. The
645 trustee's sale may occur online at a specific website on the
646 Internet or in any other manner used by the clerk of the court
647 for a judicial foreclosure sales procedure in the county or
648 counties in which the timeshare interest is located.

649 (b) The trustee shall conduct the sale and act as the
650 auctioneer.

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

655 (d) The trustee may postpone the sale, in which case,
656 notice of postponement must be given by the trustee at the date,
657 time, and location contained in the notice of sale. The notice
658 of sale for the postponed sale must be mailed under paragraph
659 (6) (b), recorded under paragraph (4) (e), and published under
660 paragraph (6) (d). The effective date of the initial notice of
661 sale is not affected by a postponed sale.

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

667 (f) On the date of the sale and upon receipt of the cash or

590-04406A-10

20102358c2

668 certified funds due from the highest bidder, the trustee shall
669 issue to the highest bidder a certificate of sale stating that a
670 foreclosure conforming to the requirements of this section has
671 occurred, including the time, location, and date of the sale,
672 that the timeshare interest was sold, the amounts secured by the
673 lien, and the amount of the highest bid. A copy of the
674 certificate of sale shall be mailed by certified mail,
675 registered mail, or permitted delivery service, return receipt
676 requested, to all persons entitled to receive a notice of sale
677 under subsection (6).

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

682 (8) EFFECT OF TRUSTEE'S SALE.—

683 (a) A sale conducted under subsection (7) forecloses and
684 terminates all interests of any person to whom notice is given
685 under paragraphs (4) (d) and (6) (b), and any other person
686 claiming interests by, through, or under any such person, in the
687 affected timeshare interest. A failure to give notice to any
688 person entitled to notice does not affect the validity of the
689 sale as to the interests of persons properly notified. A person
690 entitled to notice but not given notice has the rights of a
691 person not made a defendant in a judicial foreclosure.

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

695 (c) A sale conducted under subsection (7) releases the
696 obligor's liability for all amounts secured by the lien. The

590-04406A-10

20102358c2

697 lienholder does not have a right to any deficiency judgment
698 against the obligor after a sale of the obligor's timeshare
699 interest under this section.

700 (d) The issuance and recording of the trustee's deed is
701 presumed valid and may be relied upon by third parties without
702 actual knowledge of irregularities in the foreclosure
703 proceedings. If for any reason there is an irregularity in the
704 foreclosure proceedings, a purchaser becomes subrogated to all
705 the rights of the lienholder to the indebtedness that it secured
706 to the extent necessary to reforeclose the assessment lien in
707 order to correct the irregularity and becomes entitled to an
708 action de novo for the foreclosure of the assessment lien. Any
709 subsequent reforeclosure required to correct an irregularity may
710 be conducted under this section.

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

712 (a) Within 10 calendar days after the trustee conducts a
713 sale, the trustee shall execute and acknowledge a certificate of
714 compliance that:

715 1. Confirms delivery of the notice of default and intent to
716 foreclose and attaches the affidavit required under subsection
717 (5).

718 2. States that the default was not cured, that the trustee
719 did not receive any written objection under paragraph (3) (a),
720 and that the timeshare interest was not redeemed under paragraph
721 (3) (b).

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

725 4. Confirms that the notice of sale was mailed under

590-04406A-10

20102358c2

726 paragraph (6) (b) together with a list of the parties to whom the
727 notice of sale was mailed.

728 (b) In furtherance of the execution of the certificate of
729 compliance required under this subsection, the trustee is
730 entitled to rely upon an affidavit or certification from the
731 lienholder as to the facts and circumstances of default and
732 failure to cure the default.

733 (10) TRUSTEE'S DEED.—

734 (a) The trustee's deed must include the name and address of
735 the trustee, the name and address of the highest bidder, the
736 name of the former owner, a legal description of the timeshare
737 interest, and the name and address of the preparer of the
738 trustee's deed. The trustee's deed must recite that the
739 certificate of compliance was recorded and may not contain
740 warranties of title from the trustee. The certificate of
741 compliance shall be attached as an exhibit to the trustee's
742 deed.

