



1 A bill to be entitled
2 An act relating to timeshares; amending s. 718.112,
3 F.S.; specifying that certain provisions relating to
4 condominium board elections do not apply to timeshare
5 condominiums; amending s. 721.05, F.S.; revising and
6 providing definitions related to the Florida Vacation
7 Plan and Timesharing Act; amending s. 721.07, F.S.;
8 revising formula requirements for calculating reserves
9 for accommodations and facilities of real property
10 timeshare plans; amending s. 721.15, F.S.; requiring
11 the successor in interest to be listed as the owner of
12 the timeshare interest under certain conditions;
13 requiring an estoppel letter in certain timeshare
14 resale transfer transactions; amending s. 721.17,
15 F.S.; prohibiting certain activities related to
16 offering timeshare interest transfer services;
17 requiring resale transfer agreements to contain
18 specified information; requiring the establishment of
19 an escrow account for certain purposes; providing
20 requirements and duties of the escrow agent; providing
21 penalties; providing for applicability; amending s.
22 721.82, F.S.; revising definitions applicable to the
23 Timeshare Lien Foreclosure Act; amending s. 721.84,
24 F.S.; making an editorial change; amending s. 721.855,
25 F.S.; revising procedure for the trustee foreclosure
26 of assessment liens; revising conditions under which a
27 trustee may sell a foreclosed encumbered timeshare
28 interest; revising and providing notice requirements;



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

43

44 Be It Enacted by the Legislature of the State of Florida:

45

46 Section 1. Paragraph (d) of subsection (2) of section
 47 718.112, Florida Statutes, is amended to read:

48 718.112 Bylaws.—

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

52 (d) Unit owner meetings.—

53 1. An annual meeting of the unit owners shall be held at
 54 the location provided in the association bylaws and, if the
 55 bylaws are silent as to the location, the meeting shall be held
 56 within 45 miles of the condominium property. However, such



57 distance requirement does not apply to an association governing
58 a timeshare condominium.

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



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

109 | 3. The bylaws must provide the method of calling meetings
110 | of unit owners, including annual meetings. Written notice must
111 | include an agenda, must be mailed, hand delivered, or
112 | electronically transmitted to each unit owner at least 14 days



113 before the annual meeting, and must be posted in a conspicuous
114 place on the condominium property at least 14 continuous days
115 before the annual meeting. Upon notice to the unit owners, the
116 board shall, by duly adopted rule, designate a specific location
117 on the condominium property or association property where all
118 notices of unit owner meetings shall be posted. This requirement
119 does not apply if there is no condominium property or
120 association property for posting notices. In lieu of, or in
121 addition to, the physical posting of meeting notices, the
122 association may, by reasonable rule, adopt a procedure for
123 conspicuously posting and repeatedly broadcasting the notice and
124 the agenda on a closed-circuit cable television system serving
125 the condominium association. However, if broadcast notice is
126 used, the notice and agenda must be broadcast at least four
127 times every broadcast hour of each day that a posted notice is
128 otherwise required under this section. If broadcast notice is
129 provided, the notice and agenda must be broadcast in a manner
130 and for a sufficient continuous length of time so as to allow an
131 average reader to observe the notice and read and comprehend the
132 entire content of the notice and the agenda. Unless a unit owner
133 waives in writing the right to receive notice of the annual
134 meeting, such notice must be hand delivered, mailed, or
135 electronically transmitted to each unit owner. Notice for
136 meetings and notice for all other purposes must be mailed to
137 each unit owner at the address last furnished to the association
138 by the unit owner, or hand delivered to each unit owner.
139 However, if a unit is owned by more than one person, the
140 association must provide notice to the address that the



141 developer identifies for that purpose and thereafter as one or
142 more of the owners of the unit advise the association in
143 writing, or if no address is given or the owners of the unit do
144 not agree, to the address provided on the deed of record. An
145 officer of the association, or the manager or other person
146 providing notice of the association meeting, must provide an
147 affidavit or United States Postal Service certificate of
148 mailing, to be included in the official records of the
149 association affirming that the notice was mailed or hand
150 delivered in accordance with this provision.

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

157 a. At least 60 days before a scheduled election, the
158 association shall mail, deliver, or electronically transmit, by
159 separate association mailing or included in another association
160 mailing, delivery, or transmission, including regularly
161 published newsletters, to each unit owner entitled to a vote, a
162 first notice of the date of the election. Any unit owner or
163 other eligible person desiring to be a candidate for the board
164 must give written notice of his or her intent to be a candidate
165 to the association at least 40 days before a scheduled election.
166 Together with the written notice and agenda as set forth in
167 subparagraph 3., the association shall mail, deliver, or
168 electronically transmit a second notice of the election to all



169 unit owners entitled to vote, together with a ballot that lists
170 all candidates. Upon request of a candidate, an information
171 sheet, no larger than 8 1/2 inches by 11 inches, which must be
172 furnished by the candidate at least 35 days before the election,
173 must be included with the mailing, delivery, or transmission of
174 the ballot, with the costs of mailing, delivery, or electronic
175 transmission and copying to be borne by the association. The
176 association is not liable for the contents of the information
177 sheets prepared by the candidates. In order to reduce costs, the
178 association may print or duplicate the information sheets on
179 both sides of the paper. The division shall by rule establish
180 voting procedures consistent with this sub-subparagraph,
181 including rules establishing procedures for giving notice by
182 electronic transmission and rules providing for the secrecy of
183 ballots. Elections shall be decided by a plurality of ballots
184 cast. There is no quorum requirement; however, at least 20
185 percent of the eligible voters must cast a ballot in order to
186 have a valid election. A unit owner may not permit any other
187 person to vote his or her ballot, and any ballots improperly
188 cast are invalid. A unit owner who violates this provision may
189 be fined by the association in accordance with s. 718.303. A
190 unit owner who needs assistance in casting the ballot for the
191 reasons stated in s. 101.051 may obtain such assistance. The
192 regular election must occur on the date of the annual meeting.
193 Notwithstanding this sub-subparagraph, an election is not
194 required unless more candidates file notices of intent to run or
195 are nominated than board vacancies exist.

196 b. Within 90 days after being elected or appointed to the



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

223 5. Any approval by unit owners called for by this chapter
224 or the applicable declaration or bylaws, including, but not



225 limited to, the approval requirement in s. 718.111(8), must be
226 made at a duly noticed meeting of unit owners and is subject to
227 all requirements of this chapter or the applicable condominium
228 documents relating to unit owner decisionmaking, except that
229 unit owners may take action by written agreement, without
230 meetings, on matters for which action by written agreement
231 without meetings is expressly allowed by the applicable bylaws
232 or declaration or any law that provides for such action.

