

SB 658 by **Simpson (CO-INTRODUCERS) Ring, Brandes, Evers, Joyner, Hays, Thompson;** (Identical to H 0623)
Wine

106308 A S L RCS RI, Sobel, Sachs, Brayno Delete L.13 - 14: 03/07 12:50 PM

SB 370 by **Sachs;** (Similar to CS/H 0171) Disposition of Human Remains

206074 D S RCS RI, Sachs Delete everything after 03/07 12:50 PM

SB 874 by **Galvano;** (Compare to CS/CS/H 0005) Open Parties

263904 A S RCS RI, Galvano Delete L.39: 03/07 12:50 PM

SB 696 by **Stargel;** (Similar to H 7025) Vacation and Time Share Plans

974784 D S RCS RI, Stargel Delete everything after 03/07 12:50 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Stargel, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, March 7, 2013
TIME: 10:30 a.m.—12:30 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 658 Simpson (Identical H 623)	Wine; Increasing the maximum allowable capacity for individual containers of wine sold in this state, etc. RI 03/07/2013 Fav/CS CM RC	Fav/CS Yeas 10 Nays 0
2	SB 370 Sachs (Similar CS/H 171)	Disposition of Human Remains; Revising procedures for the registration of certificates of death or fetal death and the medical certification of causes of death; revising procedures for the reporting and disposition of unclaimed remains; prohibiting certain uses or dispositions of the remains of deceased persons whose identities are not known; revising provisions prohibiting the selling or buying of human remains or the transmitting or conveying of such remains outside the state, etc. RI 03/07/2013 Fav/CS HP JU AP	Fav/CS Yeas 10 Nays 0
3	SB 874 Galvano (Compare CS/CS/H 5)	Open Parties; Revising definitions prohibiting a person from allowing a party to take place if a minor is in possession of or consuming alcohol or drugs; revising an exemption; providing criminal penalties, etc. RI 03/07/2013 Fav/CS CJ JU	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Thursday, March 7, 2013, 10:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 696 Stargel (Similar H 7025, Compare CS/H 73, CS/S 436)	Vacation and Time Share Plans; Exempting associations that govern a timeshare condominium from the prohibition of using proxies for electing members of the board; revising the formula to calculate the reserves for any accommodations and facilities of real property time share plans; removing a provision that requires a title search to accompany the affidavit initiating a trustee foreclosure proceeding of assessment liens; providing that a trustee may sell a timeshare interest if the lienholder delivers a certain title search which identifies junior interestholders of record, etc. RI 03/07/2013 Fav/CS JU	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁴

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,⁵ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁶ and allowing in-state wineries to manufacture and sell directly to consumers.⁷

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁸ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.⁹

Limitation on the Size of Individual Wine Containers

Section 564.05, F.S., prohibits the sale of wine in individual containers holding more than one gallon of wine.

However, distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size.

Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.¹⁰

Wine Kegs

Some states, including California, Georgia, Texas, and New York, permit retail vendors to sell wine from wine kegs which dispense wine through a tap. According to proponents of the bill, 36

⁴ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf (Last visited February 28, 2013).

⁵ See s 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

⁶ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

⁷ See s. 561.221, F.S.

⁸ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁹ Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

¹⁰ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

states permit the sale of wine kegs. Wine kegs are stainless steel barrels that contain the equivalent of 26 bottles, which is equal to approximately 5.2 gallons. Wine kegs are filled with wine and an inert gas to prevent the spoilage of the wine. Wine kegs are also reusable.¹¹ In Florida, retail vendors may not sell wine from wine kegs because of the one gallon limit on sale of wine in s. 564.05, F.S.

III. Effect of Proposed Changes:

The bill amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons.

Other Potential Implications:

According to a representative for the Florida Beer Wholesalers Association, the association is concerned that wine kegs would facilitate the use of refillable containers by establishments that sell alcoholic beverages for off-premise consumption. Although the bill does not relate to the sale of alcoholic beverages for consumption off-premises, the association is concerned that it could begin a shift in public policy away from the current policy that alcoholic beverages that are sold for off-premises consumption must be sold in pre-packaged, sealed containers.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Proponents of wine keg technology argue that kegs are more economical for restaurants to use in the sale of wine-by-the-glass. When a bottle of wine is opened, the contents are exposed to oxygen and the process of oxidation begins, which may spoil the wine. A vendor may risk losing money when the vendor opens a bottle for sale by-the-glass and then is unable to sell all of the wine in the bottle. Proponents also argue that the

¹¹ Worobiec, MaryAnn, "Tapped In: Wine in Kegs," *Wine Spectator* (Oct. 21, 2011). A copy of the article is available at: <http://www.winespectator.com/webfeature/show/id/45801> (Last visited on February 28, 2013).

transportation costs for wine kegs are less because they weigh less than the equivalent bottles. Wine kegs are also reusable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 7, 2013:

The committee substitute (CS) amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. The CS does not amend this section to increase the size of individual containers of wine that may be sold from one gallon to six gallons.

B. Amendments:

None.



106308

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Sobel, Sachs, Braynon, and Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 13 - 14
and insert:
any wine in individual containers holding more than 1 gallon of
such wine- or reusable containers of 5.16 gallons of such wine.
However, provided, that qualified

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 3
and insert:



106308

13

providing additional allowable capacity for

By Senator Simpson

18-00632-13

2013658__

1 A bill to be entitled
2 An act relating to wine; amending s. 564.05, F.S.;
3 increasing the maximum allowable capacity for
4 individual containers of wine sold in this state;
5 providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 564.05, Florida Statutes, is amended to
10 read:

11 564.05 Limitation of size of individual wine containers;
12 penalty.—It is unlawful for any person to sell within this state
13 any wine in individual containers holding more than 6 gallons ±
14 ~~gallon~~ of such wine. However, Provided, that qualified
15 distributors and manufacturers may sell to other qualified
16 distributors or manufacturers such wine in any size containers.
17 Any person convicted of a violation of this section commits
18 ~~shall be guilty of~~ a misdemeanor of the second degree,
19 punishable as provided in s. 775.082 or s. 775.083.

20 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON
18th District

February 13, 2013

Senator Kelli Stargel, Chairwoman
Senate Regulated Industries Committee
330 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Senator Stargel,

Please place Senate Bill 658, relating to wine canisters, on the next Regulated Industries Committee meeting agenda.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to be "W. Simpson".

Senator Wilton Simpson, 18th District

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

Florida Senate

VOTING — DISCLOSURE OF CONFLICT

Pursuant to Senate Rule 1.39, a Senator, even though he or she may vote, must disclose the nature of any interest in a matter if the interest would inure to the special private gain or loss of certain, specified persons or entities listed in Rule 1.39.

DISCLOSURE OF CONFLICT

March 6, 2013
Date

Pursuant to Senate Rule 1.39, I am disclosing that certain provisions in

SM 657
(Bill Number; Appointment; Suspension)

(Amendment Barcode)

MAY

provide a special private gain or loss to (circle one):

(Board member)

- 1. A principal by whom I or my spouse, parent, or child is retained or employed;
2. A parent organization or subsidiary of a corporate principal by which I am retained or employed; or
3. An immediate family member or business associate of mine.

The nature of the interest is specified below.

Multiple horizontal lines for text entry.

As permitted by Senate Rule, I may vote on this matter.

John Mackin, Senator, District 6

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/7/13

Meeting Date

Topic _____

Bill Number 658
(if applicable)

Name Michael Martinez

Amendment Barcode _____
(if applicable)

Job Title Deputy General Counsel

Address 1940 N Monroe St
Street

Phone 850-717-1248

441 FL _____
City State Zip

E-mail Michael.Martinez@DBPR.State.FL.US

Speaking: For Against Information

Representing DBPR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic

Wine Kegs

Bill Number

658

(if applicable)

Name

SCOTT DICK

Amendment Barcode

(if applicable)

Job Title

lobbyst

Address

210 S. Monroe St

Phone

950 545-4526

Street

Tallahassee, FL

E-mail

scott@skd5sp.com

City

State

Zip

Speaking:

For

Against

Information

Representing

Florida Retail Federation

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 7 / 2013

Meeting Date

Topic _____

Bill Number 658
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic WINE CON FAIRWAYS

Bill Number SB 658
(if applicable)

Name TIM DERATANY

Amendment Barcode _____
(if applicable)

Job Title COBBYIST

Address 11520 DRAGON PT. DR

Phone 321-501-1104

Street
DMERVILLE IS FL 32952
City State Zip

E-mail TIMDERATANY@YAHOO.COM

Speaking: For Against Information

Representing WINE INSTITUTE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Wine ILPGS

Bill Number 658
(if applicable)

Name Mr Eric Cross

Amendment Barcode _____
(if applicable)

Job Title President

Address _____
Street

Phone _____

City State Zip

E-mail _____

Speaking: For Against Information

Representing Beer Industry of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

MARCH 7th 2013
Meeting Date

Topic Relating to Wine

Bill Number SB 658
(if applicable)

Name Richard Turner

Amendment Barcode _____
(if applicable)

Job Title General Counsel & V.P. Government Relations

Address 230 South Adams Street
Street

Phone 850-224-2250

Tallahassee FL 32301
City State Zip

E-mail rturner@frla.org

Speaking: For Against Information

Representing Florida Restaurant & Lodging Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/7/13

Meeting Date

Topic Wine Canisters

Bill Number SB 658
(if applicable)

Name Mitchell Rubin

Amendment Barcode _____
(if applicable)

Job Title Executive Director
Florida Beer Wholesalers Assn

Address 215 S. Monroe St. #310

Phone 850-224-2377

Street
Tallahassee, FL 32301
City State Zip

E-mail MRubin2585@aol.com

Speaking: For Against Information

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

MARCH 7 2013
Meeting Date

Topic RELATING TO WINE

Bill Number 658
(if applicable)