743 (b) Ten calendar days after a sale, absent the prior filing
744 and service on the trustee of a judicial action to enjoin
745 issuance of the trustee's deed to the timeshare interest, the
746 trustee shall:

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

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

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

590-04406A-10

20102358c2

755 1. The trustee's deed conveys to the highest bidder all
756 rights, title, and interest in the timeshare interest that the
757 former owner had, or had the power to convey, at the time of the
758 recording of the claim of lien, together with all rights, title,
759 and interest that the former owner or his or her successors in
760 interest acquired after the recording of the claim of lien.

761 2. The issuance and recording of a trustee's deed has the
762 same force and effect as the issuance and recording of a
763 certificate of title by the clerk of the court in a judicial
764 foreclosure action.

765 (11) DISPOSITION OF PROCEEDS OF SALE.-

766 (a) The trustee shall apply the proceeds of the sale as
767 follows:

768 1. To the expenses of the sale, including compensation of
769 the trustee.

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

772 3. If there are junior interestholders, the trustee may
773 file an action in interpleader, pay the surplus to a court, name
774 the competing junior interestholders, and ask the court to
775 determine the proper distribution of the surplus. In an
776 interpleader action, the trustee shall recover reasonable
777 attorney's fees and costs.

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

783 (b) In disposing of the proceeds of the sale, the trustee

590-04406A-10

20102358c2

784 may rely on the information provided in the affidavit of the
785 lienholder under paragraph (2) (c) and, if there is a dispute or
786 uncertainty over such claims, the trustee may submit the matter
787 to adjudication by court, by interpleader, or in any other
788 authorized manner and shall recover reasonable attorney's fees
789 and costs.

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

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

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

803 Section 10. Section 721.856, Florida Statutes, is created
804 to read:

805 721.856 Procedure for the trustee foreclosure of mortgage
806 liens.—This section establishes a trustee foreclosure procedure
807 for mortgage liens.

808 (1) APPOINTMENT OF TRUSTEE.—

809 (a) A trustee or a substitute trustee may be appointed by a
810 lienholder by recording a notice of appointment of trustee or
811 notice of substitution of trustee in the official records of the
812 county or counties in which the timeshare interest is located. A

590-04406A-10

20102358c2

813 lienholder may appoint multiple trustees in a single
814 appointment, and an appointed trustee may be used by the
815 lienholder regarding the trustee foreclosure of any mortgage
816 lien.

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

820 (c) The recorded notice of appointment of trustee or notice
821 of substitution of trustee must contain the name and address of
822 the trustee or substitute trustee, the name and address of the
823 lienholder, and the name and address of the timeshare plan.

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

825 (a) Before initiating the trustee foreclosure against a
826 timeshare interest, the mortgage, or an amendment to a mortgage
827 executed by the obligor before the effective date of this
828 section, must contain a statement in substantially the following
829 form:

830

831 If the mortgagor fails to make timely payments under
832 the obligation secured by this mortgage, or is
833 otherwise deemed in uncured default of this mortgage,
834 the lien against the mortgagor's timeshare interest
835 created by this mortgage may be foreclosed in
836 accordance with a judicial foreclosure procedure or a
837 trustee foreclosure procedure and may result in the
838 loss of your timeshare interest. If the mortgagee
839 initiates a trustee foreclosure procedure, the
840 mortgagor may object and the mortgagee may proceed
841 only by filing a judicial foreclosure action.

590-04406A-10

20102358c2

842

843 (b) In order to initiate a trustee foreclosure procedure
844 against a timeshare interest, the lienholder shall deliver an
845 affidavit to the trustee that identifies the obligor, the notice
846 address of the obligor, the timeshare interest, the official
847 records book and page number where the mortgage is recorded, and
848 the name and notice address of any junior interestholder. The
849 affidavit must be accompanied by a title search of the timeshare
850 interest identifying any junior interestholders of record, and
851 the effective date of the title search must be a date that is
852 within 60 calendar days before the date of the affidavit. The
853 affidavit must also:

854 1. State the facts that establish that the obligor has
855 defaulted in the obligation to make a payment under a specified
856 provision of the mortgage or is otherwise deemed in uncured
857 default under a specified provision of the mortgage.

