

29 providing exceptions for actions for failure to follow
 30 the trustee foreclosure procedure; amending s.
 31 721.856, F.S.; revising procedure for the trustee
 32 foreclosure of mortgage liens; revising conditions
 33 under which a trustee may sell a foreclosed encumbered
 34 timeshare interest; revising and providing notice
 35 requirements; providing for perfection of notice;
 36 providing requirements for a notice of lis pendens;
 37 providing sale requirements; providing exceptions for
 38 actions for failure to follow the trustee foreclosure
 39 procedure; providing an effective date.

40
 41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Paragraph (d) of subsection (2) of section
 44 718.112, Florida Statutes, is amended to read:

45 718.112 Bylaws.—

46 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 47 following and, if they do not do so, shall be deemed to include
 48 the following:

49 (d) Unit owner meetings.—

50 1. An annual meeting of the unit owners shall be held at
 51 the location provided in the association bylaws and, if the
 52 bylaws are silent as to the location, the meeting shall be held
 53 within 45 miles of the condominium property. However, such
 54 distance requirement does not apply to an association governing
 55 a timeshare condominium.

56 2. Unless the bylaws provide otherwise, a vacancy on the

57 | board caused by the expiration of a director's term shall be
58 | filled by electing a new board member, and the election must be
59 | by secret ballot. An election is not required if the number of
60 | vacancies equals or exceeds the number of candidates. For
61 | purposes of this paragraph, the term "candidate" means an
62 | eligible person who has timely submitted the written notice, as
63 | described in sub-subparagraph 4.a., of his or her intention to
64 | become a candidate. Except in a timeshare condominium, or if the
65 | staggered term of a board member does not expire until a later
66 | annual meeting, or if all members' terms would otherwise expire
67 | but there are no candidates, the terms of all board members
68 | expire at the annual meeting, and such members may stand for
69 | reelection unless prohibited by the bylaws. If the bylaws permit
70 | staggered terms of no more than 2 years and upon approval of a
71 | majority of the total voting interests, the association board
72 | members may serve 2-year staggered terms. If the number of board
73 | members whose terms expire at the annual meeting equals or
74 | exceeds the number of candidates, the candidates become members
75 | of the board effective upon the adjournment of the annual
76 | meeting. Unless the bylaws provide otherwise, any remaining
77 | vacancies shall be filled by the affirmative vote of the
78 | majority of the directors making up the newly constituted board
79 | even if the directors constitute less than a quorum or there is
80 | only one director. In a condominium association of more than 10
81 | units or in a condominium association that does not include
82 | timeshare units or timeshare interests, coowners of a unit may
83 | not serve as members of the board of directors at the same time
84 | unless they own more than one unit or unless there are not

85 | enough eligible candidates to fill the vacancies on the board at
86 | the time of the vacancy. Any unit owner desiring to be a
87 | candidate for board membership must comply with sub-subparagraph
88 | 4.a. and must be eligible to serve on the board of directors at
89 | the time of the deadline for submitting a notice of intent to
90 | run in order to have his or her name listed as a proper
91 | candidate on the ballot or to serve on the board. A person who
92 | has been suspended or removed by the division under this
93 | chapter, or who is delinquent in the payment of any fee, fine,
94 | or special or regular assessment as provided in paragraph (n),
95 | is not eligible for board membership. A person who has been
96 | convicted of any felony in this state or in a United States
97 | District or Territorial Court, or who has been convicted of any
98 | offense in another jurisdiction which would be considered a
99 | felony if committed in this state, is not eligible for board
100 | membership unless such felon's civil rights have been restored
101 | for at least 5 years as of the date such person seeks election
102 | to the board. The validity of an action by the board is not
103 | affected if it is later determined that a board member is
104 | ineligible for board membership due to having been convicted of
105 | a felony.

106 | 3. The bylaws must provide the method of calling meetings
107 | of unit owners, including annual meetings. Written notice must
108 | include an agenda, must be mailed, hand delivered, or
109 | electronically transmitted to each unit owner at least 14 days
110 | before the annual meeting, and must be posted in a conspicuous
111 | place on the condominium property at least 14 continuous days
112 | before the annual meeting. Upon notice to the unit owners, the

113 board shall, by duly adopted rule, designate a specific location
114 on the condominium property or association property where all
115 notices of unit owner meetings shall be posted. This requirement
116 does not apply if there is no condominium property or
117 association property for posting notices. In lieu of, or in
118 addition to, the physical posting of meeting notices, the
119 association may, by reasonable rule, adopt a procedure for
120 conspicuously posting and repeatedly broadcasting the notice and
121 the agenda on a closed-circuit cable television system serving
122 the condominium association. However, if broadcast notice is
123 used, the notice and agenda must be broadcast at least four
124 times every broadcast hour of each day that a posted notice is
125 otherwise required under this section. If broadcast notice is
126 provided, the notice and agenda must be broadcast in a manner
127 and for a sufficient continuous length of time so as to allow an
128 average reader to observe the notice and read and comprehend the
129 entire content of the notice and the agenda. Unless a unit owner
130 waives in writing the right to receive notice of the annual
131 meeting, such notice must be hand delivered, mailed, or
132 electronically transmitted to each unit owner. Notice for
133 meetings and notice for all other purposes must be mailed to
134 each unit owner at the address last furnished to the association
135 by the unit owner, or hand delivered to each unit owner.
136 However, if a unit is owned by more than one person, the
137 association must provide notice to the address that the
138 developer identifies for that purpose and thereafter as one or
139 more of the owners of the unit advise the association in
140 writing, or if no address is given or the owners of the unit do

141 not agree, to the address provided on the deed of record. An
142 officer of the association, or the manager or other person
143 providing notice of the association meeting, must provide an
144 affidavit or United States Postal Service certificate of
145 mailing, to be included in the official records of the
146 association affirming that the notice was mailed or hand
147 delivered in accordance with this provision.

148 4. The members of the board shall be elected by written
149 ballot or voting machine. Proxies may not be used in electing
150 the board in general elections or elections to fill vacancies
151 caused by recall, resignation, or otherwise, unless otherwise
152 provided in this chapter. This subparagraph does not apply to an
153 association governing a timeshare condominium.

154 a. At least 60 days before a scheduled election, the
155 association shall mail, deliver, or electronically transmit, by
156 separate association mailing or included in another association
157 mailing, delivery, or transmission, including regularly
158 published newsletters, to each unit owner entitled to a vote, a
159 first notice of the date of the election. Any unit owner or
160 other eligible person desiring to be a candidate for the board
161 must give written notice of his or her intent to be a candidate
162 to the association at least 40 days before a scheduled election.
163 Together with the written notice and agenda as set forth in
164 subparagraph 3., the association shall mail, deliver, or
165 electronically transmit a second notice of the election to all
166 unit owners entitled to vote, together with a ballot that lists
167 all candidates. Upon request of a candidate, an information
168 sheet, no larger than 8 1/2 inches by 11 inches, which must be

169 furnished by the candidate at least 35 days before the election,
170 must be included with the mailing, delivery, or transmission of
171 the ballot, with the costs of mailing, delivery, or electronic
172 transmission and copying to be borne by the association. The
173 association is not liable for the contents of the information
174 sheets prepared by the candidates. In order to reduce costs, the
175 association may print or duplicate the information sheets on
176 both sides of the paper. The division shall by rule establish
177 voting procedures consistent with this sub-subparagraph,
178 including rules establishing procedures for giving notice by
179 electronic transmission and rules providing for the secrecy of
180 ballots. Elections shall be decided by a plurality of ballots
181 cast. There is no quorum requirement; however, at least 20
182 percent of the eligible voters must cast a ballot in order to
183 have a valid election. A unit owner may not permit any other
184 person to vote his or her ballot, and any ballots improperly
185 cast are invalid. A unit owner who violates this provision may
186 be fined by the association in accordance with s. 718.303. A
187 unit owner who needs assistance in casting the ballot for the
188 reasons stated in s. 101.051 may obtain such assistance. The
189 regular election must occur on the date of the annual meeting.
190 Notwithstanding this sub-subparagraph, an election is not
191 required unless more candidates file notices of intent to run or
192 are nominated than board vacancies exist.