Name SIATER BATLISS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. MONROE ST
Street

Phone 850 222 8900

TALLAHASSEE FL 32301
City State Zip

E-mail swb@cardenaspartners.com

Speaking: For Against Information

Representing FREE FLOW WINES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 370

INTRODUCER: Regulated Industries Committee and Senator Sachs

SUBJECT: Disposition of Human Remains

DATE: March 8, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.	_____	_____	HP	_____
3.	_____	_____	JU	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 370 amends various provisions relating to the disposition of human remains. The bill:

- Addresses technical issues such as adding the Department of Health as an authorized issuer of extensions of time to provide the medical certification and of burial-transit permits, permitting electronic transfer of medical certification of cause of death, adding the appropriate district medical examiner as one of the persons who must file a death certificate, clarifying the obligations of primary and attending physicians;
- Defines several terms to have the same meaning as provided in ch. 497, F.S.;
- Defines nontransplant anatomical donation organizations (NADOs) as authorized to accept donations of human remains.
- Directs any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at public expense, to notify the anatomical board at the University of Florida Health Science Center (board);
- Defines the reasonable effort that must be undertaken to identify deceased persons, veterans who may be eligible for burial in a national cemetery, and to dispose of unclaimed remains;

- Authorizes the board to embalm the human remains that it receives;
- Specifies the situations in which notification of the board is not required;
- Permits a funeral director licensed under ch. 497, F.S., to act as a legally authorized person for the unclaimed remains when no family exists or is available, and releases a funeral director from liability for damages when exercising that authority;
- Provides that, when the identity of the unclaimed remains cannot be ascertained, the remains may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state;
- Authorizes counties to dispose of unclaimed remains by burial or cremation pursuant to an ordinance or resolution if the remains are not claimed by the board;
- Clarifies that competing claims for unclaimed remains are prioritized according to the priority of legally authorized persons provided in s. 497.005, F.S.;
- Permits the board to lend remains to accredited colleges of mortuary science for education or research purposes;
- Authorizes the board to pay or reimburse the reasonable expenses, as determined by the board, for the transportation, removal, or storage of unclaimed remains by licensed funeral establishments or removal services;
- Requires the board, rather than the Department of Financial Services (DFS), to keep a record of all fees and other financial transactions, and authorizes the University of Florida to audit these records using an accounting firm paid by the board at least once every three years and provide DFS with the audit;
- Limits the conveyance of human remains by the board outside the state for educational or scientific purposes;
- Allows third parties to convey human remains or any part thereof outside the state for dental education or research purposes, with proper notice to and approval by the board;
- Creates an exception for nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks (AATB) to convey human remains into or outside the state, for medical or dental education or research purposes;
- Requires that the original burial-transit permit must accompany human remains received by the board or a nontransplant anatomical donation organization;
- Requires that a nontransplant anatomical donation organization must obtain written consent to dissect, segment, or disarticulate the remains, with such consent expressly stating the long-term preservation or extensive preparation methods that may be used on the remains being dissected, segmented or disarticulated; and
- Prohibits the giving by any person, institution or organization of any monetary inducement or other valuable consideration to the donor's estate, or other third party, but permits the payment or reimbursement of the reasonable costs associated with the removal, storage, and transportation of human remains, including payment or reimbursement to a funeral establishment or removal service, or the reasonable costs after use, including the disposition of human remains.

This bill substantially amends the following sections of the Florida Statutes: 382.002, 382.006, 382.008, 382.011, 406.50, 406.51, 406.52, 406.53, 406.55, 406.56, 406.57, 406.58, 406.59, 406.60, 406.61, 497.005, 497.382, 497.607, and 765.513.

The bill creates section 406.49, Florida Statutes. The bill repeals section 406.54, Florida Statutes.

II. Present Situation:

The transportation, handling and disposition of dead human beings is addressed in multiple Florida laws regulating various departments and persons:

- The Department of Health Office of Vital Statistics (Chapter 382, F.S., the Florida Vital Statistics Act);
- Medical examiners and state anatomical board (Chapter 406, F.S., the Medical Examiners Act);
- Funeral directors, crematories, and direct disposers (Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act); and
- Persons making advance directives (health care surrogate designations and living wills) and anatomical gifts, i.e., donations of a person's body (or portions thereof) for transplantation, therapy, research, or education, to organ procurement organizations, eye banks or tissue banks (Chapter 765, F.S.)

There are multiple definitions and terms for dead human bodies and disposition methods. Section 382.002, F.S., defines "final disposition" as burial, interment, cremation, removal from the state, or other authorized disposition. Cremation, rather than dispersion of the resulting ashes or residue, is deemed final disposition.

Pursuant to s. 382.008, F.S., death certificates are to be filed by the funeral director assuming custody of a dead body, or a physician or other person in attendance at or after the death. Within 72 hours after receipt of a death certificate, the medical certification of cause of death is to be completed by the physician in charge of the decedent's care for the illness or condition which resulted in death, the physician in attendance at the time of death (or immediately before or after death), or the medical examiner.¹

Medical examiners must investigate and determine the cause of death in certain conditions ("violent or suspect circumstances") where:

- Death is due to unlawful act or neglect, by violence, by accident, by suicide, that are sudden when the deceased was in apparent good health, in prison, in police custody, in a suspicious or unusual circumstance, unattended by a physician, by criminal abortion, by poison, by disease constituting a public health threat, or by disease, injury, or toxic agent resulting from employment;
- The dead body is brought into the state without proper medical certification; or
- When a body is to be cremated, dissected, or buried at sea.²

There are 24 medical examiner districts in Florida and 22 Chief Medical Examiners. Some of the medical examiners serve more than one district.³

¹ Section 382.008(3), F.S.

² Section 406.11, F.S.

³ See <http://myfloridamedicalexaminer.com/> (Last visited March 4, 2013).

The legal disposition of dead human bodies or human remains is further regulated in s. 406.50 to s. 406.61, F.S. Anyone (typically public officers and employees of governmental entities, and those in charge of prisons, morgues, hospitals, funeral parlors or mortuaries) coming into possession of bodies and remains that are not claimed by a legally authorized person as defined in s. 497.005, F.S., or of remains to be buried or cremated at public expense, must notify the anatomical board located at the University of Florida Health Science Center in Gainesville (board). However, such notification is not required if the death was caused by crushing injury, the deceased had a contagious disease, an autopsy was required to determine the cause of death, the body was in a state of severe decomposition, or a family member objects to the use of the body for medical education and research.⁴

There are special requirements for the identification and handling of veterans or others entitled to burial in a national cemetery, including the contacting of certain county and federal offices, including required contractual provisions with providers handling unclaimed bodies.⁵ Similar provisions exist for the handling of unclaimed bodies of indigent persons.⁶

The stated mission of the board is to supply anatomical materials for teaching and research programs in the State of Florida.⁷ The program provides donated bodies for the training of physicians, dentists, physician assistants, and other health workers.⁸

Bodies received by the board may not be used for medical science purposes for 48 hours after receipt.⁹ If there is a surfeit of bodies, or if the board deems a body unfit for anatomical purposes, the board may notify the appropriate person in the county for identification and contact of relatives, if any.

Even after delivery of a body to the board, upon payment for expenses incurred, friends and representatives of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization, may claim a body.¹⁰

The board is prohibited from entering into any contract, oral or written, for the payment of any sum of money to a living person in exchange for the delivery of the body of that person upon death.¹¹ The board is permitted to accept and receive the bodies of those who die within the state of Florida, if they executed wills leaving their body to the board for the advancement of medical science.¹²

The board or its duly authorized agent shall distribute those bodies delivered to it “equitably to and among the medical and dental schools, teaching hospitals, medical institutions, and health-related teaching programs that require cadaveric material for study.” Alternatively, those bodies

⁴ Section 406.50, F.S.

⁵ *Id.*

⁶ Section 406.53, F.S.

⁷ The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.

⁸ See www.old.med.ufl.edu/anatbd/ (Last visited March 5, 2013).

⁹ Section 406.52, F.S.

¹⁰ Section 406.54, F.S.

¹¹ Section 406.55, F.S.

¹² Section 406.56, F.S.

“may be loaned for examination or study purposes to recognized associations of licensed embalmers or funeral directors, or medical or dental examining boards at the discretion of the anatomical board.”¹³

Fees may be charged by the board to the institutions to which the bodies are distributed or loaned, to defray the costs of obtaining and preparing the bodies. The board is also empowered to receive money from public or private sources to defray the costs of embalming, handling, shipping, storage, cremation or other costs relating to the obtaining and use of the bodies. The record of all fees and other financial transactions are audited annually by the Department of Financial Services, and a report of the audit made annually to the University of Florida.¹⁴

The buying or conveying of bodies or parts of bodies (except transmittal or conveyances by “recognized Florida medical or dental schools”) is prohibited in the state of Florida, punishable as a misdemeanor of the first degree.¹⁵

The law now permits human “specimens” to be conveyed by the board outside the state, for educational or scientific purposes, as well as in cases involving investigation of deaths in violent or suspicious circumstances as described above.

There is also a provision allowing persons, institutions, or organizations to convey bodies or parts of bodies into or out of the state for medical education or research purposes, provided that notice of such intent is provided to the board, and approval granted by it.¹⁶

Another exception to the conveyance prohibition allows an entity accredited by the American Association of Museums (AAM) which intends to convey plastinated anatomical remains into and out of the state for exhibition purposes. Such entities are not required to obtain consent from the board so long as they provide (1) notification to the board of the duration and location of the proposed exhibition at least 30 days before the intended conveyance, (2) a description of the bodies or parts of bodies and the name of the company providing them, and (3) documentation that each body was donated by the deceased or his or her next of kin for purposes of plastination and public exhibition, or in lieu thereof, an affidavit stating that (i) each body was donated directly by the deceased or his or her next of kin for such purposes to the company providing it and (ii) that such company has a donation form on file for the body.¹⁷

There is no reference in s. 406.61, F.S., to the transmittal or conveyance of bodies or parts strictly within the state.

Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act, includes defined terms concerning the various methods of final disposition of dead human bodies, including procedures, descriptions of facilities and merchandise, and priority of those persons legally authorized to decide upon and direct such disposition.

¹³ Section 406.57, F.S.

¹⁴ Section 406.58, F.S.

¹⁵ Section 406.61(1), F.S.

¹⁶ *Id.*

¹⁷ Section 406.61(2), F.S.

Chapter 765, F.S., addresses advance directives (health care surrogate designations and living wills) and anatomical gifts, i.e., donations of a person's body (or parts thereof) for transplantation, therapy, research, or education, to organ procurement organizations, eye banks or tissue banks. The term "anatomical gift" is defined in s. 765.511(2), F.S., as "a donation of all or part of a human body to take effect after the donor's death and to be used for transplantation, therapy, research, or education."

The law defines several types of organizations permitted to handle human organs, human eye tissue or other human tissue. An organ procurement organization is defined as an organization designated by the Secretary of the United States Department of Health and Human Services that engages in the retrieval, screening, testing, processing, storage, or distribution (hereafter collectively the "evaluation and conveyance") of human organs.¹⁸ The United Network for Organ Sharing is currently the organ procurement organization under contract with the U.S. Department of Health and Human Services. The contract was initially awarded in 1986.¹⁹ The more general term "procurement organizations" includes organ procurement organizations, eye banks or tissue banks.²⁰

In turn, "eye bank" is defined as an entity accredited by the Eye Bank Association of America or otherwise regulated under federal or state law to engage in the evaluation and conveyance of human eye tissue.²¹ As of November 2012, there were three accredited eye banks in Florida.²² "Tissue bank" is defined as an entity accredited by the American Association of Tissue Banks or otherwise regulated under federal or state law to engage in the evaluation and conveyance of human tissue. According to the American Association of Tissue Banks, there are a total of 14 banks in Florida that are accredited for various activities.²³ Each bank can be accredited to perform certain activities. Banks are accredited as Transplant Tissue Banks and as Nontransplant Anatomical Donation Organizations (NADOs).²⁴

Section 765.514, F.S., describes the methods for making anatomical gifts as signing an organ and tissue donor card, registering online with the donor registry, or expressing the wish to donate in a will, living will, advance directive or other properly executed document.²⁵

III. Effect of Proposed Changes:

Section 1 amends s. 382.002, F.S. The definition of "final disposition" is amended to include "anatomical donation" as an authorized final disposition of a dead body and to indicate that such donation is considered final disposition (similar to cremation being considered final disposition, notwithstanding any subsequent dispersion of ashes that may occur). The term "funeral director"

¹⁸ Section 765.511(15), F.S.

¹⁹ See the United Network for Organ Sharing website at: <http://www.unos.org/donation/index.php?topic=optn> (Last visited March 4, 2013).

²⁰ Section 765.511(19), F.S.

²¹ Section 765.511(11), F.S.

²² See the Eye Bank Association list of accredited eye banks at: <http://www.restore sight.org/wp-content/uploads/2012/11/Accreditation-Status-List-November-2012.pdf> (Last visited March 4, 2013).

²³ See search of accredited banks at: <http://www.aatb.org/Accredited-Bank-Search> (Last visited March 4, 2013).

²⁴ See <http://www.aatb.org/Accreditation> (Last visited March 4, 2013).

²⁵ Section 765.514, F.S.

is amended to delete a reference to “or other person” as the individual who may first assume custody of, or who “effects the final disposition of” a dead body.

Section 2 amends s. 382.006(2), F.S., concerning burial-transit permits, which are required to be obtained prior to final disposition within 5 days after death.²⁶ The bill adds the Department of Health as an authorized issuer of such permits, along with the local registrar or sub-registrar in the registration districts.²⁷

Section 3 amends s. 382.008, F.S., concerning the registration of deaths. It provides that in the absence of the funeral director who first assumes custody of the body, the district medical examiner of the county in which the death occurred or the body was found is included as a person who can file a death certificate. An extension of time to provide the medical certification of cause of death may be granted by the department as well as the local registrar. Electronic transfer of the medical certification of cause of death is permitted. The certification may now be provided by the decedent’s primary or attending physician (rather than limited to the physician in charge of care for the illness or condition which resulted in death, or the physician in attendance at the time of, or immediately before or after, the death) or the local district medical examiner in the event of a death in violent or suspicious circumstances. Primary or attending physician is defined to mean a physician who treated the deceased through examination, medical advice, or medication during the 12 months preceding the date of death.²⁸ Additional references to physicians and medical examiners are conformed to this definition and to accurately refer to the status of the appropriate medical examiner.

Section 4 amends s. 382.011, F.S., regarding the determination of cause of death by medical examiners. In addition to deaths in violent or suspicious circumstances, such determination is mandated where death occurred more than 12 months after last treatment by a primary or attending physician (rather than only 30 days after last treatment by a physician). There is also an expansion of the choice of medical examiners for cases requiring an investigation of death. Funeral directors or other persons to whose attention the death may come may continue to refer the case to the district medical examiner of the county in which the death occurred, or may instead refer the case to the examiner of the county in which the body was found.

Section 5 creates s. 406.49, F.S., to define the terms “cremated remains,” “final disposition,” “human remains or remains,” and “legally authorized person” to have the same meaning as provided in s. 497.005, F.S., regulating funeral, cemetery, and consumer services. The bill creates the definition of “nontransplant anatomical donation organization” as a tissue bank or other organization that facilitates nontransplant anatomical donations, including activities such as- referral, obtaining of consents and authorizations, acquisition, transport, assessment of acceptability of donors, preparation, storage, release, evaluation of intended use, distribution, and final disposition of donations.

The bill transfers the definition of “anatomical board” from s. 406.50, F.S., to this section. It also transfers the definition of “indigent person” from s. 406.53, F.S., to this section. It defines the

²⁶ See Section 382.006(1), F.S.

²⁷ The county health departments appoint the registrars and deputy registrars.

²⁸ Section 382.008(3), F.S.

term “unclaimed remains” to mean human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person’s expense.

The bill changes the term “body” and “dead human body” to “remains,” and “disposal” to “final disposition” wherever used in Part II of Chapter 406 – Disposition of Dead Bodies (but no amendment was made to the title of Part II).

Section 6 amends s. 406.50, F.S., to direct “a person or entity” that comes into possession, charge, or control of unclaimed remains that are required to be buried or cremated at public expense to notify the board. The duty of notification is presently on “all public officers, agents, or employees of every county, city, village, town or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons” coming into possession of such remains. The duty of notification is not required when:

- The unclaimed remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease;
- A legally authorized person objects to the use of the remains for medical education or research; or
- The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces or National Guard, and is eligible for burial in a national cemetery, or was the spouse or dependent child of a veteran eligible for burial in a national cemetery.

The bill has removed the notification exception for death caused by crushing injury.

In current law, s. 406.50(2), F.S., requires the person or entity in charge of the remains to make a reasonable effort to identify the person, contact relatives, determine if the deceased person is eligible for burial in a national cemetery and if so, to make those arrangements in accordance with federal regulations. The bill amends this provision to require that the effort occur before final disposition, and include contacting the National Cemetery Scheduling Office in addition to contacting the county veterans’ service office, or the regional office of the United States Department of Veterans Affairs. If the deceased is eligible for burial in a national cemetery, the person or entity in charge of the remains must also make a reasonable effort to cause the remains or cremated remains to be delivered to a national cemetery.

The bill clarifies s. 406.50(2)(b), F.S., concerning eligibility for burial in a national cemetery by correcting the reference to 38 C.F.R. 38.620.

Section 406.50(3), F.S., directs that unclaimed remains be delivered to the board as soon as possible after death. The bill provides that a funeral director licensed under ch. 497, F.S., may assume the responsibility of a legally authorized person (defined in s. 406.49(6), F.S.) when no family exists or is available, and, after 24 hours has elapsed since the time of death, may authorize arterial embalming for the purpose of storage and delivery of the unclaimed remains to the board. The bill provides that the funeral director is released from liability for damages under the subsection.

Section 406.50(4), F.S., provides that the remains of a deceased person whose identity cannot be ascertained may not be:

- Cremated;
- Donated as an anatomical gift;
- Buried at sea; or
- Removed from the state.

The bill repeals the current s. 406.54, F.S., which provides that competing claims for a body for interment by legally authorized persons shall be prioritized in accordance with s. 732.103, F.S., which describes rights to property of a deceased that is not otherwise devised by will and appears to be inapplicable to unclaimed remains.

The issue of priority of authorization for anatomical gifts for identified persons is addressed in s. 765.512, F.S., with the classes of persons described in priority order. In the absence of actual notice of contrary indications by the deceased or actual notice of opposition by a member of a prior class, a member of a class may give all or any part of the deceased's body for the following purposes specified in s. 765.513, F.S., to:

- Any procurement organization or accredited medical or dental school, college, or university for education, research, therapy, or transplantation; or
- Any individual specified by name for therapy or transplantation needed by him or her.

Section 406.50(5), F.S., is created to provide that, if the board does not accept unclaimed remains, the board of county commissioners, or its designated department, of the county in which the remains were found or the death occurred, may authorize and arrange for the burial or cremation of the entire remains. Boards of county commissioners may, by ordinance or resolution, prescribe policies and procedures for final disposition of unclaimed remains.