858 2. Specify the amounts secured by the lien as of the date
859 of the affidavit and a per diem amount to account for further
860 accrual of the amounts secured by the lien.

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

864 4. State that the lienholder is the holder of the note, and
865 has complied with all preconditions in the note and mortgage to
866 determine the amounts secured by the lien and to initiate the
867 use of the trustee foreclosure procedure.

868 (3) OBLIGOR'S RIGHTS.-

869 (a) The obligor may object to the lienholder's use of the
870 trustee foreclosure procedure for a specific default before the

590-04406A-10

20102358c2

871 sale of the timeshare interest under subsection (7) by
872 delivering a written objection to the trustee using the
873 objection form provided in subsection (5). If the trustee
874 receives the written objection from the obligor, the trustee may
875 not proceed with the trustee foreclosure procedure as to the
876 default specified in the notice of default and intent to
877 foreclose under subsection (5), and the lienholder may proceed
878 only with a judicial foreclosure action as to that specified
879 default.

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

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

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

890 (b) The trustee has not received a written objection to the
891 use of the trustee foreclosure procedure under paragraph (3) (a)
892 and the timeshare interest was not redeemed under paragraph
893 (3) (b);

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

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

590-04406A-10

20102358c2

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

904 (f) The notice of sale required under subsection (6) has
905 been recorded in the official records of the county in which the
906 mortgage was recorded.

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

908 (a) In any foreclosure proceeding under this section, the
909 trustee must notify the obligor of the proceeding by sending the
910 obligor a written notice of default and intent to foreclose to
911 the notice address of the obligor by certified mail, registered
912 mail, or permitted delivery service, return receipt requested,
913 and by first-class mail or permitted delivery service, postage
914 prepaid, as follows:

915 1. The notice of default and intent to foreclose must
916 identify the obligor, the notice address of the obligor, the
917 legal description of the timeshare interest, the nature of the
918 default, the amounts secured by the lien, and a per diem amount
919 to account for further accrual of the amounts secured by the
920 lien and state the method by which the obligor may cure the
921 default, including the period of time after the date of the
922 notice of default and intent to foreclose within which the
923 obligor may cure the default.

924 2. The notice of default and intent to foreclose must
925 include an objection form with which the obligor can object to
926 the use of the trustee foreclosure procedure by signing and
927 returning the objection form to the trustee. The objection form
928 must identify the obligor, the notice address of the obligor,

590-04406A-10

20102358c2

929 the timeshare interest, and the return address of the trustee
930 and state: "The undersigned obligor exercises the obligor's
931 right to object to the use of the trustee foreclosure procedure
932 contained in s. 721.856, Florida Statutes."

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

935
936 If you fail to cure the default as set forth in this
937 notice or take other appropriate action with regard to
938 this foreclosure matter, you risk losing ownership of
939 your timeshare interest through the trustee
940 foreclosure procedure established in s. 721.856,
941 Florida Statutes. You may sign and send the enclosed
942 objection form to the trustee, exercising your right
943 to object to the use of the trustee foreclosure
944 procedure. Upon the trustee's receipt of your signed
945 objection form, the foreclosure of the lien with
946 respect to the default specified in this notice is
947 subject to the judicial foreclosure procedure only.
948 You have the right to cure your default in the manner
949 set forth in this notice at any time before the
950 trustee's sale of your timeshare interest. If you do
951 not object to the use of the trustee foreclosure
952 procedure, you will not be subject to a deficiency
953 judgment even if the proceeds from the sale of your
954 timeshare interest are insufficient to offset the
955 amounts secured by the lien.

956
957 4. The trustee shall also mail a copy of the notice of

590-04406A-10

20102358c2

958 default and intent to foreclose, without the objection form, to
959 the notice address of any junior interestholder by certified
960 mail, registered mail, or permitted delivery service, return
961 receipt requested, and by first-class mail or permitted delivery
962 service, postage prepaid.