193 b. Within 90 days after being elected or appointed to the
194 board, each newly elected or appointed director shall certify in
195 writing to the secretary of the association that he or she has
196 read the association's declaration of condominium, articles of

197 incorporation, bylaws, and current written policies; that he or
198 she will work to uphold such documents and policies to the best
199 of his or her ability; and that he or she will faithfully
200 discharge his or her fiduciary responsibility to the
201 association's members. In lieu of this written certification,
202 within 90 days after being elected or appointed to the board,
203 the newly elected or appointed director may submit a certificate
204 of having satisfactorily completed the educational curriculum
205 administered by a division-approved condominium education
206 provider within 1 year before or 90 days after the date of
207 election or appointment. The written certification or
208 educational certificate is valid and does not have to be
209 resubmitted as long as the director serves on the board without
210 interruption. A director who fails to timely file the written
211 certification or educational certificate is suspended from
212 service on the board until he or she complies with this sub-
213 subparagraph. The board may temporarily fill the vacancy during
214 the period of suspension. The secretary shall cause the
215 association to retain a director's written certification or
216 educational certificate for inspection by the members for 5
217 years after a director's election. Failure to have such written
218 certification or educational certificate on file does not affect
219 the validity of any board action.

220 5. Any approval by unit owners called for by this chapter
221 or the applicable declaration or bylaws, including, but not
222 limited to, the approval requirement in s. 718.111(8), must be
223 made at a duly noticed meeting of unit owners and is subject to
224 all requirements of this chapter or the applicable condominium

225 documents relating to unit owner decisionmaking, except that
226 unit owners may take action by written agreement, without
227 meetings, on matters for which action by written agreement
228 without meetings is expressly allowed by the applicable bylaws
229 or declaration or any law that provides for such action.

230 6. Unit owners may waive notice of specific meetings if
231 allowed by the applicable bylaws or declaration or any law. If
232 authorized by the bylaws, notice of meetings of the board of
233 administration, unit owner meetings, except unit owner meetings
234 called to recall board members under paragraph (j), and
235 committee meetings may be given by electronic transmission to
236 unit owners who consent to receive notice by electronic
237 transmission.

238 7. Unit owners have the right to participate in meetings
239 of unit owners with reference to all designated agenda items.
240 However, the association may adopt reasonable rules governing
241 the frequency, duration, and manner of unit owner participation.

242 8. A unit owner may tape record or videotape a meeting of
243 the unit owners subject to reasonable rules adopted by the
244 division.

245 9. Unless otherwise provided in the bylaws, any vacancy
246 occurring on the board before the expiration of a term may be
247 filled by the affirmative vote of the majority of the remaining
248 directors, even if the remaining directors constitute less than
249 a quorum, or by the sole remaining director. In the alternative,
250 a board may hold an election to fill the vacancy, in which case
251 the election procedures must conform to sub-subparagraph 4.a.
252 unless the association governs 10 units or fewer and has opted

253 out of the statutory election process, in which case the bylaws
 254 of the association control. Unless otherwise provided in the
 255 bylaws, a board member appointed or elected under this section
 256 shall fill the vacancy for the unexpired term of the seat being
 257 filled. Filling vacancies created by recall is governed by
 258 paragraph (j) and rules adopted by the division.

259 10. This chapter does not limit the use of general or
 260 limited proxies, require the use of general or limited proxies,
 261 or require the use of a written ballot or voting machine for any
 262 agenda item or election at any meeting of a timeshare
 263 condominium association.

264
 265 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 266 association of 10 or fewer units may, by affirmative vote of a
 267 majority of the total voting interests, provide for different
 268 voting and election procedures in its bylaws, which may be by a
 269 proxy specifically delineating the different voting and election
 270 procedures. The different voting and election procedures may
 271 provide for elections to be conducted by limited or general
 272 proxy.

273 Section 2. Subsection (34) of section 721.05, Florida
 274 Statutes, is amended, and subsections (51) and (52) are added to
 275 that section, to read:

276 721.05 Definitions.—As used in this chapter, the term:

277 (34) "Timeshare estate" means a right to occupy a
 278 timeshare unit, coupled with a freehold estate or an estate for
 279 years with a future interest in a timeshare property or a
 280 specified portion thereof. The term includes ~~shall also mean~~ an

CS/HB 7025

2013

281 interest in a condominium unit pursuant to s. 718.103, an
282 interest in a cooperative unit pursuant to s. 719.103, or a
283 direct or indirect ~~an~~ interest in a trust that complies in all
284 respects with the provisions of s. 721.08(2)(c)4., provided that
285 the trust does not contain any personal property timeshare
286 interests. A timeshare estate is a parcel of real property under
287 the laws of this state.

288 (51) "Resale transfer agreement" means a contract or other
289 agreement between a person offering timeshare interest transfer
290 services and a consumer timeshare reseller, in which the person
291 offering timeshare interest transfer services agrees to provide
292 such services as described in s. 721.17(3).

293 (52) "Timeshare interest transfer services" means any good
294 or service relating to an offer or agreement to transfer
295 ownership of a consumer resale timeshare interest, or assistance
296 with or a promise of assistance in connection with the transfer
297 of ownership of a consumer resale timeshare interest, as
298 described in s. 721.17(3).

299 Section 3. Paragraph (t) of subsection (5) of section
300 721.07, Florida Statutes, is amended to read:

301 721.07 Public offering statement.—Prior to offering any
302 timeshare plan, the developer must submit a filed public
303 offering statement to the division for approval as prescribed by
304 s. 721.03, s. 721.55, or this section. Until the division
305 approves such filing, any contract regarding the sale of that
306 timeshare plan is subject to cancellation by the purchaser
307 pursuant to s. 721.10.

308 (5) Every filed public offering statement for a timeshare

309 plan which is not a multisite timeshare plan shall contain the
310 information required by this subsection. The division is
311 authorized to provide by rule the method by which a developer
312 must provide such information to the division.

313 (t) An estimated operating budget for the timeshare plan
314 and a schedule of the purchaser's expenses shall be attached as
315 an exhibit and shall contain the following information:

316 1. The estimated annual expenses of the timeshare plan
317 collectible from purchasers by assessments. The estimated
318 payments by the purchaser for assessments shall also be stated
319 in the estimated amounts for the times when they will be due.
320 Expenses shall also be shown for the shortest timeshare period
321 offered for sale by the developer. If the timeshare plan
322 provides for the offer and sale of units to be used on a
323 nontimeshare basis, the estimated monthly and annual expenses of
324 such units shall be set forth in a separate schedule.

325 2. The estimated weekly, monthly, and annual expenses of
326 the purchaser of each timeshare interest, other than assessments
327 payable to the managing entity. Expenses which are personal to
328 purchasers that are not uniformly incurred by all purchasers or
329 that are not provided for or contemplated by the timeshare plan
330 documents may be excluded from this estimate.