Section 7 amends s. 406.51, F.S., to replace the term "disposal" with the term "final disposition" and references the entire applicable Code of Federal Regulations citation of 38 C.F.R. 38.620, concerning eligibility for burial in a national cemetery.

Section 8 substantially rewords s. 406.52, F.S., which relates to the retention of human remains and the process for reclaiming remains from the board. The bill provides the following changes to current law:

- Subsection (1) authorizes the board to embalm human remains upon receipt and to refuse to accept unclaimed remains or the remains of an indigent person; and
- Subsection (2) provides that, at any point prior to use for medical education or research, human remains may be claimed by a legally authorized person, after payment of the board's expenses incurred for transporting, embalming and storing the remains.

The bill deletes the provisions in s. 406.52, F.S., which:

- Deem county commissioners of the county where the death occurred to be considered a legally authorized person under s. 497.005, F.S.;

- Allow the board to provide written notice to the appropriate county commissioners or other legally authorized persons that more bodies had been made available than could be used for medical science, or that a body had been deemed unfit for anatomical purposes, in order to cause the unclaimed body to be buried or cremated in compliance with rules, laws and practices for disposing of unclaimed bodies; and
- Require the county to take reasonable efforts to determine the identity of the body, contact relatives, and accommodate the requests of relatives if a preference is expressed for either burial or cremation.

While licensees under ch. 497, F.S., have no liability for any damages resulting from cremating or burying human remains at the direction of the county, the bill requires such action be based upon written notification.

Section 9 substantially rewords s. 406.53, F.S., as to unclaimed remains of indigent persons. The bill specifies the following circumstances, notwithstanding the provisions of s. 406.50(1), F.S.,²⁹ when a county is not required to notify the board:

- The indigent's remains are decomposed or mutilated by wounds or if an autopsy is performed;
- A legally authorized person or a relative by blood or marriage claims the remains for final disposition at his or her expense (or if such person or relative is also an indigent person, in a manner consistent with policies of the county in which the death occurred or the remains were found);
- The deceased indigent person was a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery (or was the spouse or dependent child of such an eligible veteran); or
- A licensed funeral director certifies that the board has been notified and either accepted or declined the remains.

The bill deletes the exceptions from board notification for the following circumstances:

- In the event of death caused by crushing injury;
- Where the deceased had a contagious disease; or
- Where the body is claimed for burial at the expense of any friend or a representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization, or a governmental agency that was providing residential care to the indigent person at the time of his or her death.

The bill also deletes the provision directing the Department of Health to assess fees for burial pursuant to s. 402.33, F.S., when it claims the body of an indigent client.

Section 10 amends s. 406.55, F.S., concerning contracts for delivery of human remains after death. The term "body" is replaced with "human remains" and "person's remains." The board

²⁹ This section deals with unclaimed human remains generally.

may not enter into any contract that provides for any sum of money to be paid to a living person in exchange for the “delivery of that person’s remains” to the board.

Section 11 amends s. 406.56, F.S., concerning acceptance of human remains left by execution of a will, to replace the term “bodies” with the term “remains” and “person’s remains.” It also replaces the term “medical science” with the term “medical education or research.”

Section 12 amends s. 406.57, F.S., to replace the term “bodies” with “human remains” and to require the board to loan remains to accredited colleges of mortuary science for education or research purposes. The bill deletes the board’s authority to loan remains to “recognized associations of licensed embalmers or funeral directors.” It deletes the discretion previously enjoyed by the board regarding the loans of remains.

Section 13 amends s. 406.58, F.S., to replace the term “bodies” with “human remains” or “remains” and deletes the reference to “associations” to conform to the revision in section 12. The bill also specifies that the board may pay or reimburse the reasonable expenses, as determined by the board, for the removal, storage, or transportation of unclaimed remains by licensed funeral establishments or removal services.

The bill requires the board, not the Department of Financial Services (DFS) keep records of all fees and other financial transactions. The bill directs the University of Florida to audit these records at least once every three years or more frequently if deemed necessary, and to provide a copy of the audit to DFS within 90 days after completion. The bill authorizes the University of Florida to contract with a licensed public accounting firm “to provide for” the audit, and the accounting firm “may be paid from the fees collected by the board.”

Section 14 amends s. 406.59, F.S., to replace the terms “body” and “bodies” with “human remains” and deletes the reference to “associations” to conform to the revision in section 12. Entities receiving remains from the board may not use them for any purposes other than medical education or research.

Section 15 amends s. 406.60, F.S., to reference “human remains” and to provide that the board or a cinerator facility licensed under ch. 497, F.S., may dispose of human remains by cremation when such remains have been used for, and are not of any further value to, medical or dental education or research.

Section 16 amends s. 406.61, F.S., concerning the selling, buying or conveying of remains outside the state. The terms “bodies” and “parts of bodies” are replaced with the term “human remains or any part thereof.” The bill amends s. 406.61(1)(b), F.S., to affirmatively state that the board may transport human remains outside the state for educational or scientific purposes. The bill allows other persons, institutions or organizations that convey human remains or any part thereof outside the state to also do so for dental education or research purposes (in addition to medical education or research purposes), but only upon the required notification to, and approval from, the board.

The bill creates s. 406.61(1)(b), F.S., as an exception to the notification and approval requirement. A nontransplant anatomical donation organization (NADO) that is accredited by the

American Association of Tissue Banks (AATB) may convey human remains into or outside the state, for medical or dental education or research purposes without notifying the board or receiving board approval for the conveyance.

According to the American Association of Tissue Banks (AATB), an organization that promulgates industry standards and accredits tissue banks in the United States and Canada,³⁰ a NADO is a tissue bank or other organization that facilitates nontransplant anatomical donation including referral, obtaining informed consent or authorization, acquisition, traceability, transport, assessing donor acceptability, preparation, packaging, labeling, storage, release, evaluating intended use, distribution, and final disposition of nontransplant anatomical donations.³¹

The bill requires that a NADO be accredited by the AATB “effective October 1, 2014.” There is no other provision regarding verification or enforcement of this requirement, or basis for distinguishing among NADOs accredited before or after that date. The AATB developed accreditation standards for NADOs in 2012, and there are currently four NADOs accredited by AATB, including one in Florida.³²

The bill requires in s. 406.61(2), F.S., that the original burial-transit permit issued pursuant to s. 382.007, F.S., must accompany human remains received by the board or a NADO. It also prohibits the dissection, segmentation, or disarticulation of the remains until the district medical examiner of the county in which the death occurred or the remains were found has granted approval pursuant to s. 406.11, F.S.

The bill requires that a NADO must obtain specific written consent for the dissection, segmentation, or disarticulation of any part of the remains from all persons who are authorized to consent to an anatomical gift as described in s. 765.512, F.S. Such consent must expressly state that the remains may undergo “long-term preservation or extensive preparation, including but not limited to, removal of the head, arms, legs, hands, feet, spine, organs, tissues, or fluids.”

The bill prohibits any person offering any monetary inducement or other valuable consideration, including goods and services, to a donor, legally authorized person, the donor’s estate, or any other third party, in exchange for human remains. The bill provides, however, that the term “valuable consideration” does not include, and does not prohibit payment or reimbursement of the following expenses:

- reasonable costs associated with the removal, storage, and transportation of human remains;
- fees of a licensed funeral establishment or removal service;
- reasonable costs after use of the human remains; or

³⁰ Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practices. www.aatb.org/About-AATB (Last visited March 1, 2013).

³¹ See <http://www.aatb.org/index.asp?bid=271#> for accreditation requirements (Last visited March 1, 2013).

³² See *supra* n. 21.

- disposition by cremation of human remains after use when they are deemed of no further value to medical or dental education or research.

The bill also deletes s. 406.61(3), F.S., which provides a substitute format to comply with required documentation for plastinated remains exhibited before July 1, 2009 by entities accredited by the American Association of Museums. The substitute method of compliance expired on January 1, 2012, by the terms of the subsection.

Section 17 amends s. 497.005, F.S., to redefine “final disposition” as it relates to the Florida Funeral, Cemetery, and Consumer Services Act to include provisions relating to anatomical donation. Delivery of an anatomical donation is deemed to be final disposition if the medical institution or entity receiving it assumes responsibility for disposal by cremation after use, as required by s. 406.60, F.S., (rather than “responsibility for disposal”).

Section 18 amends s. 497.382, F.S., concerning reports of embalming or other handling of dead bodies. Such information is to be recorded and signed monthly as appropriate by embalmers, funeral directors or direct disposers, and maintained at the business premises for inspection by staff of the Division of Funeral, Cemetery, and Consumer Services within the Department of Financial Services. The bill deletes the requirement that the reports be submitted to or filed with the division. The bill revises the reporting procedure for funeral directors performing disinterments.

Section 19 amends s. 497.607, F.S., regarding cremated remains that have not been claimed within 120 days after cremation, to require a reasonable effort must be made to determine whether the remains are those of a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard eligible for burial in a national cemetery (or the spouse or dependent child of an eligible veteran). If so, the establishment “shall arrange for” interment in a national cemetery. Use of a veterans’ service organization is permitted, and a funeral or direct disposal establishment or veterans’ service organization acting in good faith is not liable for damages resulting from the release of required information to determine eligibility.

However, there is no requirement to determine if the deceased is an eligible veteran if the funeral or direct disposal establishment is informed by a legally authorized person that the deceased was not a veteran. Similarly, there is no requirement to relinquish possession of cremated remains to a veteran’s service organization if the establishment is informed by a legally authorized person that the deceased did not desire any funeral, ceremony, or interment-related services recognizing the deceased’s service as a veteran.