963 5. Notice under this paragraph is considered perfected upon
964 the trustee receiving the return receipt bearing the signature
965 of the obligor or junior interestholder, as applicable, within
966 30 calendar days after the trustee sent the notice. Notice is
967 not perfected if the notice is returned as undeliverable within
968 30 calendar days after the trustee sent the notice, if the
969 trustee cannot ascertain from the receipt that the obligor or
970 junior interestholder is the person who signed the receipt, or
971 if the receipt from the obligor or junior interestholder is
972 returned or refused within 30 calendar days after the trustee
973 sent the notice.

974 (b) If the notice required by paragraph (a) is returned as
975 undeliverable within 30 calendar days after the trustee sent the
976 notice, the trustee shall perform a diligent search and inquiry
977 to obtain a different address for the obligor or junior
978 interestholder. For purposes of this paragraph, any address
979 known and used by the lienholder for sending regular mailings or
980 other communications from the lienholder to the obligor or
981 junior interestholder, as applicable, must be included with
982 other addresses produced from the diligent search and inquiry,
983 if any.

984 1. If the trustee's diligent search and inquiry produces an
985 address different from the notice address, the trustee shall
986 mail a copy of the notice by certified mail, registered mail, or

590-04406A-10

20102358c2

987 permitted delivery service, return receipt requested, and by
988 first-class mail or permitted delivery service, postage prepaid,
989 to the new address. Notice under this subparagraph is considered
990 perfected upon the trustee receiving the return receipt bearing
991 the signature of the obligor or junior interestholder, as
992 applicable, within 30 calendar days after the trustee sent the
993 notice under this subparagraph. Notice is not perfected if the
994 trustee cannot ascertain from the receipt that the obligor or
995 junior interestholder is the person who signed the receipt or
996 the receipt from the obligor or junior interestholder is
997 returned refused. If the trustee does not perfect notice, the
998 trustee shall perfect service under paragraph (c).

999 2. If the trustee's diligent search and inquiry does not
1000 locate a different address for the obligor or junior
1001 interestholder, as applicable, the trustee may perfect notice
1002 against that person under paragraph (c).

1003 (c) If the notice is not perfected under subparagraph
1004 (a)5., and the notice was not returned as undeliverable, or if
1005 the notice was not perfected under subparagraph (b)1., the
1006 trustee may perfect notice by publication in a newspaper of
1007 general circulation in the county or counties in which the
1008 timeshare interest is located. The notice must appear at least
1009 once a week for 2 consecutive weeks. The trustee may group an
1010 unlimited number of notices in the same publication, if all of
1011 the notices pertain to the same timeshare plan. Notice is
1012 considered perfected upon publication as required in this
1013 paragraph.

1014 (d) If notice is perfected under subparagraph (a)5., the
1015 trustee shall execute an affidavit in recordable form setting

590-04406A-10

20102358c2

1016 forth the manner in which notice was perfected and attach the
1017 affidavit to the certificate of compliance set forth in
1018 subsection (9). The affidavit must state the nature of the
1019 notice, the date on which the notice was mailed, the name and
1020 address on the envelope containing the notice, the manner in
1021 which the notice was mailed, and the basis for that knowledge.

1022 (e) If notice is perfected under subparagraph (b)1., the
1023 trustee shall execute an affidavit in recordable form setting
1024 forth the manner in which notice was perfected and attach the
1025 affidavit to the certificate of compliance set forth in
1026 subsection (9). The affidavit must state the nature of the
1027 notice, the dates on which the notice was mailed, the name and
1028 addresses on the envelopes containing the notice, the manner in
1029 which the notice was mailed, the fact that a signed receipt from
1030 the certified mail, registered mail, or permitted delivery
1031 service was timely received, and the name and address on the
1032 envelopes containing the notice.

1033 (f) If notice is perfected under paragraph (c), the trustee
1034 shall execute an affidavit in recordable form setting forth the
1035 manner in which notice was perfected and attach the affidavit to
1036 the certificate of compliance set forth in subsection (9). The
1037 affidavit must include all the information contained in
1038 paragraph (d) or paragraph (e), as applicable, state that the
1039 notice was perfected by publication after diligent search and
1040 inquiry was made for the current address for the person, include
1041 a statement that notice was perfected by publication, and set
1042 forth the information required by s. 49.041 in the case of a
1043 natural person or s. 49.051 in the case of a corporation,
1044 whichever is applicable. No other action of the trustee is

590-04406A-10

20102358c2

1045 necessary to perfect notice.