331 3. The estimated items of expenses of the timeshare plan
332 and the managing entity, except as excluded under subparagraph
333 2., including, but not limited to, if applicable, the following
334 items, which shall be stated either as management expenses
335 collectible by assessments or as expenses of the purchaser
336 payable to persons other than the managing entity:

337 | a. Expenses for the managing entity:
 338 | (I) Administration of the managing entity.
 339 | (II) Management fees.
 340 | (III) Maintenance.
 341 | (IV) Rent for facilities.
 342 | (V) Taxes upon timeshare property.
 343 | (VI) Taxes upon leased areas.
 344 | (VII) Insurance.
 345 | (VIII) Security provisions.
 346 | (IX) Other expenses.
 347 | (X) Operating capital.
 348 | (XI) Reserves for deferred maintenance and reserves for
 349 | capital expenditures, including:
 350 | (A) Reserves for deferred maintenance or capital
 351 | expenditures of accommodations and facilities of a real property
 352 | timeshare plan, if any. All reserves for any accommodations and
 353 | facilities of real property timeshare plans located in this
 354 | state shall be calculated using ~~by~~ a formula ~~which is~~ based upon
 355 | estimated life and replacement cost of each reserve item that
 356 | will provide funds equal to the total estimated deferred
 357 | maintenance expense or total estimated life and replacement cost
 358 | for an asset or group of assets over the remaining useful life
 359 | of the asset or group of assets. Funding formulas for reserves
 360 | shall be based on either a separate analysis of each of the
 361 | required assets using the straight-line accounting method or a
 362 | pooled analysis of two or more of the required assets using the
 363 | pooling accounting method. Reserves for deferred maintenance for
 364 | such accommodations and facilities shall include accounts for

365 roof replacement, building painting, pavement resurfacing,
366 replacement of timeshare unit furnishings and equipment, and any
367 other component, the useful life of which is less than the
368 useful life of the overall structure. For any accommodations and
369 facilities of real property timeshare plans located outside of
370 this state, the developer shall disclose the amount of reserves
371 for deferred maintenance or capital expenditures required by the
372 law of the situs state, if applicable, and maintained for such
373 accommodations and facilities.

374 (B) Reserves for deferred maintenance or capital
375 expenditures of accommodations and facilities of a personal
376 property timeshare plan, if any. If such reserves are
377 maintained, the estimated operating budget shall disclose the
378 methodology of how the reserves are calculated. If a personal
379 property timeshare plan does not require reserves, the following
380 statement, in conspicuous type, shall appear in both the budget
381 and the public offering statement:

382 The estimated operating budget for this personal property
383 timeshare plan does not include reserves for deferred
384 maintenance or capital expenditures; each timeshare interest may
385 be subject to substantial special assessments from time to time
386 because no such reserves exist.

387 (XII) Fees payable to the division.

388 b. Expenses for a purchaser:

389 (I) Rent for the timeshare unit, if subject to a lease.

390 (II) Rent payable by the purchaser directly to the lessor
391 or agent under any lease for the use of facilities, which use
392 and payment is a mandatory condition of ownership and is not

393 included in the common expenses or assessments for common
394 maintenance paid by the purchasers to the managing entity.

395 4. The estimated amounts shall be stated for a period of
396 at least 12 months and may distinguish between the period before
397 ~~prior to~~ the time that purchasers elect a majority of the board
398 of administration and the period after that date.

399 5. If the developer intends to guarantee the level of
400 assessments, such guarantee must be based upon a good faith
401 estimate of the revenues and expenses of the timeshare plan. The
402 guarantee must include a description of the following:

403 a. The specific time period measured in one or more
404 calendar or fiscal years during which the guarantee will be in
405 effect.

406 b. A statement that the developer will pay all common
407 expenses incurred in excess of the total revenues of the
408 timeshare plan pursuant to s. 721.15(2) if the developer has
409 excused himself or herself from the payment of assessments
410 during the guarantee period.

411 c. The level, expressed in total dollars, at which the
412 developer guarantees the budget. If the developer has reserved
413 the right to extend or increase the guarantee level pursuant to
414 s. 721.15(2), a disclosure must be included to that effect.

415 6. If the developer intends to provide a trust fund to
416 defer or reduce the payment of annual assessments, a copy of the
417 trust instrument shall be attached as an exhibit and shall
418 include a description of such arrangement, including, but not
419 limited to:

420 a. The specific amount of such trust funds and the source

421 of the funds.

422 b. The name and address of the trustee.

423 c. The investment methods permitted by the trust
424 agreement.

425 d. A statement in conspicuous type that the funds from the
426 trust account may not cover all assessments and that there is no
427 guarantee that purchasers will not have to pay assessments in
428 the future.

429 7. The budget of a phase timeshare plan may contain a note
430 identifying the number of timeshare interests covered by the
431 budget, indicating the number of timeshare interests, if any,
432 estimated to be declared as part of the timeshare plan during
433 that calendar year, and projecting the common expenses for the
434 timeshare plan based upon the number of timeshare interests
435 estimated to be declared as part of the timeshare plan during
436 that calendar year.

437 Section 4. Subsection (7) of section 721.15, Florida
438 Statutes, is amended to read:

439 721.15 Assessments for common expenses.—

440 (7) (a) A purchaser, regardless of how her or his timeshare
441 estate or timeshare license has been acquired, including a
442 purchaser at a judicial sale, is personally liable for all
443 assessments for common expenses which come due while the
444 purchaser is the owner of such interest. A successor in interest
445 is jointly and severally liable with her or his predecessor in
446 interest for all unpaid assessments against such predecessor up
447 to the time of transfer of the timeshare interest to such
448 successor without prejudice to any right a successor in interest

449 | may have to recover from her or his predecessor in interest any
450 | amounts assessed against such predecessor and paid by such
451 | successor. The predecessor in interest, or a person providing
452 | resale transfer services for the predecessor in interest
453 | pursuant to s. 721.17(3), shall provide the managing entity with
454 | a copy of the recorded deed of conveyance if the interest is a
455 | timeshare estate or a copy of the instrument of transfer if the
456 | interest is a timeshare license, containing the name and mailing
457 | address of the successor in interest within 15 days after the
458 | date of transfer. The managing entity shall not be liable to any
459 | person for any inaccuracy in the books and records of the
460 | timeshare plan arising from the failure of the predecessor in
461 | interest to timely and correctly notify the managing entity of
462 | the name and mailing address of the successor in interest.

463 | (b) Within 30 days after receiving a written request from
464 | a timeshare interest owner or from a person providing resale
465 | transfer services for a consumer timeshare reseller pursuant to
466 | s. 721.17(3), if all assessments and other moneys owed by such
467 | timeshare interest owner to the managing entity have been
468 | previously paid in full, a managing entity shall provide a
469 | certificate or estoppel letter to or at the direction of such
470 | timeshare interest owner or to such person providing resale
471 | transfer services stating that all assessments and other moneys
472 | owed to the managing entity by the timeshare interest owner have
473 | been paid in full with respect to the timeshare interest. The
474 | managing entity may charge a reasonable fee for the preparation
475 | and delivery of the certificate or estoppel letter. The amount
476 | of the fee must be included on the certificate or estoppel

477 | letter.

478 | Section 5. Section 721.17, Florida Statutes, is amended to
 479 | read:

480 | 721.17 Transfer of interest; resale transfer agreements.-

481 | (1) Except in the case of a timeshare plan subject to the
 482 | provisions of chapter 718 or chapter 719, no developer, owner of
 483 | the underlying fee, or owner of the underlying personal property
 484 | shall sell, lease, assign, mortgage, or otherwise transfer his
 485 | or her interest in the accommodations and facilities of the
 486 | timeshare plan except by an instrument evidencing the transfer
 487 | recorded in the public records of the county in which such
 488 | accommodations and facilities are located or, with respect to
 489 | personal property timeshare plans, in full compliance with s.
 490 | 721.08. The instrument shall be executed by both the transferor
 491 | and transferee and shall state:

492 | (a)~~(1)~~ That its provisions are intended to protect the
 493 | rights of all purchasers of the plan.

494 | (b)~~(2)~~ That its terms may be enforced by any prior or
 495 | subsequent timeshare purchaser so long as that purchaser is not
 496 | in default of his or her obligations.

497 | (c)~~(3)~~ That so long as a purchaser remains in good
 498 | standing with respect to her or his obligations under the
 499 | timeshare instrument, including making all payments to the
 500 | managing entity required by the timeshare instrument with
 501 | respect to the annual common expenses of the timeshare plan, the
 502 | transferee shall honor all rights of such purchaser relating to
 503 | the subject accommodation or facility as reflected in the
 504 | timeshare instrument.

505 ~~(d)(4)~~ That the transferee will fully honor all rights of
506 timeshare purchasers to cancel their contracts and receive
507 appropriate refunds.