The bill defines “reasonable effort” as contacting the National Cemetery Scheduling Office, the county veterans’ service office, the regional office of the U.S. Department of Veterans Affairs, or a veteran’s service organization. The term “veterans’ service organization” is defined as a tax-exempt entity under s. 501(c) (3) or 501(c)(10) of the Internal Revenue Code, organized for the benefit of veterans’ burial and interment, that is recognized by the Memorial Affairs Division of the U.S. Department of Veterans Affairs. This includes members and employees of those organizations that assist in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

Section 20 amends s, 765.513, F.S., regarding those persons or entities that may become donees of anatomical gifts of bodies or parts of them, to specify that the anatomical board or a nontransplant anatomical organization may be a donee of the whole body for medical or dental education or research.

Section 21 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Effective October 1, 2014, nontransplant anatomical donation organizations will be required to be accredited by the American Association of Tissue Banks to convey human remains outside and into the state. Staff at the AATB reports that the initial application cost is \$5,000, and annual renewals thereafter range between a minimum of \$3,250 and \$75,000 annually, based on gross revenues.³³

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

While the title of Part II of 406 remains as “Disposition of Dead Bodies,” although all references therein will refer to human remains or remains, the Division of Law Revision and Information in the Office of Legislative Services will conform the reference accordingly as needed.

³³ Teleconference with D. Newman at AATB March 5, 2013.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The committee substitute conforms the bill to its House companion (CS/HB 171). The committee substitute allows the Department of Health as well as the local health department registrar to grant an extension of time for the submission of the medical certification of the cause of death. It defines nontransplant anatomical transplant organizations as authorized to accept donations of human remains. The committee substitute describes specific requirements for the contents of consents to be obtained by nontransplant anatomical organizations. The committee substitute provides that an institution or organization may not offer monetary or other valuable consideration in exchange for human remains, and defines the term “valuable consideration” to exclude payments or reimbursement of reasonable costs associated with the handling of the remains before and after use, including cremation.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
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The Committee on Regulated Industries (Sachs) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (8) and (9) of section 382.002, Florida Statutes, are amended to read:

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

(8) "Final disposition" means the burial, interment, cremation, removal from the state, anatomical donation, or other authorized disposition of a dead body or a fetus as described in subsection (7). In the case of cremation, dispersion of ashes or cremation residue is considered to occur after final



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13 disposition; the cremation itself is considered final
14 disposition. In the case of anatomical donation of a dead body,
15 the donation itself is considered final disposition.

16 (9) "Funeral director" means a licensed funeral director or
17 direct disposer licensed pursuant to chapter 497 ~~or other person~~
18 who first assumes custody of or effects the final disposition of
19 a dead body or a fetus as described in subsection (7).

20 Section 2. Subsection (2) of section 382.006, Florida
21 Statutes, is amended to read:

22 382.006 Burial-transit permit.—

23 (2) A burial-transit permit shall be issued by the
24 department or the local registrar or subregistrar of the
25 registration district in which the death occurred or the body
26 was found. A burial-transit permit may ~~shall~~ not be issued:

27 (a) Until a complete and satisfactory certificate of death
28 or fetal death is ~~has been~~ filed in accordance with the
29 requirements of this chapter and adopted rules, unless the
30 funeral director provides adequate assurance that a complete and
31 satisfactory certificate will be so registered.

32 (b) Except under conditions prescribed by the department,
33 if the death occurred from some disease that ~~which~~ is deemed
34 ~~held~~ by the department to be infectious, contagious, or
35 communicable and dangerous to the public health.

36 Section 3. Paragraph (a) of subsection (2) and subsections
37 (3), (4), and (5) of section 382.008, Florida Statutes, are
38 amended to read:

39 382.008 Death and fetal death registration.—

40 (2) (a) The funeral director who first assumes custody of a
41 dead body or fetus shall file the certificate of death or fetal



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42 death. In the absence of the funeral director, the physician or
43 other person in attendance at or after the death or the district
44 medical examiner of the county in which the death occurred or
45 the body was found shall file the certificate of death or fetal
46 death. The person who files the certificate shall obtain
47 personal data from the next of kin or the best qualified person
48 or source available. The medical certification of cause of death
49 shall be furnished to the funeral director, either in person or
50 via certified mail or electronic transfer, by the physician or
51 medical examiner responsible for furnishing such information.
52 For fetal deaths, the physician, midwife, or hospital
53 administrator shall provide any medical or health information to
54 the funeral director within 72 hours after expulsion or
55 extraction.

56 (3) Within 72 hours after receipt of a death or fetal death
57 certificate from the funeral director, the medical certification
58 of cause of death shall be completed and made available to the
59 funeral director by the decedent's primary or attending
60 ~~physician in charge of the decedent's care for the illness or~~
61 ~~condition which resulted in death, the physician in attendance~~
62 ~~at the time of death or fetal death or immediately before or~~
63 ~~after such death or fetal death, or, if s. 382.011 applies,~~ the
64 district medical examiner of the county in which the death
65 occurred or the body was found ~~if the provisions of s. 382.011~~
66 ~~apply~~. The primary or attending physician or medical examiner
67 shall certify over his or her signature the cause of death to
68 the best of his or her knowledge and belief. As used in this
69 section, the term "primary or attending physician" means a
70 physician who treated the decedent through examination, medical



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71 advice, or medication during the 12 months preceding the date of
72 death.

73 (a) The local registrar may grant the funeral director an
74 extension of time upon a good and sufficient showing of any of
75 the following conditions:

76 1. An autopsy is pending.

77 2. Toxicology, laboratory, or other diagnostic reports have
78 not been completed.

79 3. The identity of the decedent is unknown and further
80 investigation or identification is required.

81 (b) If the decedent's primary or attending physician or
82 district medical examiner of the county in which the death
83 occurred or the body was found indicates ~~has indicated~~ that he
84 or she will sign and complete the medical certification of cause
85 of death, but will not be available until after the 5-day
86 registration deadline, the local registrar may grant an
87 extension of 5 days. If a further extension is required, the
88 funeral director must provide written justification to the
89 registrar.

90 (4) If the department or local registrar grants ~~has granted~~
91 an extension of time to provide the medical certification of
92 cause of death, the funeral director shall file a temporary
93 certificate of death or fetal death which shall contain all
94 available information, including the fact that the cause of
95 death is pending. The decedent's primary or attending physician
96 or the district medical examiner of the county in which the
97 death occurred or the body was found shall provide an estimated
98 date for completion of the permanent certificate.

99 (5) A permanent certificate of death or fetal death,



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100 containing the cause of death and any other information that
101 ~~which~~ was previously unavailable, shall be registered as a
102 replacement for the temporary certificate. The permanent
103 certificate may also include corrected information if the items
104 being corrected are noted on the back of the certificate and
105 dated and signed by the funeral director, physician, or district
106 medical examiner of the county in which the death occurred or
107 the body was found, as appropriate.

108 Section 4. Subsection (1) of section 382.011, Florida
109 Statutes, is amended to read:

110 382.011 Medical examiner determination of cause of death.-

111 (1) In the case of any death or fetal death due to causes
112 or conditions listed in s. 406.11, any ~~or where the death that~~
113 ~~occurred more than 12 months 30 days~~ after the decedent was last
114 treated by a primary or attending physician as defined in s.
115 382.008(3) unless the death was medically expected as certified
116 ~~by an attending physician, or any death for which where~~ there is
117 reason to believe that the death may have been due to an
118 unlawful act or neglect, the funeral director or other person to
119 whose attention the death may come shall refer the case to the
120 district medical examiner of the county ~~district~~ in which the
121 death occurred or the body was found for investigation and
122 determination of the cause of death.

123 Section 5. Section 406.49, Florida Statutes, is created in
124 part II of chapter 406, Florida Statutes, to read:

125 406.49 Definitions.-As used in this part, the term:

126 (1) "Anatomical board" means the anatomical board of the
127 state headquartered at the University of Florida Health Science
128 Center.



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129 (2) "Cremated remains" has the same meaning as provided in
130 s. 497.005.

131 (3) "Final disposition" has the same meaning as provided in
132 s. 497.005.

133 (4) "Human remains" or "remains" has the same meaning as
134 provided in s. 497.005.

135 (5) "Indigent person" means a person whose family income
136 does not exceed 100 percent of the current federal poverty
137 guidelines prescribed for the family's household size by the
138 United States Department of Health and Human Services.

139 (6) "Legally authorized person" has the same meaning as
140 provided in s. 497.005.

141 (7) "Nontransplant anatomical donation organization" means
142 a tissue bank or other organization that facilitates
143 nontransplant anatomical donation, including referral, obtaining
144 informed consent or authorization, acquisition, traceability,
145 transport, assessing donor acceptability, preparation,
146 packaging, labeling, storage, release, evaluating intended use,
147 distribution, and final disposition of nontransplant anatomical
148 donations.

149 (8) "Unclaimed remains" means human remains that are not
150 claimed by a legally authorized person, other than a medical
151 examiner or the board of county commissioners, for final
152 disposition at the person's expense.