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

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

245 8. A unit owner may tape record or videotape a meeting of
246 the unit owners subject to reasonable rules adopted by the
247 division.

248 9. Unless otherwise provided in the bylaws, any vacancy
249 occurring on the board before the expiration of a term may be
250 filled by the affirmative vote of the majority of the remaining
251 directors, even if the remaining directors constitute less than
252 a quorum, or by the sole remaining director. In the alternative,



253 a board may hold an election to fill the vacancy, in which case
 254 the election procedures must conform to sub-subparagraph 4.a.
 255 unless the association governs 10 units or fewer and has opted
 256 out of the statutory election process, in which case the bylaws
 257 of the association control. Unless otherwise provided in the
 258 bylaws, a board member appointed or elected under this section
 259 shall fill the vacancy for the unexpired term of the seat being
 260 filled. Filling vacancies created by recall is governed by
 261 paragraph (j) and rules adopted by the division.

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

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

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

279 721.05 Definitions.—As used in this chapter, the term:
 280 (34) "Timeshare estate" means a right to occupy a



281 timeshare unit, coupled with a freehold estate or an estate for
 282 years with a future interest in a timeshare property or a
 283 specified portion thereof. The term includes ~~shall also mean~~ an
 284 interest in a condominium unit pursuant to s. 718.103, an
 285 interest in a cooperative unit pursuant to s. 719.103, or a
 286 direct or indirect ~~an~~ interest in a trust that complies in all
 287 respects with the provisions of s. 721.08(2)(c)4., provided that
 288 the trust does not contain any personal property timeshare
 289 interests. A timeshare estate is a parcel of real property under
 290 the laws of this state.

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

296 (52) "Timeshare interest transfer services" means any good
 297 or service relating to an offer or agreement to transfer
 298 ownership of a consumer resale timeshare interest, or assistance
 299 with or a promise of assistance in connection with the transfer
 300 of ownership of a consumer resale timeshare interest, as
 301 described in s. 721.17(3). The term does not include resale
 302 advertising services as provided in this chapter.

303 Section 3. Paragraph (t) of subsection (5) of section
 304 721.07, Florida Statutes, is amended to read:

305 721.07 Public offering statement.—Prior to offering any
 306 timeshare plan, the developer must submit a filed public
 307 offering statement to the division for approval as prescribed by
 308 s. 721.03, s. 721.55, or this section. Until the division



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309 | approves such filing, any contract regarding the sale of that
310 | timeshare plan is subject to cancellation by the purchaser
311 | pursuant to s. 721.10.

312 | (5) Every filed public offering statement for a timeshare
313 | plan which is not a multisite timeshare plan shall contain the
314 | information required by this subsection. The division is
315 | authorized to provide by rule the method by which a developer
316 | must provide such information to the division.

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

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

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

335 | 3. The estimated items of expenses of the timeshare plan
336 | and the managing entity, except as excluded under subparagraph



337 2., including, but not limited to, if applicable, the following
 338 items, which shall be stated either as management expenses
 339 collectible by assessments or as expenses of the purchaser
 340 payable to persons other than the managing entity:

341 a. Expenses for the managing entity:

342 (I) Administration of the managing entity.

343 (II) Management fees.

344 (III) Maintenance.

345 (IV) Rent for facilities.

346 (V) Taxes upon timeshare property.

347 (VI) Taxes upon leased areas.

348 (VII) Insurance.

349 (VIII) Security provisions.

350 (IX) Other expenses.

351 (X) Operating capital.

352 (XI) Reserves for deferred maintenance and reserves for
 353 capital expenditures, including:

354 (A) Reserves for deferred maintenance or capital
 355 expenditures of accommodations and facilities of a real property
 356 timeshare plan, if any. All reserves for any accommodations and
 357 facilities of real property timeshare plans located in this
 358 state shall be calculated using ~~by~~ a formula ~~which is~~ based upon
 359 estimated life and replacement cost of each reserve item that
 360 will provide funds equal to the total estimated deferred
 361 maintenance expense or total estimated life and replacement cost
 362 for an asset or group of assets over the remaining useful life
 363 of the asset or group of assets. Funding formulas for reserves
 364 shall be based on either a separate analysis of each of the



365 required assets using the straight-line accounting method or a
366 pooled analysis of two or more of the required assets using the
367 pooling accounting method. Reserves for deferred maintenance for
368 such accommodations and facilities shall include accounts for
369 roof replacement, building painting, pavement resurfacing,
370 replacement of timeshare unit furnishings and equipment, and any
371 other component, the useful life of which is less than the
372 useful life of the overall structure. For any accommodations and
373 facilities of real property timeshare plans located outside of
374 this state, the developer shall disclose the amount of reserves
375 for deferred maintenance or capital expenditures required by the
376 law of the situs state, if applicable, and maintained for such
377 accommodations and facilities.

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

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

391 (XII) Fees payable to the division.

392 b. Expenses for a purchaser:



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

394 (II) Rent payable by the purchaser directly to the lessor
395 or agent under any lease for the use of facilities, which use
396 and payment is a mandatory condition of ownership and is not
397 included in the common expenses or assessments for common
398 maintenance paid by the purchasers to the managing entity.

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

403 5. If the developer intends to guarantee the level of
404 assessments, such guarantee must be based upon a good faith
405 estimate of the revenues and expenses of the timeshare plan. The
406 guarantee must include a description of the following:

407 a. The specific time period measured in one or more
408 calendar or fiscal years during which the guarantee will be in
409 effect.

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

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

419 6. If the developer intends to provide a trust fund to
420 defer or reduce the payment of annual assessments, a copy of the



421 trust instrument shall be attached as an exhibit and shall
 422 include a description of such arrangement, including, but not
 423 limited to:

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

426 b. The name and address of the trustee.

427 c. The investment methods permitted by the trust
 428 agreement.

429 d. A statement in conspicuous type that the funds from the
 430 trust account may not cover all assessments and that there is no
 431 guarantee that purchasers will not have to pay assessments in
 432 the future.