508 ~~(e)(5)~~ That the obligations of the transferee under such
509 instrument will continue to exist despite any cancellation or
510 rejection of the contracts between the developer and purchaser
511 arising out of bankruptcy proceedings.

512 (2) Should any transfer of the interest of the developer,
513 the owner of the underlying fee, or the owner of the underlying
514 property occur in a manner which is not in compliance with
515 subsection (1) ~~this section~~, the terms set forth in this section
516 shall be presumed to be a part of the transfer and shall be
517 deemed to be included in the instrument of transfer. Notice
518 shall be mailed to each purchaser of record within 30 days after
519 the transfer unless such transfer does not affect the
520 purchaser's rights in or use of the timeshare plan. Persons who
521 hold mortgages or liens on the property constituting a timeshare
522 plan before the filed public offering statement of such plan is
523 approved by the division shall not be considered transferees for
524 the purposes of this subsection ~~section~~.

525 (3) (a) In the course of offering timeshare interest
526 transfer services, no person shall:

527 1. Engage in any timeshare interest transfer services for
528 consideration, or the expectation of receiving consideration,
529 without first obtaining a written resale transfer agreement
530 signed by the person offering timeshare interest transfer
531 services and by the consumer timeshare reseller that complies
532 with this subsection.

533 2. Fail to provide both the consumer timeshare reseller
534 and the escrow agent required by paragraph (c) with a fully
535 executed copy of the resale transfer agreement.

536 3. Fail to comply with the requirements of paragraphs (b)
537 and (c).

538 (b) Each resale transfer agreement shall contain:

539 1. A statement that no fee, cost, or other compensation
540 may be paid to the person providing the timeshare resale
541 transfer services before the delivery to the consumer timeshare
542 reseller of written evidence that all promised timeshare
543 interest transfer services have been performed, including, but
544 not limited to, delivery to both the consumer timeshare reseller
545 and the timeshare plan managing entity of a copy of the recorded
546 instrument or other legal document evidencing the transfer of
547 ownership of or legal title to the consumer resale timeshare
548 interest to the transferee, accompanied by the full name,
549 address, and other known contact information for the transferee.

550 2. The name, address, current phone number, and current e-
551 mail address of the escrow agent required by paragraph (c).

552 3. A statement that the person providing the timeshare
553 resale transfer services will provide the consumer timeshare
554 reseller with written notice of the full performance of the
555 timeshare resale transfer services, together with a copy of the
556 recorded instrument or other legal document evidencing the
557 transfer of ownership of or legal title to the consumer resale
558 timeshare interest from the consumer timeshare reseller to a
559 transferee, and that the consumer timeshare reseller will have 5
560 business days after receipt of such written notice of full

561 performance to notify the escrow agent in the manner described
562 in the resale transfer agreement if the consumer timeshare
563 reseller believes that all promised timeshare interest transfer
564 services have not in fact been fully performed.

565 4. A statement in substantially the following form in
566 conspicuous type immediately preceding the space in the resale
567 transfer agreement provided for the consumer timeshare
568 reseller's signature:

569
570 ...(Name)... has agreed to provide you with timeshare
571 resale transfer services pursuant to this resale
572 transfer agreement. After those services have been
573 fully performed, ...(Name)... is obligated to provide
574 you with written notice of such full performance and a
575 copy of the recorded instrument or other legal
576 document evidencing the transfer of ownership of or
577 legal title to the consumer resale timeshare interest
578 to the transferee. Any fee or other compensation paid
579 by you under this agreement before such full
580 performance by ...(Name)... must be held in escrow by
581 the escrow agent specified in this agreement, and
582 ...(Name)... is prohibited from receiving any such fee
583 or other compensation until all promised timeshare
584 interest transfer services have been performed. You
585 have 5 business days after your receipt of written
586 notice of full performance from ...(Name)... to notify
587 the escrow agent in the manner described in this
588 agreement if you believe that all promised timeshare

589 interest transfer services have not in fact been fully
590 performed.

591
592 (c)1. Before entering into any resale transfer agreement,
593 a person providing timeshare resale transfer services shall
594 establish an escrow account with an escrow agent for the purpose
595 of protecting the funds or other property of consumer timeshare
596 resellers required to be escrowed by this subsection. An
597 attorney who is a member in good standing of The Florida Bar, a
598 licensed Florida real estate broker in good standing, or a
599 licensed Florida title insurance agent in good standing, who
600 also provides timeshare interest transfer services as described
601 in this subsection, may serve as escrow agent under this
602 subsection. The escrow agent shall maintain the escrow account
603 only in such a manner as to be under the direct supervision and
604 control of the escrow agent. The escrow agent shall have a
605 fiduciary duty to each consumer timeshare reseller to maintain
606 the escrow account in accordance with good accounting practices
607 and to release the consumer timeshare reseller's funds or other
608 property from escrow only in accordance with this subsection.

609 2. All funds or other property that are received from or
610 on behalf of a consumer timeshare reseller pursuant to a resale
611 transfer agreement to provide timeshare interest transfer
612 services shall be deposited into an escrow account pursuant to
613 this paragraph. A fee, cost, or other compensation that is due
614 or that will be paid to the person providing the timeshare
615 resale transfer services under the resale transfer agreement
616 must be held in such escrow account until the person providing

617 the timeshare resale transfer services has fully complied with
618 all of the obligations under the resale transfer agreement and
619 under this subsection.

620 3. The funds or other property required to be escrowed
621 pursuant to this paragraph may only be released from escrow as
622 follows:

623 a. The escrow agent may release the escrowed funds or
624 other property to, or on the order of, the person providing the
625 timeshare resale transfer services upon presentation of an
626 affidavit by the person that all promised timeshare interest
627 transfer services have been performed, including delivery to
628 both the consumer timeshare reseller and the timeshare plan
629 managing entity of a copy of the recorded instrument or other
630 legal document evidencing the transfer of ownership of or legal
631 title to the consumer resale timeshare interest to the
632 transferee, provided that at least 5 days have passed since the
633 consumer timeshare reseller has received the notice required
634 under paragraph (b)3. and the escrow agent has not received
635 notice from the consumer timeshare reseller pursuant to
636 paragraph (b)3. disputing that all promised timeshare interest
637 transfer services have in fact fully performed by the person
638 providing the timeshare resale transfer services.

639 b. If the escrow agent receives conflicting demands for
640 funds or other property held in escrow, the escrow agent shall
641 immediately notify the division of the dispute and either
642 promptly submit the matter to arbitration or, by interpleader or
643 otherwise, seek an adjudication of the matter by court.

644 c. The escrow agent shall retain all resale transfer

645 agreements, escrow account records, affidavits, and notices of
646 dispute received pursuant to this subsection for a period of 5
647 years.

648 (d) A person providing timeshare resale transfer services,
649 an agent or third party service provider for the timeshare
650 resale transfer service provider, or an escrow agent who
651 intentionally fails to comply with the provisions of this
652 subsection concerning the establishment of an escrow account,
653 deposits of funds into escrow, withdrawal therefrom, and
654 maintenance of records is guilty of a felony of the third
655 degree, punishable as provided in s. 775.082, s. 775.083, or s.
656 775.084. The failure to establish an escrow account, place funds
657 therein as required in this subsection, withdraw funds therefrom
658 only as permitted in this subsection, or maintain records is
659 prima facie evidence of an intentional and purposeful violation
660 of this subsection.

661 (e)1. No person shall participate, for consideration or
662 with the expectation of consideration, in a plan or scheme, a
663 purpose of which is to transfer a consumer resale timeshare
664 interest to a transferee that the person knows does not have the
665 ability, means, or intent to pay all assessments and taxes for
666 the consumer resale timeshare interest that are due or that come
667 due during the transferee's ownership.

668 2. It is a violation of this paragraph if there is a
669 transfer, series of transfers, or other action made or taken by
670 a person for the purpose of circumventing subparagraph 1.