153 Section 6. Section 406.50, Florida Statutes, is amended to
154 read:

155 406.50 Unclaimed ~~dead bodies or human~~ remains; disposition,
156 procedure.—

157 (1) A person or entity that comes ~~All public officers,~~



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158 ~~agents, or employees of every county, city, village, town, or~~
159 ~~municipality and every person in charge of any prison, morgue,~~
160 ~~hospital, funeral parlor, or mortuary and all other persons~~
161 ~~coming into possession, charge, or control of unclaimed any dead~~
162 ~~human body or remains that which are unclaimed or which are~~
163 ~~required to be buried or cremated at public expense shall ~~are~~~~
164 ~~hereby required to notify, immediately notify, the anatomical~~
165 ~~board, unless:~~

166 (a) The unclaimed remains are decomposed or mutilated by
167 wounds;

168 (b) An autopsy is performed on the remains;

169 (c) The remains contain ~~whenever any such body, bodies, or~~
170 ~~remains come into its possession, charge, or control.~~

171 ~~Notification of the anatomical board is not required if the~~
172 ~~death was caused by crushing injury, the deceased had a~~
173 ~~contagious disease;~~

174 (d) A legally authorized person, ~~an autopsy was required to~~
175 ~~determine cause of death, the body was in a state of severe~~
176 ~~decomposition, or a family member objects to use of the remains~~
177 ~~body for medical education or ~~and~~ research; or~~

178 (e) The deceased person was a veteran of the United States
179 Armed Forces, United States Reserve Forces, or National Guard
180 and is eligible for burial in a national cemetery or was the
181 spouse or dependent child of a veteran eligible for burial in a
182 national cemetery.

183 (2) ~~(1)~~ Before the final disposition of unclaimed remains,
184 the person or entity in charge or control of the ~~dead body or~~
185 human remains shall make a reasonable effort to determine:

186 (a) Determine the identity of the deceased person and ~~shall~~



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187 ~~further make a reasonable effort to~~ contact any relatives of the
188 ~~such~~ deceased person.

189 (b) Determine whether ~~or not~~ the deceased person is
190 eligible under 38 C.F.R. s. 38.620 for ~~entitled to~~ burial in a
191 national cemetery as a veteran of the armed forces and, if
192 eligible so, to cause the deceased person's remains or cremated
193 remains to be delivered to a national cemetery shall make
194 ~~arrangements for such burial services in accordance with the~~
195 ~~provisions of 38 C.F.R.~~

196
197 For purposes of this subsection, "a reasonable effort" includes
198 contacting the National Cemetery Scheduling Office, the county
199 veterans service office, or the regional office of the United
200 States Department of Veterans Affairs.

201 ~~(3)(2) Unclaimed remains~~ Such dead human bodies as
202 ~~described in this chapter~~ shall be delivered to the anatomical
203 board as soon as possible after death. When no family exists or
204 is available, a funeral director licensed under chapter 497 may
205 assume the responsibility of a legally authorized person and
206 may, after 24 hours have elapsed since the time of death,
207 authorize arterial embalming for the purposes of storage and
208 delivery of unclaimed remains to the anatomical board. A funeral
209 director licensed under chapter 497 is not liable for damages
210 under this subsection.

211 (4) The remains of a deceased person whose identity is not
212 known may not be cremated, donated as an anatomical gift, buried
213 at sea, or removed from the state.

214 (5) If the anatomical board does not accept the unclaimed
215 remains, the board of county commissioners or its designated



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216 county department of the county in which the death occurred or
217 the remains were found may authorize and arrange for the burial
218 or cremation of the entire remains. A board of county
219 commissioners may by resolution or ordinance, in accordance with
220 applicable laws and rules, prescribe policies and procedures for
221 final disposition of unclaimed remains.

222 ~~(6)(3) This part does not~~ Nothing herein shall affect the
223 right of a medical examiner to hold human ~~such dead body or~~
224 remains for the purpose of investigating the cause of death or,
225 ~~nor shall this chapter affect~~ the right of any court of
226 competent jurisdiction to enter an order affecting the
227 disposition of such ~~body or~~ remains.

228 ~~(4) In the event more than one legally authorized person~~
229 ~~claims a body for interment, the requests shall be prioritized~~
230 ~~in accordance with s. 732.103.~~

231
232 ~~For purposes of this chapter, the term "anatomical board" means~~
233 ~~the anatomical board of this state located at the University of~~
234 ~~Florida Health Science Center, and the term "unclaimed" means a~~
235 ~~dead body or human remains that is not claimed by a legally~~
236 ~~authorized person, as defined in s. 497.005, for interment at~~
237 ~~that person's expense.~~

238 Section 7. Section 406.51, Florida Statutes, is amended to
239 read:

240 406.51 Final disposition of unclaimed deceased veterans;
241 contract requirements.—Any contract by a local governmental
242 entity for the final disposition ~~disposal~~ of unclaimed human
243 remains must provide for compliance with s. 406.50(2) ~~406.50(1)~~
244 and require that the procedures in 38 C.F.R. s. 38.620, relating



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245 to disposition of unclaimed deceased veterans, are ~~be~~ followed.

246 Section 8. Section 406.52, Florida Statutes, is amended to
247 read:

248 (Substantial rewording of section. See
249 s. 406.52, F.S., for present text.)

250 406.52 Retention of human remains before use; claim after
251 delivery to anatomical board; procedures for unclaimed remains
252 of indigent persons.—

253 (1) The anatomical board shall keep in storage all human
254 remains that it receives for at least 48 hours before allowing
255 their use for medical education or research. Human remains may
256 be embalmed when received. The anatomical board may, for any
257 reason, refuse to accept unclaimed remains or the remains of an
258 indigent person.

259 (2) At any time before their use for medical education or
260 research, human remains delivered to the anatomical board may be
261 claimed by a legally authorized person. The anatomical board
262 shall release the remains to the legally authorized person after
263 payment of the anatomical board's expenses incurred for
264 transporting, embalming, and storing the remains.

265 (3) (a) A board of county commissioners may by resolution or
266 ordinance, in accordance with applicable laws and rules,
267 prescribe policies and procedures for the burial or cremation of
268 the entire unclaimed remains of an indigent person whose death
269 occurred, or whose remains were found, in the county.

270 (b) A person licensed under chapter 497 is not liable for
271 any damages resulting from cremating or burying such human
272 remains at the written direction of the board of county
273 commissioners or its designee.



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274 Section 9. Section 406.53, Florida Statutes, is amended to
275 read:

276 (Substantial rewording of section. See
277 s. 406.53, F.S., for present text.)

278 406.53 Unclaimed remains of indigent person; exemption from
279 notice to the anatomical board.—A board of county commissioners
280 or its designated county department that receives a report of
281 the unclaimed remains of an indigent person, notwithstanding s.
282 406.50(1), is not required to notify the anatomical board of the
283 remains if:

284 (1) The indigent person's remains are decomposed or
285 mutilated by wounds or if an autopsy is performed on the
286 remains;

287 (2) A legally authorized person or a relative by blood or
288 marriage claims the remains for final disposition at his or her
289 expense or, if such relative or legally authorized person is
290 also an indigent person, in a manner consistent with the
291 policies and procedures of the board of county commissioners of
292 the county in which the death occurred or the remains were
293 found;

294 (3) The deceased person was a veteran of the United States
295 Armed Forces, United States Reserve Forces, or National Guard
296 and is eligible for burial in a national cemetery or was the
297 spouse or dependent child of a veteran eligible for burial in a
298 national cemetery; or

299 (4) A funeral director licensed under chapter 497 certifies
300 that the anatomical board has been notified and either accepted
301 or declined the remains.

302 Section 10. Section 406.55, Florida Statutes, is amended to



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303 read:

304 406.55 Contracts for delivery of human remains ~~body~~ after
305 death prohibited.—The anatomical board may not enter is
306 ~~specifically prohibited from entering~~ into any contract, oral or
307 written, that provides for ~~whereby~~ any sum of money to shall be
308 paid to any living person in exchange for ~~which~~ the delivery of
309 that person's remains ~~body of said person shall be delivered~~ to
310 the anatomical board when the ~~such living~~ person dies.

311 Section 11. Section 406.56, Florida Statutes, is amended to
312 read:

313 406.56 Acceptance of human remains ~~bodies~~ under will.—If
314 any person ~~being~~ of sound mind executes ~~shall execute~~ a will
315 leaving his or her remains ~~body~~ to the anatomical board for ~~the~~
316 ~~advancement of~~ medical education or research ~~science~~ and the
317 ~~such~~ person dies within the geographical limits of the state,
318 the anatomical board may ~~is hereby empowered to~~ accept and
319 receive the person's remains ~~such body~~.

320 Section 12. Section 406.57, Florida Statutes, is amended to
321 read:

322 406.57 Distribution of human remains ~~dead bodies~~.—The
323 anatomical board or its duly authorized agent shall take and
324 receive human remains ~~the bodies~~ delivered to it as provided in
325 ~~under the provisions of~~ this chapter and shall:

326 (1) Distribute the remains ~~them~~ equitably ~~to and~~ among the
327 medical and dental schools, teaching hospitals, medical
328 institutions, and health-related teaching programs that require
329 cadaveric material for study; or

330 (2) Loan the remains ~~same may be loaned for examination or~~
331 ~~study purposes~~ to accredited colleges of mortuary science



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332 ~~recognized associations of licensed embalmers or funeral~~
333 ~~directors,~~ or medical or dental examining boards for educational
334 or research purposes at the discretion of the anatomical board.