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

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

443 721.15 Assessments for common expenses.—

444 (7) (a) A purchaser, regardless of how her or his timeshare
 445 estate or timeshare license has been acquired, including a
 446 purchaser at a judicial sale, is personally liable for all
 447 assessments for common expenses which come due while the
 448 purchaser is the owner of such interest. A successor in interest



449 is jointly and severally liable with her or his predecessor in
450 interest for all unpaid assessments against such predecessor up
451 to the time of transfer of the timeshare interest to such
452 successor without prejudice to any right a successor in interest
453 may have to recover from her or his predecessor in interest any
454 amounts assessed against such predecessor and paid by such
455 successor. The predecessor in interest or his or her agent, or a
456 person providing resale transfer services for the predecessor in
457 interest pursuant to s. 721.17(3) or his or her agent, shall
458 deliver to ~~provide~~ the managing entity ~~with~~ a copy of the
459 recorded deed of conveyance if the interest is a timeshare
460 estate or a copy of the instrument of transfer if the interest
461 is a timeshare license, with ~~containing~~ the name and mailing
462 address of the successor in interest within 15 days after the
463 date of transfer, and after such delivery the successor in
464 interest shall be listed by the managing entity as the owner of
465 the timeshare interest on the books and records of the timeshare
466 plan. The managing entity shall not be liable to any person for
467 any inaccuracy in the books and records of the timeshare plan
468 arising from the failure of the predecessor in interest to
469 timely and correctly notify the managing entity of the name and
470 mailing address of the successor in interest.

471 (b) Within 30 days after receiving a written request from
472 a timeshare interest owner, an agent designated in writing by
473 the timeshare interest owner, or a person providing resale
474 transfer services for a consumer timeshare reseller pursuant to
475 s. 721.17(3), a managing entity must provide a certificate,
476 signed by an officer or agent of the managing entity, to the



477 person requesting the certificate, that states the amount of any
478 assessment, transfer fee, or other moneys currently owed to the
479 managing entity, and of any assessment, transfer fee, or other
480 moneys approved by the managing entity that will be due within
481 the next 90 days, with respect to the designated consumer resale
482 timeshare interest, as well as any information contained in the
483 books and records of the timeshare plan regarding the legal
484 description and use plan related to the designated consumer
485 resale timeshare interest.

486 1. A person who relies upon such certificate shall be
487 protected thereby.

488 2. A summary proceeding pursuant to s. 51.011 may be
489 brought to compel compliance with this paragraph, and in such an
490 action the prevailing party may recover reasonable attorney fees
491 and court costs.

492 3. The managing entity may charge a fee not to exceed \$150
493 for the preparation and delivery of the certificate. The amount
494 of the fee must be included on the certificate.

495 Section 5. Section 721.17, Florida Statutes, is amended to
496 read:

497 721.17 Transfer of interest; resale transfer agreements.-

498 (1) Except in the case of a timeshare plan subject to the
499 provisions of chapter 718 or chapter 719, no developer, owner of
500 the underlying fee, or owner of the underlying personal property
501 shall sell, lease, assign, mortgage, or otherwise transfer his
502 or her interest in the accommodations and facilities of the
503 timeshare plan except by an instrument evidencing the transfer
504 recorded in the public records of the county in which such



505 accommodations and facilities are located or, with respect to
506 personal property timeshare plans, in full compliance with s.
507 721.08. The instrument shall be executed by both the transferor
508 and transferee and shall state:

509 (a)~~(1)~~ That its provisions are intended to protect the
510 rights of all purchasers of the plan.

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

514 (c)~~(3)~~ That so long as a purchaser remains in good
515 standing with respect to her or his obligations under the
516 timeshare instrument, including making all payments to the
517 managing entity required by the timeshare instrument with
518 respect to the annual common expenses of the timeshare plan, the
519 transferee shall honor all rights of such purchaser relating to
520 the subject accommodation or facility as reflected in the
521 timeshare instrument.

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

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

529 (2) Should any transfer of the interest of the developer,
530 the owner of the underlying fee, or the owner of the underlying
531 property occur in a manner which is not in compliance with
532 subsection (1) ~~this section~~, the terms set forth in subsection



533 | (1) ~~this section~~ shall be presumed to be a part of the transfer
534 | and shall be deemed to be included in the instrument of
535 | transfer. Notice shall be mailed to each purchaser of record
536 | within 30 days after the transfer unless such transfer does not
537 | affect the purchaser's rights in or use of the timeshare plan.
538 | Persons who hold mortgages or liens on the property constituting
539 | a timeshare plan before the filed public offering statement of
540 | such plan is approved by the division shall not be considered
541 | transferees for the purposes of subsection (1) ~~this section~~.

542 | (3) (a) In the course of offering timeshare interest
543 | transfer services, no person shall:

544 | 1. Engage in any timeshare interest transfer services for
545 | consideration, or the expectation of receiving consideration,
546 | without first obtaining a written resale transfer agreement
547 | signed by the consumer timeshare reseller that complies with
548 | this subsection.

549 | 2. Fail to provide both the consumer timeshare reseller
550 | and the escrow agent required by paragraph (c) with an executed
551 | copy of the resale transfer agreement.

552 | 3. Fail to comply with the requirements of paragraphs (b)
553 | and (c).

554 | (b) Each resale transfer agreement shall contain:

555 | 1. A statement that no fee, cost, or other compensation
556 | may be paid to the person providing the timeshare resale
557 | transfer services before the delivery to the consumer timeshare
558 | reseller of written evidence that all promised timeshare
559 | interest transfer services have been performed, including, but
560 | not limited to, delivery to both the consumer timeshare reseller



561 and the timeshare plan managing entity of a copy of the recorded
562 instrument or other legal document evidencing the transfer of
563 ownership of or legal title to the consumer resale timeshare
564 interest to the transferee, accompanied by the full name,
565 address, and other known contact information for the transferee.

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

568 3. A statement that the person providing the timeshare
569 resale transfer services will provide the consumer timeshare
570 reseller with written notice of the full performance of the
571 timeshare resale transfer services, together with a copy of the
572 recorded instrument or other legal document evidencing the
573 transfer of ownership of or legal title to the consumer resale
574 timeshare interest from the consumer timeshare reseller to a
575 transferee.

576 4. A statement in substantially the following form in
577 conspicuous type immediately preceding the space in the resale
578 transfer agreement provided for the consumer timeshare
579 reseller's signature:

580
581 ...(Name)... has agreed to provide you with timeshare
582 resale transfer services pursuant to this resale
583 transfer agreement. After those services have been
584 fully performed, ...(Name)... is obligated to provide
585 you with written notice of such full performance and a
586 copy of the recorded instrument or other legal
587 document evidencing the transfer of ownership of or
588 legal title to the consumer resale timeshare interest



589 to the transferee. Any fee or other compensation paid
590 by you under this agreement before such full
591 performance by ...(Name)... must be held in escrow by
592 the escrow agent specified in this agreement, and
593 ...(Name)... is prohibited from receiving any such fee
594 or other compensation until all promised timeshare
595 interest transfer services have been performed.