1046 (6) NOTICE OF SALE.—

1047 (a) The notice of sale must contain:

1048 1. The name and notice addresses of the obligor and any
1049 junior interestholder.

1050 2. The legal description of the timeshare interest.

1051 3. The name and address of the trustee.

1052 4. A description of the default that is the basis for the
1053 foreclosure.

1054 5. The official records book and page numbers where the
1055 mortgage is recorded.

1056 6. The amounts secured by the lien and a per diem amount to
1057 account for further accrual of the amounts secured by the lien.

1058 7. The date, location, and starting time of the trustee's
1059 sale.

1060 8. The right of and the method by which the obligor may
1061 cure the default or the right of any junior interestholder to
1062 redeem its interest up to the date the trustee issues the
1063 certificate of sale in accordance with paragraph (7) (f).

1064 (b) The trustee shall send a copy of the notice of sale
1065 within 3 business days after the date it is submitted for
1066 recording, by first-class mail or permitted delivery service,
1067 postage prepaid, to the notice addresses of the obligor and any
1068 junior interestholder.

1069 (c) After the date of recording of the notice of sale,
1070 notice is not required to be given to any person claiming an
1071 interest in the timeshare interest except as provided in this
1072 section. The recording of the notice of sale has the same force
1073 and effect as the filing of a lis pendens in a judicial

590-04406A-10

20102358c2

1074 proceeding under s. 48.23.

1075 (d) The trustee shall publish the notice of sale in a
1076 newspaper of general circulation in the county or counties in
1077 which the timeshare interest is located at least once a week for
1078 2 consecutive weeks before the date of the sale. The last
1079 publication must occur at least 5 calendar days before the sale.
1080 The trustee may group an unlimited number of notices of sale in
1081 the same publication, if all of the notices of sale pertain to
1082 the same timeshare plan.

1083 (7) MANNER OF SALE.—

1084 (a) The sale of a timeshare interest by the trustee in a
1085 public auction shall be held in the county in which the
1086 timeshare interest is located, on the date, location, and
1087 starting time designated in the notice of sale, which must be
1088 after 9 a.m. but before 4 p.m. on a business day at least 30
1089 calendar days after the recording of the notice of sale. The
1090 trustee's sale may occur online at a specific website on the
1091 Internet or in any other manner used by the clerk of the court
1092 for a judicial foreclosure sales procedure in the county or
1093 counties in which the timeshare interest is located.

1094 (b) The trustee shall conduct the sale and act as the
1095 auctioneer.

1096 (c) The lienholder and any person other than the trustee
1097 may bid at the sale. In lieu of participating in the sale, the
1098 lienholder may send the trustee written bidding instructions
1099 that the trustee shall announce as appropriate during the sale.

1100 (d) The trustee may postpone the sale. In such case, notice
1101 of postponement must be given by the trustee at the date, time,
1102 and location contained in the notice of sale. The notice of sale

590-04406A-10

20102358c2

1103 for the postponed sale must be mailed under paragraph (6) (b),
1104 recorded under paragraph (4) (f), and published under paragraph
1105 (6) (d). The effective date of the initial notice of sale is not
1106 affected by a postponed sale.

1107 (e) The highest bidder of the timeshare interest shall pay
1108 the price bid to the trustee in cash or certified funds on the
1109 day of the sale. If the lienholder is the highest bidder, the
1110 lienholder shall receive a credit up to the amount set forth in
1111 the notice of sale as required under subparagraph (6) (a)6.

1112 (f) On the date of the sale and upon receipt of the cash or
1113 certified funds due from the highest bidder, the trustee shall
1114 issue to the highest bidder a certificate of sale stating that a
1115 foreclosure conforming to the requirements of this section has
1116 occurred, including the time, location, and date of the sale,
1117 that the timeshare interest was sold, the amounts secured by the
1118 lien, and the amount of the highest bid. A copy of the
1119 certificate of sale shall be mailed by certified mail,
1120 registered mail, or permitted delivery service, return receipt
1121 requested, to all persons entitled to receive a notice of sale
1122 under subsection (6).