671 3. It is not a violation of this paragraph if a managing
672 entity performs such administrative acts as are necessary to

673 satisfy its fiduciary duties or to otherwise comply with the
674 requirements of this chapter with respect to any transfer of a
675 consumer resale timeshare interest, including the requirement to
676 maintain and update the books and records of the timeshare plan
677 pursuant to ss. 721.13(4) and 721.15(7).

678 (f) Providing timeshare interest transfer services with
679 respect to a consumer resale timeshare interest in a timeshare
680 property located or offered within this state, or in a multisite
681 timeshare plan registered or required to be registered to be
682 offered in this state, including acting as an agent or third-
683 party service provider for a resale service provider,
684 constitutes operating, conducting, engaging in, or carrying on a
685 business or business venture in this state for the purposes of
686 s. 48.193(1).

687 (g)1. Notwithstanding any other penalties provided for in
688 this subsection, a violation of this subsection is subject to a
689 civil penalty of not more than \$10,000 per violation pursuant to
690 s. 721.26(5) (e).

691 2. A managing entity may bring an action to enforce the
692 provisions of paragraph (e). In such action, the managing entity
693 may recover its actual damages, plus attorney fees and court
694 costs. Without regard to any other remedy or relief to which the
695 managing entity is entitled, the managing entity may also bring
696 an action to obtain a declaratory judgment that an act or
697 practice violates paragraph (e) and to enjoin a person who has
698 violated, is violating, or is otherwise likely to violate
699 paragraph (e).

700 (h) This subsection does not apply to a resale advertiser

701 who offers resale advertising services to a consumer timeshare
702 reseller, unless such person also specifically offers timeshare
703 interest transfer services to such consumer timeshare reseller.
704 Paragraphs (a)-(d) do not apply to a resale broker who offers
705 timeshare interest transfer services to a consumer timeshare
706 reseller, so long as the resale broker complies in all respects
707 with chapter 475 and with s. 721.20. This subsection does not
708 apply to the transfer of ownership of a consumer resale
709 timeshare interest from a consumer timeshare reseller to the
710 developer or managing entity of that timeshare plan.

711 Section 6. Subsections (9) and (11) of section 721.82,
712 Florida Statutes, are amended to read:

713 721.82 Definitions.—As used in this part, the term:

714 (9) "Notice address" means:

715 (a) As to an assessment lien, the address of the owner of
716 a timeshare interest as reflected by the books and records of
717 the timeshare plan under ss. 721.13(4) and 721.15(7).

718 (b) As to a mortgage lien:

719 1. The address of the mortgagor as set forth in the
720 mortgage, the promissory note or a separate document executed by
721 the mortgagor at the time the mortgage lien was created, or the
722 most current address of the mortgagor according to the records
723 of the mortgagee; and

724 2. If the owner of the timeshare interest is different
725 from the mortgagor, the address of the owner of the timeshare
726 interest as reflected by the books and records of the mortgagee.

727 (c) As to a junior interestholder, the address as set
728 forth in the recorded instrument creating the junior lien or

729 interest, or in any recorded amendment thereto changing the
730 address, or in any written notification by the junior
731 interestholder to the foreclosing lienholder changing the
732 address.

733 (d) As to an owner of a timeshare interest, mortgagor, or
734 junior interestholder whose current address is not the address
735 as determined by paragraph (a), paragraph (b), or paragraph (c),
736 such address as is known to be the current address.

737 (11) "Permitted delivery service" means any nationally
738 recognized common carrier delivery service, ~~or~~ international
739 airmail service that allows for return receipt service, or a
740 service recognized by an international jurisdiction as the
741 equivalent of certified, registered mail for that jurisdiction.

742 Section 7. Subsection (6) of section 721.84, Florida
743 Statutes, is amended to read:

744 721.84 Appointment of a registered agent; duties.—

745 (6) Unless otherwise provided in this section, a
746 registered agent in receipt of any notice or other document
747 addressed from the lienholder to the obligor in care of the
748 registered agent at the registered office must mail, by first-
749 class ~~first-class~~ mail if the obligor's address is within the
750 United States, and by international air mail if the obligor's
751 address is outside the United States, with postage fees prepaid,
752 such notice or documents to the obligor at the obligor's last
753 designated address within 5 days after receipt.

754 Section 8. Paragraph (c) of subsection (2), subsections
755 (4) and (5), paragraph (c) of subsection (6), paragraph (b) of
756 subsection (7), and paragraph (b) of subsection (14) of section

757 721.855, Florida Statutes, are amended to read:

758 721.855 Procedure for the trustee foreclosure of
 759 assessment liens.—The provisions of this section establish a
 760 trustee foreclosure procedure for assessment liens.

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

763 (c)1. In order to initiate a trustee foreclosure procedure
 764 against a timeshare interest, the lienholder shall deliver an
 765 affidavit to the trustee that identifies the obligor; the notice
 766 address of the obligor; the timeshare interest; the date that
 767 the notice of the intent to file a lien was given, if
 768 applicable; the official records book and page number where the
 769 claim of lien is recorded; and the name and notice address of
 770 any junior interestholder. ~~The affidavit shall be accompanied by~~
 771 ~~a title search of the timeshare interest identifying any junior~~
 772 ~~interestholders of record, and the effective date of the title~~
 773 ~~search must be a date that is within 60 calendar days before the~~
 774 ~~date of the affidavit.~~

775 2. The affidavit shall also state the facts that establish
 776 that the obligor has defaulted in the obligation to make a
 777 payment under a specified provision of the timeshare instrument
 778 or applicable law.

779 3. The affidavit shall also specify the amounts secured by
 780 the lien as of the date of the affidavit and a per diem amount
 781 to account for further accrual of the amounts secured by the
 782 lien.

783 4. The affidavit shall also state that the assessment lien
 784 was properly created and authorized pursuant to the timeshare

785 instrument and applicable law.

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

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

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

795 (c) There is no lis pendens recorded and pending against
 796 the same timeshare interest before the recording of the notice
 797 of lis pendens pursuant to paragraph (5) (h), and the trustee has
 798 not been served notice of the filing of any action to enjoin the
 799 trustee foreclosure sale;

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

804 (e) The notice of sale required under subsection (6) has
 805 been recorded in the official records of the county or counties
 806 in which the timeshare interest is located; and

807 (f) The lienholder has provided the trustee with a title
 808 search of the timeshare interest identifying any junior
 809 interestholders of record, the effective date of which search
 810 must be within 60 calendar days before the date it is delivered
 811 to the trustee. If a title search reveals that incorrect
 812 obligors or junior interestholders have been served or

813 additional obligors or junior interestholders have not been
814 served, the foreclosure action may not proceed until the notices
815 required pursuant to this section have been served on the
816 correct or additional obligors or junior interestholders and all
817 applicable time periods have expired.

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

819 (a) In any foreclosure proceeding under this section, the
820 trustee is required to notify the obligor of the proceeding by
821 sending the obligor a written notice of default and intent to
822 foreclose to the notice address of the obligor by certified
823 mail, registered mail, or permitted delivery service, return
824 receipt requested, and by first-class mail ~~or permitted delivery~~
825 ~~service~~, postage prepaid, as follows:

826 1. The notice of default and intent to foreclose shall
827 identify the obligor, the notice address of the obligor, the
828 legal description of the timeshare interest, the nature of the
829 default, the amounts secured by the lien, and a per diem amount
830 to account for further accrual of the amounts secured by the
831 lien and shall state the method by which the obligor may cure
832 the default, including the period of time after the date of the
833 notice of default and intent to foreclose within which the
834 obligor may cure the default.

835 2. The notice of default and intent to foreclose shall
836 include an objection form with which the obligor can object to
837 the use of the trustee foreclosure procedure by signing and
838 returning the objection form to the trustee. The objection form
839 shall identify the obligor, the notice address of the obligor,
840 the timeshare interest, and the return address of the trustee

841 and shall state: "The undersigned obligor exercises the
842 obligor's right to object to the use of the trustee foreclosure
843 procedure contained in section 721.855, Florida Statutes."