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

615 2. All funds or other property that are received from or
616 on behalf of a consumer timeshare reseller pursuant to a resale



617 transfer agreement shall be deposited into an escrow account
618 pursuant to this paragraph. A fee, cost, or other compensation
619 that is due or that will be paid to the person providing the
620 timeshare resale transfer services must be held in such escrow
621 account until the person providing the timeshare resale transfer
622 services has fully complied with all of his or her obligations
623 under the resale transfer agreement and under this subsection.

624 3. The funds or other property required to be escrowed
625 pursuant to this paragraph may only be released from escrow as
626 follows:

627 a. On the order of the person providing the timeshare
628 resale transfer services upon presentation of an affidavit by
629 the person that all promised timeshare interest transfer
630 services have been performed, including delivery to both the
631 consumer timeshare reseller and the timeshare plan managing
632 entity of a copy of the recorded instrument or other legal
633 document evidencing the transfer of ownership of or legal title
634 to the consumer resale timeshare interest to the transferee.

635 b. To a managing entity to pay any assessments, transfer
636 fees, or other moneys owed with respect to the consumer resale
637 timeshare interest as set forth in the certificate provided for
638 in s. 721.15(7)(b) or to pay a governmental agency for the
639 purpose of completing and perfecting the transfer. A managing
640 entity shall accept any funds remitted to it by an escrow agent
641 pursuant to this sub-subparagraph.

642 4. The escrow agent shall retain all resale transfer
643 agreements, escrow account records, and affidavits received
644 pursuant to this subsection for a period of 5 years.



645 (d) A person providing timeshare resale transfer services,
646 an agent or third party service provider for the timeshare
647 resale transfer services provider, or an escrow agent who
648 intentionally fails to comply with the provisions of this
649 subsection concerning the establishment of an escrow account,
650 deposits of funds into escrow, withdrawal therefrom, and
651 maintenance of records is guilty of a felony of the third
652 degree, punishable as provided in s. 775.082, s. 775.083, or s.
653 775.084.

654 (e) No person shall participate, for consideration or with
655 the expectation of consideration, in a plan or scheme, a purpose
656 of which is to transfer a consumer resale timeshare interest to
657 a transferee that the person knows does not have the ability,
658 means, or intent to pay all assessments and taxes associated
659 with the consumer resale timeshare interest.

660 (f) Providing timeshare interest transfer services with
661 respect to a consumer resale timeshare interest in a timeshare
662 property located or offered within this state, or in a multisite
663 timeshare plan registered or required to be registered to be
664 offered in this state, including acting as an agent or third-
665 party service provider for a resale service provider,
666 constitutes operating, conducting, engaging in, or carrying on a
667 business or business venture in this state for the purposes of
668 s. 48.193(1).

669 (g) A managing entity may bring an action to enforce the
670 provisions of paragraph (e). In any such action, the managing
671 entity may recover its actual damages, and the prevailing party
672 may recover its reasonable attorney fees and court costs.



673 (h) Paragraphs (a)–(d) do not apply to:

674 1. A resale broker who offers timeshare interest transfer
675 services to a consumer timeshare reseller, so long as the resale
676 broker complies in all respects with chapter 475 and with s.
677 721.20; or

678 2. An attorney who is a member in good standing of The
679 Florida Bar or a licensed Florida title insurer or agent in good
680 standing who offers timeshare interest transfer services to a
681 consumer timeshare reseller, if the total consideration paid by
682 the consumer timeshare reseller to such person does not exceed
683 \$600, exclusive of any assessments, transfer fees, or moneys
684 owed with respect to the consumer resale timeshare interest as
685 set forth in the certificate provided for in s.721.15(7)(b), and
686 exclusive of any fees owed to a governmental agency for the
687 purpose of completing and perfecting the transfer.

688 (i) This subsection does not apply to the transfer of
689 ownership of a consumer resale timeshare interest from a
690 consumer timeshare reseller to the developer or managing entity
691 of that timeshare plan.

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

694 721.82 Definitions.—As used in this part, the term:

695 (9) "Notice address" means:

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

699 (b) As to a mortgage lien:

700 1. The address of the mortgagor as set forth in the



701 mortgage, the promissory note or a separate document executed by
 702 the mortgagor at the time the mortgage lien was created, or the
 703 most current address of the mortgagor according to the records
 704 of the mortgagee; and

705 2. If the owner of the timeshare interest is different
 706 from the mortgagor, the address of the owner of the timeshare
 707 interest as reflected by the books and records of the mortgagee.

708 (c) As to a junior interestholder, the address as set
 709 forth in the recorded instrument creating the junior lien or
 710 interest, or in any recorded amendment thereto changing the
 711 address, or in any written notification by the junior
 712 interestholder to the foreclosing lienholder changing the
 713 address.

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

718 (11) "Permitted delivery service" means any nationally
 719 recognized common carrier delivery service, ~~or~~ international
 720 airmail service that allows for return receipt service, or a
 721 service recognized by an international jurisdiction as the
 722 equivalent of certified, registered mail for that jurisdiction.

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

725 721.84 Appointment of a registered agent; duties.—

726 (6) Unless otherwise provided in this section, a
 727 registered agent in receipt of any notice or other document
 728 addressed from the lienholder to the obligor in care of the



729 registered agent at the registered office must mail, by first-
730 class ~~first-class~~ mail if the obligor's address is within the
731 United States, and by international air mail if the obligor's
732 address is outside the United States, with postage fees prepaid,
733 such notice or documents to the obligor at the obligor's last
734 designated address within 5 days after receipt.

735 Section 8. Paragraph (c) of subsection (2), subsections
736 (4) and (5), paragraph (c) of subsection (6), paragraph (b) of
737 subsection (7), and paragraph (b) of subsection (14) of section
738 721.855, Florida Statutes, are amended to read:

739 721.855 Procedure for the trustee foreclosure of
740 assessment liens.—The provisions of this section establish a
741 trustee foreclosure procedure for assessment liens.

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

744 (c)1. In order to initiate a trustee foreclosure procedure
745 against a timeshare interest, the lienholder shall deliver an
746 affidavit to the trustee that identifies the obligor; the notice
747 address of the obligor; the timeshare interest; the date that
748 the notice of the intent to file a lien was given, if
749 applicable; the official records book and page number where the
750 claim of lien is recorded; and the name and notice address of
751 any junior interestholder. ~~The affidavit shall be accompanied by~~
752 ~~a title search of the timeshare interest identifying any junior~~
753 ~~interestholders of record, and the effective date of the title~~
754 ~~search must be a date that is within 60 calendar days before the~~
755 ~~date of the affidavit.~~

756 2. The affidavit shall also state the facts that establish



757 that the obligor has defaulted in the obligation to make a
758 payment under a specified provision of the timeshare instrument
759 or applicable law.