335 Section 13. Section 406.58, Florida Statutes, is amended to
336 read:

337 406.58 Fees; authority to accept additional funds; annual
338 audit.-

339 (1) The anatomical board may:

340 (a) Adopt ~~is empowered to prescribe~~ a schedule of fees to
341 be collected from the institutions ~~institution or association~~ to
342 which the human remains ~~bodies, as described in this chapter,~~
343 are distributed or loaned to defray the costs of obtaining and
344 preparing the remains ~~such bodies.~~

345 (b) ~~(2) The anatomical board is hereby empowered to~~ Receive
346 money from public or private sources, in addition to the fees
347 collected from the institutions ~~institution or association~~ to
348 which human remains ~~the bodies~~ are distributed, to be used to
349 defray the costs of embalming, handling, shipping, storing,
350 cremating, and otherwise storage, ~~cremation, and other costs~~
351 ~~relating to the~~ obtaining and using the remains. ~~use of such~~
352 ~~bodies as described in this chapter; the anatomical board is~~
353 ~~empowered to~~

354 (c) Pay or reimburse the reasonable expenses, as determined
355 by the anatomical board, incurred by a funeral establishment or
356 removal service licensed under chapter 497 for the removal,
357 storage, and transportation ~~any person delivering the bodies as~~
358 ~~described in this chapter~~ to the anatomical board of unclaimed
359 human remains. ~~and is further empowered to~~

360 (d) Enter into contracts and perform such other acts ~~as are~~



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361 necessary for ~~to~~ the proper performance of its duties.†

362 (2) The anatomical board shall keep a complete record of
363 all fees and other financial transactions. The University of
364 Florida shall conduct an audit of the financial records of the
365 anatomical board at least once every 3 years or more frequently
366 as the university deems necessary. Within 90 days after
367 completing an audit, the university shall provide a copy of the
368 audit to the Department of Financial Services. The university
369 may contract with a licensed public accounting firm to provide
370 for the audit, which firm may be paid from the fees collected by
371 the ~~of said anatomical board shall be kept and audited annually~~
372 ~~by the Department of Financial Services, and a report of such~~
373 ~~audit shall be made annually to the University of Florida.~~

374 Section 14. Section 406.59, Florida Statutes, is amended to
375 read:

376 406.59 Institutions receiving human remains ~~bodies~~. ~~—A No~~
377 ~~university, school, college, teaching hospital, or institution~~
378 ~~may not, or association shall be allowed or permitted to receive~~
379 ~~any human remains from the anatomical board such body or bodies~~
380 ~~as described in this chapter until its facilities are have been~~
381 ~~inspected and approved by the anatomical board. Human remains~~
382 ~~All such bodies received by such university, school, college,~~
383 ~~teaching hospital, or institution may not, or association shall~~
384 ~~be used for any no other purpose other than the promotion of~~
385 ~~medical education or research science.~~

386 Section 15. Section 406.60, Florida Statutes, is amended to
387 read:

388 406.60 Disposition of human remains ~~bodies~~ after use. ~~At~~
389 ~~any time~~ When human remains ~~any body or bodies or part or parts~~



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390 ~~of any body or bodies, as described in this chapter, shall have~~
391 ~~been used for, and are not deemed of any no further value to,~~
392 ~~medical or dental education or research science, then the~~
393 ~~anatomical board or a cinerator facility licensed under chapter~~
394 ~~497 person or persons having charge of said body or parts of~~
395 ~~said body may dispose of the remains or any part thereof by~~
396 ~~cremation.~~

397 Section 16. Section 406.61, Florida Statutes, is amended to
398 read:

399 406.61 Selling, buying, or conveying human remains ~~bodies~~
400 outside state prohibited; exceptions; ~~r~~ penalty.-

401 (1) (a) The anatomical board may transport human remains
402 outside the state for educational or scientific purposes. Any
403 ~~person who sells or buys any body or parts of bodies as~~
404 ~~described in this chapter or any person except a recognized~~
405 ~~Florida medical or dental school who transmits or conveys or~~
406 ~~causes to be transmitted or conveyed such body or parts of~~
407 ~~bodies to any place outside this state commits a misdemeanor of~~
408 ~~the first degree, punishable as provided in ss. 775.082 and~~
409 ~~775.083. However, This chapter does not prohibit the transport~~
410 of anatomical board from transporting human remains, any part of
411 such remains specimens outside the state for educational or
412 ~~scientific purposes or prohibit the transport of bodies, parts~~
413 ~~of bodies, or tissue specimens in furtherance of lawful~~
414 ~~examination, investigation, or autopsy conducted pursuant to s.~~
415 ~~406.11.~~

416 (b) A Any person, institution, or organization that conveys
417 human remains ~~bodies~~ or any part thereof ~~parts of bodies~~ into or
418 outside ~~out of~~ the state for medical or dental education or



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419 research purposes must ~~shall~~ notify the anatomical board of such
420 intent and receive approval from the board.

421 (c) Notwithstanding paragraph (b), a nontransplant
422 anatomical donation organization accredited by the American
423 Association of Tissue Banks may convey human remains or any part
424 thereof into or outside the state for medical or dental
425 education or research purposes without notifying or receiving
426 approval from the anatomical board. Effective October 1, 2014, a
427 nontransplant anatomical donation organization must be
428 accredited by the American Association of Tissue Banks.

429 (d) A person who sells or buys human remains or any part
430 thereof, or a person who transmits or conveys or causes to be
431 transmitted or conveyed such remains or part thereof to any
432 place outside this state, in violation of this section commits a
433 misdemeanor of the first degree, punishable as provided in s.
434 775.082 or s. 775.083. This paragraph does not apply to a
435 recognized Florida medical or dental school.

436 (2) (a) Human remains received in this state by the
437 anatomical board or a nontransplant anatomical donation
438 organization must be accompanied by the original burial-transit
439 permit issued pursuant to s. 382.007. The remains may not be
440 dissected, segmented, or disarticulated until the district
441 medical examiner of the county in which the death occurred or
442 the remains were found grants approval pursuant to s. 406.11.

443 (b) A nontransplant anatomical donation organization must
444 obtain specific written consent for the dissection,
445 segmentation, or disarticulation of any part of the remains from
446 a person who is authorized under s. 765.512 to give such
447 consent. Such consent must expressly state that the remains may



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448 undergo long-term preservation or extensive preparation,
449 including, but not limited to, removal of the head, arms, legs,
450 hands, feet, spine, organs, tissues, or fluids.

451 (3) A person, institution, or organization may not offer in
452 exchange for human remains any monetary inducement or other
453 valuable consideration, including goods or services, to a donor,
454 a legally authorized person, the donor's estate, or any other
455 third party. As used in this subsection, the term "valuable
456 consideration" does not include, and this subsection does not
457 prohibit, payment or reimbursement of the reasonable costs
458 associated with the removal, storage, and transportation of
459 human remains, including payment or reimbursement of a funeral
460 establishment or removal service licensed under chapter 497 or
461 the reasonable costs after use, including payment or
462 reimbursement for the disposition of human remains pursuant to
463 s. 406.60.

464 (4) ~~(2)~~ An Any entity accredited by the American Association
465 of Museums may convey plastinated human remains ~~bodies~~ or any
466 part thereof within, parts of bodies into, or outside ~~out~~ of the
467 state for exhibition and public educational purposes without the
468 consent of the anatomical board if the accredited entity:

469 (a) Notifies the anatomical board of the conveyance and the
470 duration and location of the exhibition at least 30 days before
471 the intended conveyance.

472 (b) Submits to the anatomical board a description of the
473 remains ~~bodies~~ or any part thereof ~~parts of bodies~~ and the name
474 and address of the company providing the remains ~~bodies~~ or any
475 part thereof ~~parts of bodies~~.

476 (c) Submits to the anatomical board documentation that the



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477 remains or each part thereof ~~body~~ was donated by the decedent or
478 his or her next of kin for purposes of plastination and public
479 exhibition, or, in lieu of such documentation, an affidavit
480 stating that the remains or each part thereof ~~body~~ was donated
481 directly by the decedent or his or her next of kin for such
482 purposes to the company providing the remains ~~body~~ and that such
483 company has a donation form on file for the remains ~~body~~.

484 ~~(3) Notwithstanding paragraph (2) (c) and in lieu of the~~
485 ~~documentation or affidavit required under paragraph (2) (c), for~~
486 ~~a plastinated body that, before July 1, 2009, was exhibited in~~
487 ~~this state by any entity accredited by the American Association~~
488 ~~of Museums, such an accredited entity may submit an affidavit to~~
489 ~~the board stating that the body was legally acquired and that~~
490 ~~the company providing the body has acquisition documentation on~~
491 ~~file for the body. This subsection expires January 1, 2012.~~

492 Section 17. Subsection (32) of section 497.005, Florida
493 Statutes, is amended to read:

494 497.005 Definitions.—As used in this chapter, the term:

495 (32) "Final disposition" means the final disposal of a dead
496 human body by earth interment, aboveground interment, cremation,
497 burial at sea, anatomical donation, or delivery to a medical
498 institution for lawful dissection if the medical institution or
499 entity receiving the anatomical donation assumes responsibility
500 for disposition after use pursuant to s. 406.60 ~~disposal~~. The
501 term "Final disposition" does not include the disposal or
502 distribution of cremated remains and residue of cremated
503 remains.

504 Section 18. Section 497.382, Florida Statutes, is amended
505 to read:



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506 497.382 Reports of cases embalmed and bodies handled.—

507 (1) Each funeral establishment, direct disposal
508 establishment, cinerator facility, and centralized embalming
509 facility shall record monthly ~~report~~ on a form prescribed and
510 furnished by the licensing authority the name of the deceased
511 and such other information as may be required by rule with
512 respect to each dead human body embalmed or otherwise handled by
513 the establishment or facility. Such forms shall be signed
514 monthly by the embalmer who performs the embalming, if the body
515 is embalmed, and the funeral director in charge of the
516 establishment or facility or by the direct disposer who disposes
517 of the body and shall be maintained at the business premises of
518 the establishment or facility for inspection by division staff.
519 The licensing authority shall prescribe by rule the procedures
520 for preparing and retaining ~~in submitting~~ such forms
521 ~~documentation. Reports required by this subsection shall be~~
522 ~~filed by the 20th day of each month for final dispositions~~
523 ~~handled the preceding month.~~

524 (2) Funeral directors performing disinterments shall record
525 monthly on the form specified in subsection (1) and pursuant to
526 ~~report, using a form and procedures~~ prescribed ~~specified~~ by
527 rule, the name of the deceased and such other information as may
528 be required by rule with respect to each dead human body
529 disinterred.