1123 (g) Before a sale conducted pursuant to this subsection, a
1124 junior interestholder may pursue adjudication by court, by
1125 interpleader, or in any other authorized manner respecting any
1126 matter that is disputed by the junior interestholder.

1127 (8) EFFECT OF TRUSTEE'S SALE.—

1128 (a) A sale conducted under subsection (7) forecloses and
1129 terminates all interests of any person to whom notice is given
1130 under paragraphs (4) (e) and (6) (b), and of any other person
1131 claiming interests by, through, or under any such person, in the

590-04406A-10

20102358c2

1132 affected timeshare interest. A failure to give notice to any
1133 person entitled to notice does not affect the validity of the
1134 sale as to the interests of any person properly notified. A
1135 person entitled to notice but not given notice has the rights of
1136 a person not made a defendant in a judicial foreclosure.

1137 (b) All rights of redemption that have been foreclosed
1138 under this section terminate on the issuance of a certificate of
1139 sale under paragraph (7) (f).

1140 (c) A sale conducted under subsection (7) releases the
1141 obligor's liability for all amounts secured by the lien. The
1142 lienholder does not have a right to any deficiency judgment
1143 against the obligor after a sale of the obligor's timeshare
1144 interest under this section.

1145 (d) The issuance and recording of the trustee's deed is
1146 presumed valid and may be relied upon by third parties without
1147 actual knowledge of any irregularities in the foreclosure
1148 proceedings. If for any reason there is an irregularity in the
1149 foreclosure proceedings, a purchaser becomes subrogated to all
1150 the rights of the lienholder to the indebtedness that it secured
1151 to the extent necessary to reforeclose the mortgage lien in
1152 order to correct the irregularity and becomes entitled to an
1153 action de novo for the foreclosure of such mortgage lien. Any
1154 subsequent reforeclosure required to correct an irregularity may
1155 be conducted under this section.

1156 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1157 (a) Within 10 calendar days after the trustee conducts a
1158 sale, the trustee shall execute and acknowledge a certificate of
1159 compliance which:

1160 1. Confirms delivery of the notice of default and intent to

590-04406A-10

20102358c2

1161 foreclose and attaches the affidavit required under subsection
1162 (5).

1163 2. States that the default was not cured, that the trustee
1164 did not receive any written objection under paragraph (3) (a),
1165 and that the timeshare interest was not redeemed under paragraph
1166 (3) (b).

1167 3. States that the trustee is in possession of the original
1168 promissory note executed by the mortgagor and secured by the
1169 mortgage lien.

1170 4. Confirms that the notice of sale was published as
1171 required under paragraph (6) (d) and attaches an affidavit of
1172 publication for the notice of sale.

1173 5. Confirms that the notice of sale was mailed under
1174 paragraph (6) (b) together with a list of the parties to whom the
1175 notice of sale was mailed.

1176 (b) In furtherance of the execution of the certificate of
1177 compliance required under this subsection, the trustee is
1178 entitled to rely upon an affidavit or certification from the
1179 lienholder as to the facts and circumstances of default and
1180 failure to cure the default.

1181 (10) TRUSTEE'S DEED.—

1182 (a) The trustee's deed must include the name and address of
1183 the trustee, the name and address of the highest bidder, the
1184 name of the former owner, a legal description of the timeshare
1185 interest, and the name and address of the preparer of the
1186 trustee's deed. The trustee's deed must recite that the
1187 certificate of compliance was recorded and may not contain
1188 warranties of title from the trustee. The certificate of
1189 compliance must be attached as an exhibit to the trustee's deed.

590-04406A-10

20102358c2

1190 (b) Ten calendar days after a sale, absent the prior filing
1191 and service on the trustee of a judicial action to enjoin
1192 issuance of the trustee's deed to the timeshare interest, the
1193 trustee shall:

1194 1. Cancel the original promissory note executed by the
1195 mortgagor and secured by the mortgage lien.

1196 2. Issue a trustee's deed to the highest bidder.

1197 3. Record the trustee's deed in the official records of the
1198 county or counties in which the timeshare interest is located.