760 3. The affidavit shall also specify the amounts secured by
761 the lien as of the date of the affidavit and a per diem amount
762 to account for further accrual of the amounts secured by the
763 lien.

764 4. The affidavit shall also state that the assessment lien
765 was properly created and authorized pursuant to the timeshare
766 instrument and applicable law.

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

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

772 (b) The trustee has not received a written objection to
773 the use of the trustee foreclosure procedure under paragraph
774 (3) (a) and the timeshare interest was not redeemed under
775 paragraph (3) (b);

776 (c) There is no lis pendens recorded and pending against
777 the same timeshare interest before the recording of the notice
778 of lis pendens pursuant to paragraph (5) (h), and the trustee has
779 not been served notice of the filing of any action to enjoin the
780 trustee foreclosure sale;

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



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

788 (f) The lienholder has provided the trustee with a title
 789 search of the timeshare interest identifying any junior
 790 interestholders of record, the effective date of which search
 791 must be within 60 calendar days before the date it is delivered
 792 to the trustee. If a title search reveals that incorrect
 793 obligors or junior interestholders have been served or
 794 additional obligors or junior interestholders have not been
 795 served, the foreclosure action may not proceed until the notices
 796 required pursuant to this section have been served on the
 797 correct or additional obligors or junior interestholders and all
 798 applicable time periods have expired.

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

800 (a) In any foreclosure proceeding under this section, the
 801 trustee is required to notify the obligor of the proceeding by
 802 sending the obligor a written notice of default and intent to
 803 foreclose to the notice address of the obligor by certified
 804 mail, registered mail, or permitted delivery service, return
 805 receipt requested, and by first-class mail ~~or permitted delivery~~
 806 ~~service~~, postage prepaid, as follows:

807 1. The notice of default and intent to foreclose shall
 808 identify the obligor, the notice address of the obligor, the
 809 legal description of the timeshare interest, the nature of the
 810 default, the amounts secured by the lien, and a per diem amount
 811 to account for further accrual of the amounts secured by the
 812 lien and shall state the method by which the obligor may cure



813 the default, including the period of time after the date of the
814 notice of default and intent to foreclose within which the
815 obligor may cure the default.

816 2. The notice of default and intent to foreclose shall
817 include an objection form with which the obligor can object to
818 the use of the trustee foreclosure procedure by signing and
819 returning the objection form to the trustee. The objection form
820 shall identify the obligor, the notice address of the obligor,
821 the timeshare interest, and the return address of the trustee
822 and shall state: "The undersigned obligor exercises the
823 obligor's right to object to the use of the trustee foreclosure
824 procedure contained in section 721.855, Florida Statutes."

825 3. The notice of default and intent to foreclose shall
826 also contain a statement in substantially the following form:
827 If you fail to cure the default as set forth in this notice or
828 take other appropriate action with regard to this foreclosure
829 matter, you risk losing ownership of your timeshare interest
830 through the trustee foreclosure procedure established in section
831 721.855, Florida Statutes. You may choose to sign and send to
832 the trustee the enclosed objection form, exercising your right
833 to object to the use of the trustee foreclosure procedure. Upon
834 the trustee's receipt of your signed objection form, the
835 foreclosure of the lien with respect to the default specified in
836 this notice shall be subject to the judicial foreclosure
837 procedure only. You have the right to cure your default in the
838 manner set forth in this notice at any time before the trustee's
839 sale of your timeshare interest. If you do not object to the use
840 of the trustee foreclosure procedure, you will not be subject to



841 a deficiency judgment even if the proceeds from the sale of your
842 timeshare interest are insufficient to offset the amounts
843 secured by the lien.

844 4. The trustee shall also mail a copy of the notice of
845 default and intent to foreclose, without the objection form, to
846 the notice address of any junior interestholder by certified
847 mail, registered mail, or permitted delivery service, return
848 receipt requested, and by first-class mail ~~or permitted delivery~~
849 ~~service~~, postage prepaid.

850 5. Notice under this paragraph is considered perfected
851 upon the trustee receiving the return receipt bearing the
852 signature of the obligor or junior interestholder, as
853 applicable, within 30 calendar days after the trustee sent the
854 notice under this paragraph. Notice under this paragraph is not
855 perfected if:

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

858 b. The trustee cannot, in good faith, ascertain ~~from the~~
859 ~~receipt~~ that the obligor or junior interestholder, as
860 applicable, is the person who signed the receipt because all or
861 a portion of the obligor's or junior interestholder's name is
862 not on the signed receipt or because the trustee cannot
863 otherwise determine that the obligor or junior interestholder
864 signed the receipt; ~~or~~

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

868 (b) If the notice required by paragraph (a) is returned as



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869 undeliverable within 30 calendar days after the trustee sent the
870 notice, the trustee shall perform a diligent search and inquiry
871 to obtain a different address for the obligor or junior
872 interestholder. For purposes of this paragraph, any address
873 known and used by the lienholder for sending regular mailings or
874 other communications from the lienholder to the obligor or
875 junior interestholder, as applicable, shall be included with
876 other addresses produced from the diligent search and inquiry,
877 if any.

878 1. If the trustee's diligent search and inquiry produces
879 an address different from the notice address, the trustee shall
880 mail a copy of the notice by certified mail, registered mail, or
881 permitted delivery service, return receipt requested, and by
882 first-class mail ~~or permitted delivery service~~, postage prepaid,
883 to the new address. Notice under this subparagraph is considered
884 perfected upon the trustee receiving the return receipt bearing
885 the signature of the obligor or junior interestholder, as
886 applicable, within 30 calendar days after the trustee sent the
887 notice under this subparagraph. Notice under this subparagraph
888 is not perfected if the receipt from the obligor or junior
889 interestholder, as applicable, is refused, returned, or the
890 trustee cannot, in good faith, ascertain from the receipt that
891 the obligor or junior interestholder, as applicable, is the
892 person who signed the receipt because all or a portion of the
893 obligor's or junior interestholder's name is not on the signed
894 receipt or because the trustee cannot otherwise determine that
895 the obligor or junior interestholder signed the receipt ~~or the~~
896 ~~receipt from the obligor or junior interestholder, as~~



897 ~~applicable, is returned refused.~~ If the trustee does not perfect
898 notice under this subparagraph, the trustee shall perfect
899 service in the manner set forth in paragraph (c).