844 3. The notice of default and intent to foreclose shall
845 also contain a statement in substantially the following form:
846 If you fail to cure the default as set forth in this notice or
847 take other appropriate action with regard to this foreclosure
848 matter, you risk losing ownership of your timeshare interest
849 through the trustee foreclosure procedure established in section
850 721.855, Florida Statutes. You may choose to sign and send to
851 the trustee the enclosed objection form, exercising your right
852 to object to the use of the trustee foreclosure procedure. Upon
853 the trustee's receipt of your signed objection form, the
854 foreclosure of the lien with respect to the default specified in
855 this notice shall be subject to the judicial foreclosure
856 procedure only. You have the right to cure your default in the
857 manner set forth in this notice at any time before the trustee's
858 sale of your timeshare interest. If you do not object to the use
859 of the trustee foreclosure procedure, you will not be subject to
860 a deficiency judgment even if the proceeds from the sale of your
861 timeshare interest are insufficient to offset the amounts
862 secured by the lien.

863 4. The trustee shall also mail a copy of the notice of
864 default and intent to foreclose, without the objection form, to
865 the notice address of any junior interestholder by certified
866 mail, registered mail, or permitted delivery service, return
867 receipt requested, and by first-class mail ~~or permitted delivery~~
868 ~~service~~, postage prepaid.

869 5. Notice under this paragraph is considered perfected
870 upon the trustee receiving the return receipt bearing the
871 signature of the obligor or junior interestholder, as
872 applicable, within 30 calendar days after the trustee sent the
873 notice under this paragraph. Notice under this paragraph is not
874 perfected if:

875 a. The notice is returned as undeliverable within 30
876 calendar days after the trustee sent the notice; ~~if~~

877 b. The trustee cannot, in good faith, ascertain ~~from the~~
878 ~~receipt~~ that the obligor or junior interestholder, as
879 applicable, is the person who signed the receipt because all or
880 a portion of the obligor's or junior interestholder's name is
881 not on the signed receipt or because the trustee cannot
882 otherwise determine that the obligor or junior interestholder
883 signed the receipt; ~~or~~

884 c. ~~if~~ The receipt from the obligor or junior
885 interestholder, as applicable, is returned or refused within 30
886 calendar days after the trustee sent the notice.

887 (b) If the notice required by paragraph (a) is returned as
888 undeliverable within 30 calendar days after the trustee sent the
889 notice, the trustee shall perform a diligent search and inquiry
890 to obtain a different address for the obligor or junior
891 interestholder. For purposes of this paragraph, any address
892 known and used by the lienholder for sending regular mailings or
893 other communications from the lienholder to the obligor or
894 junior interestholder, as applicable, shall be included with
895 other addresses produced from the diligent search and inquiry,
896 if any.

897 1. If the trustee's diligent search and inquiry produces
898 an address different from the notice address, the trustee shall
899 mail a copy of the notice by certified mail, registered mail, or
900 permitted delivery service, return receipt requested, and by
901 first-class mail ~~or permitted delivery service~~, postage prepaid,
902 to the new address. Notice under this subparagraph is considered
903 perfected upon the trustee receiving the return receipt bearing
904 the signature of the obligor or junior interestholder, as
905 applicable, within 30 calendar days after the trustee sent the
906 notice under this subparagraph. Notice under this subparagraph
907 is not perfected if the receipt from the obligor or junior
908 interestholder, as applicable, is refused, returned, or the
909 trustee cannot, in good faith, ascertain from the receipt that
910 the obligor or junior interestholder, as applicable, is the
911 person who signed the receipt because all or a portion of the
912 obligor's or junior interestholder's name is not on the signed
913 receipt or because the trustee cannot otherwise determine that
914 the obligor or junior interestholder signed the receipt or the
915 receipt from the obligor or junior interestholder, as
916 applicable, is returned refused. If the trustee does not perfect
917 notice under this subparagraph, the trustee shall perfect
918 service in the manner set forth in paragraph (c).

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

923 (c) If the notice is not perfected under subparagraph
924 (a)5., and such notice was not returned as undeliverable, or if

925 the notice was not perfected under subparagraph (b)1., the
926 trustee may perfect notice by publication in a newspaper of
927 general circulation in the county or counties in which the
928 timeshare interest is located. The notice shall appear at least
929 once a week for 2 consecutive weeks. The notice of default and
930 intent to foreclose perfected by publication shall identify the
931 obligor, the notice address of the obligor, the legal
932 description of the timeshare interest, the nature of the action
933 in short and simple terms, the name and contact information of
934 the trustee, and the period of time after the date of the notice
935 of default and intent to foreclose within which the obligor may
936 cure the default. The trustee may group an unlimited number of
937 notices in the same publication, if all of the notices pertain
938 to the same timeshare plan. Notice under this paragraph is
939 considered perfected upon publication as required in this
940 paragraph.

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

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

953 subsection (9). The affidavit shall state the nature of the
954 notice, the dates on which the notice was mailed, the name and
955 addresses on the envelopes containing the notice, the manner in
956 which the notices were mailed, and the fact that a signed
957 receipt from the certified mail, registered mail, or permitted
958 delivery service was timely received, ~~and the name and address~~
959 ~~on the envelopes containing the notice.~~

960 (f) If notice is perfected by publication under paragraph
961 (c), the trustee shall execute an affidavit in recordable form
962 setting forth the manner in which notice was perfected and
963 attach the affidavit to the certificate of compliance set forth
964 in subsection (9). The affidavit shall include all the
965 information contained in either paragraph (d) or paragraph (e),
966 as applicable, shall state that the notice was perfected by
967 publication and shall state that ~~after~~ diligent search and
968 inquiry was made for the current address for the person, if
969 paragraph (b) applies. The affidavit ~~and~~ shall also include ~~a~~
970 ~~statement that notice was perfected by publication, and shall~~
971 ~~set forth~~ the information required, as applicable, by s. 49.041
972 in the case of a natural person or s. 49.051 in the case of a
973 corporation, ~~whichever is applicable.~~ No other action of the
974 trustee is necessary to perfect notice.

975 (g) Notice under paragraph (a) or paragraph (b) is
976 perfected as to all obligors who have the same address if notice
977 is perfected as to at least one obligor at that address pursuant
978 to the provisions of this subsection.

979 (h) The initiation of a trustee foreclosure action
980 operates as a lis pendens on the timeshare interest pursuant to

981 s. 48.23 if a notice of lis pendens is recorded in the official
 982 records of the county in which the deed conveying the timeshare
 983 interest to the obligor was recorded and such notice has not
 984 expired pursuant to s. 48.23(2) or been withdrawn or discharged.

985 The notice of lis pendens must contain the following:

- 986 1. The name of the obligor.
- 987 2. The date of the initiation of the trustee foreclosure
 988 action, which date shall be the date of the sending of the
 989 notice of default and intent to foreclose to the obligor.
- 990 3. The name and contact information of the trustee.
- 991 4. The legal description of the timeshare interest.
- 992 5. A statement that a trustee foreclosure action has been
 993 initiated against the timeshare interest pursuant to this
 994 section.

995 (6) NOTICE OF SALE.—

996 (c) After the date of recording of the notice of sale,
 997 notice is not required to be given to any person claiming an
 998 interest in the timeshare interest except as provided in this
 999 section. If a notice of lis pendens has not previously been
 1000 recorded pursuant to paragraph (5)(h), the recording of the
 1001 notice of sale has the same force and effect as the filing of a
 1002 lis pendens in a judicial proceeding under s. 48.23.

1003 (7) MANNER OF SALE.—

1004 (b) The trustee shall conduct the sale and act as the
 1005 auctioneer. The trustee may use a third party to conduct the
 1006 sale on behalf of the trustee and the trustee is liable for the
 1007 conduct of the sale and the actions of the third party with
 1008 respect to the conduct of the sale.