1199 (c) The certificate of compliance and trustee's deed
1200 together are presumptive evidence of the truth of the matters
1201 set forth in them, and an action to set aside the sale and void
1202 the trustee's deed may not be filed or otherwise pursued against
1203 any person acquiring the timeshare interest for value.

1204 1. The trustee's deed conveys to the highest bidder all
1205 rights, title, and interest in the timeshare interest that the
1206 former owner had, or had the power to convey, together with all
1207 rights, title, and interest that the former owner or his or her
1208 successors in interest acquired after the execution of the
1209 mortgage.

1210 2. The issuance and recording of a trustee's deed has the
1211 same force and effect as the issuance and recording of a
1212 certificate of title by the clerk of the court in a judicial
1213 foreclosure action.

1214 (11) DISPOSITION OF PROCEEDS OF SALE.-

1215 (a) The trustee shall apply the proceeds of the sale as
1216 follows:

1217 1. To the expenses of the sale, including compensation of
1218 the trustee.

590-04406A-10

20102358c2

1219 2. To the amount owed and set forth in the notice as
1220 required under subparagraph (6) (a) 6.

1221 3. If there are junior interestholders, the trustee may
1222 file an action in interpleader, pay the surplus to a court of
1223 competent jurisdiction, name the competing junior
1224 interestholders, and ask the court to determine the proper
1225 distribution of the surplus. In any interpleader action, the
1226 trustee shall recover reasonable attorney's fees and costs.

1227 4. If there are no junior interestholders, or if all junior
1228 interestholders have been paid, any surplus shall be paid to the
1229 former owner. If the trustee is unable to locate the former
1230 owner within 1 year after the sale, the surplus, if any, shall
1231 be deposited with the Chief Financial Officer under chapter 717.

1232 (b) In disposing of the proceeds of the sale, the trustee
1233 may rely on the information provided in the affidavit of the
1234 lienholder under paragraph (2) (b), and if there is a dispute or
1235 uncertainty over such claims, the trustee may submit the matter
1236 to adjudication by court, by interpleader, or in any other
1237 authorized manner and shall recover reasonable attorney's fees
1238 and costs.

1239 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure
1240 procedure established in this section does not impair or
1241 otherwise affect the lienholder's continuing right to bring a
1242 judicial foreclosure action, in lieu of using the trustee
1243 foreclosure procedure, with respect to any mortgage lien.

1244 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
1245 PROCEDURE.—An action for actual damages for a material violation
1246 of this section may be brought by an obligor against the
1247 lienholder for the failure to follow the trustee foreclosure

590-04406A-10

20102358c2

1248 procedure contained in this section.

1249 Section 11. Subsections (1) and (4) of section 721.86,
1250 Florida Statutes, are amended to read:

1251 721.86 Miscellaneous provisions.—

1252 (1) If there is a conflict between the provisions of this
1253 part and the other provisions of this chapter, chapter 702, or
1254 other applicable law, the provisions of this part prevail. The
1255 procedures in this part must be given effect in the context of
1256 any foreclosure proceedings against timeshare interests ~~estates~~
1257 governed by this chapter, chapter 702, chapter 718, or chapter
1258 719.

1259 (4) In addition to assessment liens and mortgage liens
1260 arising after the effective date of this part, except as
1261 provided in s. 721.855(13), the provisions of this part apply to
1262 all assessment liens and mortgage liens existing before ~~prior to~~
1263 the effective date of this act regarding which a foreclosure
1264 proceeding has not yet commenced.

1265 Section 12. Subsection (2) of section 721.20, Florida
1266 Statutes, is amended to read:

1267 721.20 Licensing requirements; suspension or revocation of
1268 license; exceptions to applicability; collection of advance fees
1269 for listings unlawful.—

1270 (2) Solicitors who engage only in the solicitation of
1271 prospective purchasers and any purchaser who refers no more than
1272 20 people to a developer or managing entity per year or who
1273 otherwise provides testimonials on behalf of a developer or
1274 managing entity are exempt from ~~the provisions of~~ chapter 475.

1275 Section 13. This act shall take effect upon becoming a law.