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

904 (c) If the notice is not perfected under subparagraph
905 (a)5., and such notice was not returned as undeliverable, or if
906 the notice was not perfected under subparagraph (b)1., the
907 trustee may perfect notice by publication in a newspaper of
908 general circulation in the county or counties in which the
909 timeshare interest is located. The notice shall appear at least
910 once a week for 2 consecutive weeks. The notice of default and
911 intent to foreclose perfected by publication shall identify the
912 obligor, the notice address of the obligor, the legal
913 description of the timeshare interest, the nature of the action
914 in short and simple terms, the name and contact information of
915 the trustee, and the period of time after the date of the notice
916 of default and intent to foreclose within which the obligor may
917 cure the default. The trustee may group an unlimited number of
918 notices in the same publication, if all of the notices pertain
919 to the same timeshare plan. Notice under this paragraph is
920 considered perfected upon publication as required in this
921 paragraph.

922 (d) If notice is perfected under subparagraph (a)5., the
923 trustee shall execute an affidavit in recordable form setting
924 forth the manner in which notice was perfected and attach the



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925 affidavit to the certificate of compliance set forth in
926 subsection (9). The affidavit shall state the nature of the
927 notice, the date on which the notice was mailed, the name and
928 address on the envelope containing the notice, the manner in
929 which the notice was mailed, and the basis for that knowledge.

930 (e) If notice is perfected under subparagraph (b)1., the
931 trustee shall execute an affidavit in recordable form setting
932 forth the manner in which notice was perfected and attach the
933 affidavit to the certificate of compliance set forth in
934 subsection (9). The affidavit shall state the nature of the
935 notice, the dates on which the notice was mailed, the name and
936 addresses on the envelopes containing the notice, the manner in
937 which the notices were mailed, and the fact that a signed
938 receipt from the certified mail, registered mail, or permitted
939 delivery service was timely received, ~~and the name and address~~
940 ~~on the envelopes containing the notice.~~

941 (f) If notice is perfected by publication under paragraph
942 (c), the trustee shall execute an affidavit in recordable form
943 setting forth the manner in which notice was perfected and
944 attach the affidavit to the certificate of compliance set forth
945 in subsection (9). The affidavit shall include all the
946 information contained in either paragraph (d) or paragraph (e),
947 as applicable, shall state that the notice was perfected by
948 publication and shall state that ~~after~~ diligent search and
949 inquiry was made for the current address for the person, if
950 paragraph (b) applies. The affidavit ~~and~~ shall also include a
951 ~~statement that notice was perfected by publication, and shall~~
952 ~~set forth~~ the information required, as applicable, by s. 49.041



953 in the case of a natural person or s. 49.051 in the case of a
954 corporation, ~~whichever is applicable~~. No other action of the
955 trustee is necessary to perfect notice.

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

960 (h) The initiation of a trustee foreclosure action
961 operates as a lis pendens on the timeshare interest pursuant to
962 s. 48.23 if a notice of lis pendens is recorded in the official
963 records of the county in which the deed conveying the timeshare
964 interest to the obligor was recorded and such notice has not
965 expired pursuant to s. 48.23(2) or been withdrawn or discharged.
966 The notice of lis pendens must contain the following:

- 967 1. The name of the obligor.
968 2. The date of the initiation of the trustee foreclosure
969 action, which date shall be the date of the sending of the
970 notice of default and intent to foreclose to the obligor.
971 3. The name and contact information of the trustee.
972 4. The legal description of the timeshare interest.
973 5. A statement that a trustee foreclosure action has been
974 initiated against the timeshare interest pursuant to this
975 section.

976 (6) NOTICE OF SALE.—

977 (c) After the date of recording of the notice of sale,
978 notice is not required to be given to any person claiming an
979 interest in the timeshare interest except as provided in this
980 section. If a notice of lis pendens has not previously been



981 recorded pursuant to paragraph (5) (h), the recording of the
 982 notice of sale has the same force and effect as the filing of a
 983 lis pendens in a judicial proceeding under s. 48.23.

984 (7) MANNER OF SALE.—

985 (b) The trustee shall conduct the sale and act as the
 986 auctioneer. The trustee may use a third party to conduct the
 987 sale on behalf of the trustee and the trustee is liable for the
 988 conduct of the sale and the actions of the third party with
 989 respect to the conduct of the sale.

990 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 991 PROCEDURE.—

992 (b) Any trustee who intentionally violates the provisions
 993 of this section concerning the trustee foreclosure procedure
 994 commits a felony of the third degree, punishable as provided in
 995 s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly
 996 ascertains that the obligor signed the return receipt as
 997 required in s. 721.855(5) does not violate this section if the
 998 trustee made a good faith effort to properly ascertain that the
 999 obligor signed the return receipt in accordance with subsection
 1000 (5).

1001 Section 9. Paragraph (b) of subsection (2), subsections
 1002 (4) and (5), paragraphs (c) and (d) of subsection (6), paragraph
 1003 (b) of subsection (7), and paragraph (b) of subsection (13) of
 1004 section 721.856, Florida Statutes, are amended to read:

1005 721.856 Procedure for the trustee foreclosure of mortgage
 1006 liens.—The provisions of this section establish a trustee
 1007 foreclosure procedure for mortgage liens.

1008 (2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—



1009 (b)1. In order to initiate a trustee foreclosure procedure
 1010 against a timeshare interest, the lienholder shall deliver an
 1011 affidavit to the trustee that identifies the obligor, the notice
 1012 address of the obligor, the timeshare interest, the official
 1013 records book and page number where the mortgage is recorded, and
 1014 the name and notice address of any junior interestholder. ~~The~~
 1015 ~~affidavit shall be accompanied by a title search of the~~
 1016 ~~timeshare interest identifying any junior interestholders of~~
 1017 ~~record, and the effective date of the title search must be a~~
 1018 ~~date that is within 60 calendar days before the date of the~~
 1019 ~~affidavit.~~

1020 2. The affidavit shall also state the facts that establish
 1021 that the obligor has defaulted in the obligation to make a
 1022 payment under a specified provision of the mortgage or is
 1023 otherwise deemed in uncured default under a specified provision
 1024 of the mortgage.

1025 3. The affidavit shall also specify the amounts secured by
 1026 the lien as of the date of the affidavit and a per diem amount
 1027 to account for further accrual of the amounts secured by the
 1028 lien.

1029 4. The affidavit shall also state that the appropriate
 1030 amount of documentary stamp tax and intangible taxes has been
 1031 paid upon recording of the mortgage, or otherwise paid to the
 1032 state.