1009 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 1010 PROCEDURE.—

1011 (b) Any trustee who intentionally violates the provisions
 1012 of this section concerning the trustee foreclosure procedure
 1013 commits a felony of the third degree, punishable as provided in
 1014 s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly
 1015 ascertains that the obligor signed the return receipt as
 1016 required in s. 721.855(5) does not violate this section if the
 1017 trustee made a good faith effort to properly ascertain that the
 1018 obligor signed the return receipt in accordance with subsection
 1019 (5).

1020 Section 9. Paragraph (b) of subsection (2), subsections
 1021 (4) and (5), paragraphs (c) and (d) of subsection (6), paragraph
 1022 (b) of subsection (7), and paragraph (b) of subsection (13) of
 1023 section 721.856, Florida Statutes, are amended to read:

1024 721.856 Procedure for the trustee foreclosure of mortgage
 1025 liens.—The provisions of this section establish a trustee
 1026 foreclosure procedure for mortgage liens.

1027 (2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

1028 (b)1. In order to initiate a trustee foreclosure procedure
 1029 against a timeshare interest, the lienholder shall deliver an
 1030 affidavit to the trustee that identifies the obligor, the notice
 1031 address of the obligor, the timeshare interest, the official
 1032 records book and page number where the mortgage is recorded, and
 1033 the name and notice address of any junior interestholder. ~~The~~
 1034 ~~affidavit shall be accompanied by a title search of the~~
 1035 ~~timeshare interest identifying any junior interestholders of~~
 1036 ~~record, and the effective date of the title search must be a~~

1037 | ~~date that is within 60 calendar days before the date of the~~
 1038 | ~~affidavit.~~

1039 | 2. The affidavit shall also state the facts that establish
 1040 | that the obligor has defaulted in the obligation to make a
 1041 | payment under a specified provision of the mortgage or is
 1042 | otherwise deemed in uncured default under a specified provision
 1043 | of the mortgage.

1044 | 3. The affidavit shall also specify the amounts secured by
 1045 | the lien as of the date of the affidavit and a per diem amount
 1046 | to account for further accrual of the amounts secured by the
 1047 | lien.

1048 | 4. The affidavit shall also state that the appropriate
 1049 | amount of documentary stamp tax and intangible taxes has been
 1050 | paid upon recording of the mortgage, or otherwise paid to the
 1051 | state.

1052 | 5. The affidavit shall also state that the lienholder is
 1053 | the holder of the note and has complied with all preconditions
 1054 | in the note and mortgage to determine the amounts secured by the
 1055 | lien and to initiate the use of the trustee foreclosure
 1056 | procedure.

1057 | (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
 1058 | trustee may sell an encumbered timeshare interest foreclosed
 1059 | under this section if:

1060 | (a) The trustee has received the affidavit from the
 1061 | lienholder under paragraph (2) (b);

1062 | (b) The trustee has not received a written objection to
 1063 | the use of the trustee foreclosure procedure under paragraph
 1064 | (3) (a) and the timeshare interest was not redeemed under

1065 paragraph (3) (b);

1066 (c) There is no lis pendens recorded and pending against
 1067 the same timeshare interest before the initiation of the trustee
 1068 foreclosure action and provided a notice of lis pendens has been
 1069 recorded pursuant to paragraph (5) (h), and the trustee has not
 1070 been served notice of the filing of any action to enjoin the
 1071 trustee foreclosure sale;

1072 (d) The trustee is in possession of the original
 1073 promissory note executed by the mortgagor and secured by the
 1074 mortgage lien;

1075 (e) The trustee has provided written notice of default and
 1076 intent to foreclose as required under subsection (5) and a
 1077 period of at least 30 calendar days has elapsed after such
 1078 notice is deemed perfected under subsection (5); ~~and~~

1079 (f) The notice of sale required under subsection (6) has
 1080 been recorded in the official records of the county in which the
 1081 mortgage was recorded; and

1082 (g) The lienholder has provided the trustee with a title
 1083 search of the timeshare interest identifying any junior
 1084 interestholders of record, the effective date of which search
 1085 must be within 60 calendar days before the date it is delivered
 1086 to the trustee. If a title search reveals that incorrect
 1087 obligors or junior interestholders have been served or
 1088 additional obligors or junior interestholders have not been
 1089 served, the foreclosure action may not proceed until the notices
 1090 required pursuant to this section have been served on the
 1091 correct or additional obligors or junior interestholders and all
 1092 applicable time periods have expired.

1093 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—
 1094 (a) In any foreclosure proceeding under this section, the
 1095 trustee is required to notify the obligor of the proceeding by
 1096 sending the obligor a written notice of default and intent to
 1097 foreclose to the notice address of the obligor by certified
 1098 mail, registered mail, or permitted delivery service, return
 1099 receipt requested, and by first-class mail ~~or permitted delivery~~
 1100 ~~service~~, postage prepaid, as follows:

1101 1. The notice of default and intent to foreclose shall
 1102 identify the obligor, the notice address of the obligor, the
 1103 legal description of the timeshare interest, the nature of the
 1104 default, the amounts secured by the lien, and a per diem amount
 1105 to account for further accrual of the amounts secured by the
 1106 lien and shall state the method by which the obligor may cure
 1107 the default, including the period of time after the date of the
 1108 notice of default and intent to foreclose within which the
 1109 obligor may cure the default.

1110 2. The notice of default and intent to foreclose shall
 1111 include an objection form with which the obligor can object to
 1112 the use of the trustee foreclosure procedure by signing and
 1113 returning the objection form to the trustee. The objection form
 1114 shall identify the obligor, the notice address of the obligor,
 1115 the timeshare interest, and the return address of the trustee
 1116 and shall state: "The undersigned obligor exercises the
 1117 obligor's right to object to the use of the trustee foreclosure
 1118 procedure contained in section 721.856, Florida Statutes."
 1119 3. The notice of default and intent to foreclose shall
 1120 also contain a statement in substantially the following form:

CS/HB 7025

2013

1121 If you fail to cure the default as set forth in this notice or
1122 take other appropriate action with regard to this foreclosure
1123 matter, you risk losing ownership of your timeshare interest
1124 through the trustee foreclosure procedure established in section
1125 721.856, Florida Statutes. You may choose to sign and send to
1126 the trustee the enclosed objection form, exercising your right
1127 to object to the use of the trustee foreclosure procedure. Upon
1128 the trustee's receipt of your signed objection form, the
1129 foreclosure of the lien with respect to the default specified in
1130 this notice shall be subject to the judicial foreclosure
1131 procedure only. You have the right to cure your default in the
1132 manner set forth in this notice at any time before the trustee's
1133 sale of your timeshare interest. If you do not object to the use
1134 of the trustee foreclosure procedure, you will not be subject to
1135 a deficiency judgment even if the proceeds from the sale of your
1136 timeshare interest are insufficient to offset the amounts
1137 secured by the lien.

1138 4. The trustee shall also mail a copy of the notice of
1139 default and intent to foreclose, without the objection form, to
1140 the notice address of any junior interestholder by certified
1141 mail, registered mail, or permitted delivery service, return
1142 receipt requested, and by first-class mail ~~or permitted delivery~~
1143 ~~service~~, postage prepaid.

1144 5. Notice under this paragraph is considered perfected
1145 upon the trustee receiving the return receipt bearing the
1146 signature of the obligor or junior interestholder, as
1147 applicable, within 30 calendar days after the trustee sent the
1148 notice under this paragraph. Notice under this paragraph is not

1149 perfected if:

1150 a. The notice is returned as undeliverable within 30
 1151 calendar days after the trustee sent the notice; ~~if~~

1152 b. The trustee cannot, in good faith, ascertain from the
 1153 receipt that the obligor or junior interestholder, as
 1154 applicable, is the person who signed the receipt because all or
 1155 a portion of the obligor's or junior interestholder's name is
 1156 not on the signed receipt or the trustee cannot otherwise
 1157 determine that the obligor or junior interestholder signed the
 1158 receipt; ~~or~~

1159 c. ~~if~~ The receipt from the obligor or junior
 1160 interestholder, as applicable, is returned or refused within 30
 1161 calendar days after the trustee sent the notice.