1033 5. The affidavit shall also state that the lienholder is
 1034 the holder of the note and has complied with all preconditions
 1035 in the note and mortgage to determine the amounts secured by the
 1036 lien and to initiate the use of the trustee foreclosure



1037 procedure.

1038 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A

1039 trustee may sell an encumbered timeshare interest foreclosed

1040 under this section if:

1041 (a) The trustee has received the affidavit from the

1042 lienholder under paragraph (2) (b);

1043 (b) The trustee has not received a written objection to

1044 the use of the trustee foreclosure procedure under paragraph

1045 (3) (a) and the timeshare interest was not redeemed under

1046 paragraph (3) (b);

1047 (c) There is no lis pendens recorded and pending against

1048 the same timeshare interest before the initiation of the trustee

1049 foreclosure action and provided a notice of lis pendens has been

1050 recorded pursuant to paragraph (5) (h), and the trustee has not

1051 been served notice of the filing of any action to enjoin the

1052 trustee foreclosure sale;

1053 (d) The trustee is in possession of the original

1054 promissory note executed by the mortgagor and secured by the

1055 mortgage lien;

1056 (e) The trustee has provided written notice of default and

1057 intent to foreclose as required under subsection (5) and a

1058 period of at least 30 calendar days has elapsed after such

1059 notice is deemed perfected under subsection (5); ~~and~~

1060 (f) The notice of sale required under subsection (6) has

1061 been recorded in the official records of the county in which the

1062 mortgage was recorded; and

1063 (g) The lienholder has provided the trustee with a title

1064 search of the timeshare interest identifying any junior



1065 interestholders of record, the effective date of which search
 1066 must be within 60 calendar days before the date it is delivered
 1067 to the trustee. If a title search reveals that incorrect
 1068 obligors or junior interestholders have been served or
 1069 additional obligors or junior interestholders have not been
 1070 served, the foreclosure action may not proceed until the notices
 1071 required pursuant to this section have been served on the
 1072 correct or additional obligors or junior interestholders and all
 1073 applicable time periods have expired.

1074 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

1075 (a) In any foreclosure proceeding under this section, the
 1076 trustee is required to notify the obligor of the proceeding by
 1077 sending the obligor a written notice of default and intent to
 1078 foreclose to the notice address of the obligor by certified
 1079 mail, registered mail, or permitted delivery service, return
 1080 receipt requested, and by first-class mail ~~or permitted delivery~~
 1081 ~~service~~, postage prepaid, as follows:

1082 1. The notice of default and intent to foreclose shall
 1083 identify the obligor, the notice address of the obligor, the
 1084 legal description of the timeshare interest, the nature of the
 1085 default, the amounts secured by the lien, and a per diem amount
 1086 to account for further accrual of the amounts secured by the
 1087 lien and shall state the method by which the obligor may cure
 1088 the default, including the period of time after the date of the
 1089 notice of default and intent to foreclose within which the
 1090 obligor may cure the default.

1091 2. The notice of default and intent to foreclose shall
 1092 include an objection form with which the obligor can object to



1093 the use of the trustee foreclosure procedure by signing and
 1094 returning the objection form to the trustee. The objection form
 1095 shall identify the obligor, the notice address of the obligor,
 1096 the timeshare interest, and the return address of the trustee
 1097 and shall state: "The undersigned obligor exercises the
 1098 obligor's right to object to the use of the trustee foreclosure
 1099 procedure contained in section 721.856, Florida Statutes."

1100 3. The notice of default and intent to foreclose shall
 1101 also contain a statement in substantially the following form:
 1102 If you fail to cure the default as set forth in this notice or
 1103 take other appropriate action with regard to this foreclosure
 1104 matter, you risk losing ownership of your timeshare interest
 1105 through the trustee foreclosure procedure established in section
 1106 721.856, Florida Statutes. You may choose to sign and send to
 1107 the trustee the enclosed objection form, exercising your right
 1108 to object to the use of the trustee foreclosure procedure. Upon
 1109 the trustee's receipt of your signed objection form, the
 1110 foreclosure of the lien with respect to the default specified in
 1111 this notice shall be subject to the judicial foreclosure
 1112 procedure only. You have the right to cure your default in the
 1113 manner set forth in this notice at any time before the trustee's
 1114 sale of your timeshare interest. If you do not object to the use
 1115 of the trustee foreclosure procedure, you will not be subject to
 1116 a deficiency judgment even if the proceeds from the sale of your
 1117 timeshare interest are insufficient to offset the amounts
 1118 secured by the lien.

1119 4. The trustee shall also mail a copy of the notice of
 1120 default and intent to foreclose, without the objection form, to



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1121 the notice address of any junior interestholder by certified
1122 mail, registered mail, or permitted delivery service, return
1123 receipt requested, and by first-class mail ~~or permitted delivery~~
1124 ~~service~~, postage prepaid.

1125 5. Notice under this paragraph is considered perfected
1126 upon the trustee receiving the return receipt bearing the
1127 signature of the obligor or junior interestholder, as
1128 applicable, within 30 calendar days after the trustee sent the
1129 notice under this paragraph. Notice under this paragraph is not
1130 perfected if:

1131 a. The notice is returned as undeliverable within 30
1132 calendar days after the trustee sent the notice; ~~if~~

1133 b. The trustee cannot, in good faith, ascertain from the
1134 receipt that the obligor or junior interestholder, as
1135 applicable, is the person who signed the receipt because all or
1136 a portion of the obligor's or junior interestholder's name is
1137 not on the signed receipt or the trustee cannot otherwise
1138 determine that the obligor or junior interestholder signed the
1139 receipt; ~~or~~

1140 c. ~~if~~ The receipt from the obligor or junior
1141 interestholder, as applicable, is returned or refused within 30
1142 calendar days after the trustee sent the notice.

1143 (b) If the notice required by paragraph (a) is returned as
1144 undeliverable within 30 calendar days after the trustee sent the
1145 notice, the trustee shall perform a diligent search and inquiry
1146 to obtain a different address for the obligor or junior
1147 interestholder. For purposes of this paragraph, any address
1148 known and used by the lienholder for sending regular mailings or



1149 other communications from the lienholder to the obligor or
1150 junior interestholder, as applicable, shall be included with
1151 other addresses produced from the diligent search and inquiry,
1152 if any.

1153 1. If the trustee's diligent search and inquiry produces
1154 an address different from the notice address, the trustee shall
1155 mail a copy of the notice by certified mail, registered mail, or
1156 permitted delivery service, return receipt requested, and by
1157 first-class mail ~~or permitted delivery service~~, postage prepaid,
1158 to the new address. Notice under this subparagraph is considered
1159 perfected upon the trustee receiving the return receipt bearing
1160 the signature of the obligor or junior interestholder, as
1161 applicable, within 30 calendar days after the trustee sent the
1162 notice under this subparagraph. Notice under this subparagraph
1163 is not perfected if the receipt from the obligor or junior
1164 interestholder is refused, returned, or the trustee cannot, in
1165 good faith, ascertain ~~from the receipt~~ that the obligor or
1166 junior interestholder, as applicable, is the person who signed
1167 the receipt because all or a portion of the obligor's or junior
1168 interestholder's name is not on the signed receipt or because
1169 the trustee cannot otherwise determine that the obligor or
1170 junior interestholder signed the receipt ~~or the receipt from the~~
1171 ~~obligor or junior interestholder, as applicable, is returned~~
1172 ~~refused~~. If the trustee does not perfect notice under this
1173 subparagraph, the trustee shall perfect service in the manner
1174 set forth in paragraph (c).

1175 2. If the trustee's diligent search and inquiry does not
1176 locate a different address for the obligor or junior



1177 interestholder, as applicable, the trustee may perfect notice
1178 against that person under paragraph (c).

1179 (c) If the notice is not perfected under subparagraph
1180 (a)5., and such notice was not returned as undeliverable, or if
1181 the notice was not perfected under subparagraph (b)1., the
1182 trustee may perfect notice by publication in a newspaper of
1183 general circulation in the county or counties in which the
1184 timeshare interest is located. The notice shall appear at least
1185 once a week for 2 consecutive weeks. The notice of default and
1186 intent to foreclose perfected by publication shall identify the
1187 obligor, the notice address of the obligor, the legal
1188 description of the timeshare interest, the nature of the action
1189 in short and simple terms, the name and contact information of
1190 the trustee, and the period of time after the date of the notice
1191 of default and intent to foreclose within which the obligor may
1192 cure the default. The trustee may group an unlimited number of
1193 notices in the same publication, if all of the notices pertain
1194 to the same timeshare plan. Notice under this paragraph is
1195 considered perfected upon publication as required in this
1196 paragraph.

1197 (d) If notice is perfected under subparagraph (a)5., the
1198 trustee shall execute an affidavit in recordable form setting
1199 forth the manner in which notice was perfected and attach the
1200 affidavit to the certificate of compliance set forth in
1201 subsection (9). The affidavit shall state the nature of the
1202 notice, the date on which the notice was mailed, the name and
1203 address on the envelope containing the notice, the manner in
1204 which the notice was mailed, and the basis for that knowledge.



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1205 (e) If notice is perfected under subparagraph (b)1., the
1206 trustee shall execute an affidavit in recordable form setting
1207 forth the manner in which notice was perfected and attach the
1208 affidavit to the certificate of compliance set forth in
1209 subsection (9). The affidavit shall state the nature of the
1210 notice, the dates on which the notice was mailed, the name and
1211 addresses on the envelopes containing the notice, the manner in
1212 which the notice was mailed, and the fact that a signed receipt
1213 from the certified mail, registered mail, or permitted delivery
1214 service was timely received, ~~and the name and address on the~~
1215 ~~envelopes containing the notice.~~

1216 (f) If notice is perfected under paragraph (c), 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 include all the information
1221 contained in either paragraph (d) or paragraph (e), as
1222 applicable, shall state that the notice was perfected by
1223 publication and shall state that ~~after~~ diligent search and
1224 inquiry was made for the current address for the person, if
1225 paragraph (b) applies. The affidavit shall also include ~~a~~
1226 ~~statement that notice was perfected by publication, and shall~~
1227 ~~set forth~~ the information required, as applicable, by s. 49.041
1228 in the case of a natural person or s. 49.051 in the case of a
1229 corporation, ~~whichever is applicable.~~ No other action of the
1230 trustee is necessary to perfect notice.

1231 (g) Notice under paragraph (a) or paragraph (b) is
1232 perfected as to all obligors who have the same address if notice



1233 is perfected as to at least one obligor at that address pursuant
 1234 to the provisions of this subsection.

1235 (h) The initiation of a trustee foreclosure action
 1236 operates as a lis pendens on the timeshare interest pursuant to
 1237 s. 48.23 if a notice of lis pendens is recorded in the official
 1238 records of the county or counties in which the mortgage is
 1239 recorded and such notice has not expired pursuant to s. 48.23(2)
 1240 or been withdrawn or discharged. The notice of lis pendens must
 1241 contain the following:

- 1242 1. The name of the obligor.
- 1243 2. The date of the initiation of the trustee foreclosure
 1244 action, which date shall be the date of the sending of the
 1245 notice of default and intent to foreclose to the obligor.
- 1246 3. The name and contact information of the trustee.
- 1247 4. The legal description of the timeshare interest.
- 1248 5. A statement that a trustee foreclosure action has been
 1249 initiated against the timeshare interest pursuant to this
 1250 section.

1251 (6) NOTICE OF SALE.—

1252 (c) After the date of recording of the notice of sale,
 1253 notice is not required to be given to any person claiming an
 1254 interest in the timeshare interest except as provided in this
 1255 section. If a notice of lis pendens has not previously been
 1256 recorded pursuant to paragraph (5) (h), the recording of the
 1257 notice of sale has the same force and effect as the filing of a
 1258 lis pendens in a judicial proceeding under s. 48.23.

1259 (d)1. The trustee shall publish the notice of sale in a
 1260 newspaper of general circulation in the county or counties in



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1261 which the timeshare interest is located at least once a week for
1262 2 consecutive weeks before the date of the sale. The last
1263 publication shall occur at least 5 calendar days before the
1264 sale.

1265 2. The trustee may group an unlimited number of notices of
1266 sale in the same publication, if all of the notices of sale
1267 pertain to the same timeshare plan.

1268 (7) MANNER OF SALE.—

1269 (b) The trustee shall conduct the sale and act as the
1270 auctioneer. The trustee may use a third party to conduct the
1271 sale on behalf of the trustee and the trustee is liable for the
1272 conduct of the sale and the actions of the third party with
1273 respect to the conduct of the sale.

1274 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
1275 PROCEDURE.—

1276 (b) Any trustee who intentionally violates the provisions
1277 of this section concerning the trustee foreclosure procedure
1278 commits a felony of the third degree, punishable as provided in
1279 s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly
1280 ascertains that the obligor signed the return receipt as
1281 required in s. 721.856(5) does not violate this section if the
1282 trustee made a good faith effort to properly ascertain that it
1283 is the obligor who signed the return receipt in accordance with
1284 subsection (5).

1285 Section 10. This act shall take effect July 1, 2013.