1162 (b) If the notice required by paragraph (a) is returned as
 1163 undeliverable within 30 calendar days after the trustee sent the
 1164 notice, the trustee shall perform a diligent search and inquiry
 1165 to obtain a different address for the obligor or junior
 1166 interestholder. For purposes of this paragraph, any address
 1167 known and used by the lienholder for sending regular mailings or
 1168 other communications from the lienholder to the obligor or
 1169 junior interestholder, as applicable, shall be included with
 1170 other addresses produced from the diligent search and inquiry,
 1171 if any.

1172 1. If the trustee's diligent search and inquiry produces
 1173 an address different from the notice address, the trustee shall
 1174 mail a copy of the notice by certified mail, registered mail, or
 1175 permitted delivery service, return receipt requested, and by
 1176 first-class mail ~~or permitted delivery service,~~ postage prepaid,

CS/HB 7025

2013

1177 to the new address. Notice under this subparagraph is considered
1178 perfected upon the trustee receiving the return receipt bearing
1179 the signature of the obligor or junior interestholder, as
1180 applicable, within 30 calendar days after the trustee sent the
1181 notice under this subparagraph. Notice under this subparagraph
1182 is not perfected if the receipt from the obligor or junior
1183 interestholder is refused, returned, or the trustee cannot, in
1184 good faith, ascertain ~~from the receipt~~ that the obligor or
1185 junior interestholder, as applicable, is the person who signed
1186 the receipt because all or a portion of the obligor's or junior
1187 interestholder's name is not on the signed receipt or because
1188 the trustee cannot otherwise determine that the obligor or
1189 junior interestholder signed the receipt ~~or the receipt from the~~
1190 ~~obligor or junior interestholder, as applicable, is returned~~
1191 ~~refused.~~ If the trustee does not perfect notice under this
1192 subparagraph, the trustee shall perfect service in the manner
1193 set forth in paragraph (c).

1194 2. If the trustee's diligent search and inquiry does not
1195 locate a different address for the obligor or junior
1196 interestholder, as applicable, the trustee may perfect notice
1197 against that person under paragraph (c).

1198 (c) If the notice is not perfected under subparagraph
1199 (a)5., and such notice was not returned as undeliverable, or if
1200 the notice was not perfected under subparagraph (b)1., the
1201 trustee may perfect notice by publication in a newspaper of
1202 general circulation in the county or counties in which the
1203 timeshare interest is located. The notice shall appear at least
1204 once a week for 2 consecutive weeks. The notice of default and

1205 intent to foreclose perfected by publication shall identify the
 1206 obligor, the notice address of the obligor, the legal
 1207 description of the timeshare interest, the nature of the action
 1208 in short and simple terms, the name and contact information of
 1209 the trustee, and the period of time after the date of the notice
 1210 of default and intent to foreclose within which the obligor may
 1211 cure the default. The trustee may group an unlimited number of
 1212 notices in the same publication, if all of the notices pertain
 1213 to the same timeshare plan. Notice under this paragraph is
 1214 considered perfected upon publication as required in this
 1215 paragraph.

1216 (d) If notice is perfected under subparagraph (a)5., the
 1217 trustee shall execute an affidavit in recordable form setting
 1218 forth the manner in which notice was perfected and attach the
 1219 affidavit to the certificate of compliance set forth in
 1220 subsection (9). The affidavit shall state the nature of the
 1221 notice, the date on which the notice was mailed, the name and
 1222 address on the envelope containing the notice, the manner in
 1223 which the notice was mailed, and the basis for that knowledge.

1224 (e) If notice is perfected under subparagraph (b)1., the
 1225 trustee shall execute an affidavit in recordable form setting
 1226 forth the manner in which notice was perfected and attach the
 1227 affidavit to the certificate of compliance set forth in
 1228 subsection (9). The affidavit shall state the nature of the
 1229 notice, the dates on which the notice was mailed, the name and
 1230 addresses on the envelopes containing the notice, the manner in
 1231 which the notice was mailed, and the fact that a signed receipt
 1232 from the certified mail, registered mail, or permitted delivery

1233 service was timely received, ~~and the name and address on the~~
1234 ~~envelopes containing the notice.~~

1235 (f) If notice is perfected under paragraph (c), the
1236 trustee shall execute an affidavit in recordable form setting
1237 forth the manner in which notice was perfected and attach the
1238 affidavit to the certificate of compliance set forth in
1239 subsection (9). The affidavit shall include all the information
1240 contained in either paragraph (d) or paragraph (e), as
1241 applicable, shall state that the notice was perfected by
1242 publication and shall state that ~~after~~ diligent search and
1243 inquiry was made for the current address for the person, if
1244 paragraph (b) applies. The affidavit shall also include ~~a~~
1245 ~~statement that notice was perfected by publication, and shall~~
1246 ~~set forth~~ the information required, as applicable, by s. 49.041
1247 in the case of a natural person or s. 49.051 in the case of a
1248 corporation, ~~whichever is applicable.~~ No other action of the
1249 trustee is necessary to perfect notice.

1250 (g) Notice under paragraph (a) or paragraph (b) is
1251 perfected as to all obligors who have the same address if notice
1252 is perfected as to at least one obligor at that address pursuant
1253 to the provisions of this subsection.

1254 (h) The initiation of a trustee foreclosure action
1255 operates as a lis pendens on the timeshare interest pursuant to
1256 s. 48.23 if a notice of lis pendens is recorded in the official
1257 records of the county or counties in which the mortgage is
1258 recorded and such notice has not expired pursuant to s. 48.23(2)
1259 or been withdrawn or discharged. The notice of lis pendens must
1260 contain the following:

- 1261 1. The name of the obligor.
 1262 2. The date of the initiation of the trustee foreclosure
 1263 action, which date shall be the date of the sending of the
 1264 notice of default and intent to foreclose to the obligor.
 1265 3. The name and contact information of the trustee.
 1266 4. The legal description of the timeshare interest.
 1267 5. A statement that a trustee foreclosure action has been
 1268 initiated against the timeshare interest pursuant to this
 1269 section.

1270 (6) NOTICE OF SALE.—

1271 (c) After the date of recording of the notice of sale,
 1272 notice is not required to be given to any person claiming an
 1273 interest in the timeshare interest except as provided in this
 1274 section. If a notice of lis pendens has not previously been
 1275 recorded pursuant to paragraph (5)(h), the recording of the
 1276 notice of sale has the same force and effect as the filing of a
 1277 lis pendens in a judicial proceeding under s. 48.23.

1278 (d)1. The trustee shall publish the notice of sale in a
 1279 newspaper of general circulation in the county or counties in
 1280 which the timeshare interest is located at least once a week for
 1281 2 consecutive weeks before the date of the sale. The last
 1282 publication shall occur at least 5 calendar days before the
 1283 sale.

1284 2. The trustee may group an unlimited number of notices of
 1285 sale in the same publication, if all of the notices of sale
 1286 pertain to the same timeshare plan.

1287 (7) MANNER OF SALE.—

1288 (b) The trustee shall conduct the sale and act as the

CS/HB 7025

2013

1289 | auctioneer. The trustee may use a third party to conduct the
1290 | sale on behalf of the trustee and the trustee is liable for the
1291 | conduct of the sale and the actions of the third party with
1292 | respect to the conduct of the sale.

1293 | (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
1294 | PROCEDURE.—

1295 | (b) Any trustee who intentionally violates the provisions
1296 | of this section concerning the trustee foreclosure procedure
1297 | commits a felony of the third degree, punishable as provided in
1298 | s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly
1299 | ascertains that the obligor signed the return receipt as
1300 | required in s. 721.856(5) does not violate this section if the
1301 | trustee made a good faith effort to properly ascertain that it
1302 | is the obligor who signed the return receipt in accordance with
1303 | subsection (5).

1304 | Section 10. This act shall take effect July 1, 2013.