530 Section 19. Subsection (2) of section 497.607, Florida
531 Statutes, is amended to read:

532 497.607 Cremation; procedure required.—

533 (2) (a) With respect to any person who intends to provide
534 for the cremation of the deceased, if, after a period of 120



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535 days from the time of cremation the cremated remains have not
536 been claimed, the funeral or direct disposal establishment may
537 dispose of the cremated remains. Such disposal shall include
538 scattering them at sea or placing them in a licensed cemetery
539 scattering garden or pond or in a church columbarium or
540 otherwise disposing of the remains as provided by rule.

541 (b) A reasonable effort shall be made before such disposal
542 to determine whether the cremated remains are those of a veteran
543 of the United States Armed Forces, United States Reserve Forces,
544 or National Guard eligible for burial in a national cemetery or
545 a spouse or dependent child of a veteran eligible for burial in
546 a national cemetery.

547 (c) If the unclaimed cremated remains are those of an
548 eligible veteran or the spouse or dependent child of an eligible
549 veteran, the funeral or direct disposal establishment shall
550 arrange for the interment of the cremated remains in a national
551 cemetery. A funeral or direct disposal establishment may use the
552 assistance of a veterans' service organization for this purpose.
553 A funeral or direct disposal establishment or veterans' service
554 organization acting in good faith is not liable for any damages
555 resulting from the release of required information to determine
556 eligibility for interment.

557 (d) This subsection does not require a funeral or direct
558 disposal establishment to:

559 1. Determine whether the cremated remains are those of a
560 veteran if the funeral or direct disposal establishment is
561 informed by a legally authorized person that the decedent was
562 not a veteran.

563 2. Relinquish possession of the cremated remains to a



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564 veterans' service organization if the funeral or direct disposal
565 establishment is informed by a legally authorized person that
566 the decedent did not desire any funeral, ceremony, or interment-
567 related services recognizing the decedent's service as a
568 veteran.

569 (e) For purposes of this subsection, the term:

570 1. "Reasonable effort" includes contacting the National
571 Cemetery Scheduling Office, the county veterans service office,
572 the regional office of the United States Department of Veterans
573 Affairs, or a veterans' service organization.

574 2. "Veterans' service organization" means an association,
575 corporation, or other entity that qualifies under s. 501(c)(3)
576 or s. 501(c)(19) of the Internal Revenue Code as a tax-exempt
577 organization, that is organized for the benefit of veterans'
578 burial and interment, and that is recognized by the Memorial
579 Affairs Division of the United States Department of Veterans
580 Affairs. The term includes a member or employee of an eligible
581 nonprofit veterans' corporation, association, or entity that
582 specifically assists in facilitating the identification,
583 recovery, and interment of the unclaimed cremated remains of
584 veterans.

585 Section 20. Subsection (1) of section 765.513, Florida
586 Statutes, is amended to read:

587 765.513 Donees; purposes for which anatomical gifts may be
588 made.—

589 (1) The following persons or entities may become donees of
590 anatomical gifts of bodies or parts of them for the purposes
591 stated:

592 (a) Any procurement organization or accredited medical or



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593 dental school, college, or university for education, research,
594 therapy, or transplantation.

595 (b) Any individual specified by name for therapy or
596 transplantation needed by him or her.

597 (c) The anatomical board or a nontransplant anatomical
598 donation organization, as defined in s. 406.49, for donation of
599 the whole body for medical or dental education or research.

600 Section 21. Section 406.54, Florida Statutes, is repealed.

601 Section 22. This act shall take effect July 1, 2013.

602

603 ===== T I T L E A M E N D M E N T =====

604 And the title is amended as follows:

605 Delete everything before the enacting clause
606 and insert:

607 A bill to be entitled

608 An act relating to disposition of human remains;
609 amending s. 382.002, F.S.; revising definitions for
610 purposes of the Florida Vital Statistics Act; amending
611 s. 382.006, F.S.; authorizing the Department of Health
612 to issue burial-transit permits; amending s. 382.008,
613 F.S.; revising procedures for the registration of
614 certificates of death or fetal death and the medical
615 certification of causes of death; providing a
616 definition; amending s. 382.011, F.S.; extending the
617 time by which certain deaths must be referred to the
618 medical examiner for investigation; creating s.
619 406.49, F.S.; providing definitions; amending s.
620 406.50, F.S.; revising procedures for the reporting
621 and disposition of unclaimed remains; prohibiting



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622 certain uses or dispositions of the remains of
623 deceased persons whose identities are not known;
624 limiting the liability of licensed funeral directors
625 who authorize the embalming of unclaimed remains under
626 certain circumstances; amending s. 406.51, F.S.;
627 requiring that local governmental contracts for the
628 final disposition of unclaimed remains comply with
629 certain federal regulations; amending s. 406.52, F.S.;
630 revising procedures for the anatomical board's
631 retention of human remains before their use; providing
632 for claims by, and the release of human remains to,
633 legally authorized persons after payment of certain
634 expenses; authorizing county ordinances or resolutions
635 for the final disposition of the unclaimed remains of
636 indigent persons; limiting the liability of certain
637 licensed persons for cremating or burying human
638 remains under certain circumstances; amending s.
639 406.53, F.S.; revising exceptions from requirements
640 for notice to the anatomical board of the death of
641 indigent persons; deleting a requirement that the
642 Department of Health assess fees for the burial of
643 certain bodies; amending ss. 406.55, 406.56, and
644 406.57, F.S.; conforming provisions; amending s.
645 406.58, F.S.; requiring audits of the financial
646 records of the anatomical board; conforming
647 provisions; amending s. 406.59, F.S.; conforming
648 provisions; amending s. 406.60, F.S.; authorizing
649 certain facilities to dispose of human remains by
650 cremation; amending s. 406.61, F.S.; revising



651 provisions prohibiting the selling or buying of human
652 remains or the transmitting or conveying of such
653 remains outside the state; providing penalties;
654 excepting accredited nontransplant anatomical donation
655 organizations from requirements for the notification
656 of and approval from the anatomical board for the
657 conveyance of human remains for specified purposes;
658 requiring that nontransplant anatomical donation
659 organizations be accredited by a certain date;
660 requiring that human remains received by the
661 anatomical board be accompanied by a burial-transit
662 permit; requiring approval by the medical examiner and
663 consent of certain persons before the dissection,
664 segmentation, or disarticulation of such remains;
665 prohibiting the offer of any monetary inducement or
666 other valuable consideration in exchange for human
667 remains; providing a definition; deleting an expired
668 provision; conforming provisions; amending s. 497.005,
669 F.S.; revising a definition for purposes of the
670 Florida Funeral, Cemetery, and Consumer Services Act;
671 amending s. 497.382, F.S.; revising certain reporting
672 requirements for funeral establishments, direct
673 disposal establishments, cinerator facilities, and
674 centralized embalming facilities; amending s. 497.607,
675 F.S.; providing requirements for the disposal of
676 unclaimed cremated remains by funeral or direct
677 disposal establishments; limiting the liability of
678 funeral or direct disposal establishments and
679 veterans' service organizations related to the release



680 of information required to determine the eligibility
681 for interment in a national cemetery of the unclaimed
682 cremated remains of a veteran; providing definitions;
683 amending s. 765.513, F.S.; revising the list of donees
684 who may accept anatomical gifts and the purposes for
685 which such a gift may be used; repealing s. 406.54,
686 F.S., relating to claims of bodies after delivery to
687 the anatomical board; providing an effective date.

By Senator Sachs

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1 A bill to be entitled
 2 An act relating to disposition of human remains;
 3 amending s. 382.002, F.S.; revising definitions for
 4 purposes of the Florida Vital Statistics Act; amending
 5 s. 382.006, F.S.; authorizing the Department of Health
 6 to issue burial-transit permits; amending s. 382.008,
 7 F.S.; revising procedures for the registration of
 8 certificates of death or fetal death and the medical
 9 certification of causes of death; providing a
 10 definition; amending s. 382.011, F.S.; extending the
 11 time by which certain deaths must be referred to the
 12 medical examiner for investigation; creating s.
 13 406.49, F.S.; providing definitions; amending s.
 14 406.50, F.S.; revising procedures for the reporting
 15 and disposition of unclaimed remains; prohibiting
 16 certain uses or dispositions of the remains of
 17 deceased persons whose identities are not known;
 18 limiting the liability of licensed funeral directors
 19 who authorize the embalming of unclaimed remains under
 20 certain circumstances; amending s. 406.51, F.S.;
 21 requiring that local governmental contracts for the
 22 final disposition of unclaimed remains comply with
 23 certain federal regulations; amending s. 406.52, F.S.;
 24 revising procedures for the anatomical board's
 25 retention of human remains before their use; providing
 26 for claims by, and the release of human remains to,
 27 legally authorized persons after payment of certain
 28 expenses; authorizing county ordinances or resolutions
 29 for the final disposition of the unclaimed remains of

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30 indigent persons; limiting the liability of certain
 31 licensed persons for cremating or burying human
 32 remains under certain circumstances; amending s.
 33 406.53, F.S.; revising exceptions from requirements
 34 for notice to the anatomical board of the death of
 35 indigent persons; deleting a requirement that the
 36 Department of Health assess fees for the burial of
 37 certain bodies; amending ss. 406.55, 406.56, and
 38 406.57, F.S.; conforming provisions; amending s.
 39 406.58, F.S.; requiring audits of the financial
 40 records of the anatomical board; conforming
 41 provisions; amending s. 406.59, F.S.; conforming
 42 provisions; amending s. 406.60, F.S.; authorizing
 43 certain facilities to dispose of human remains by
 44 cremation; amending s. 406.61, F.S.; revising
 45 provisions prohibiting the selling or buying of human
 46 remains or the transmitting or conveying of such
 47 remains outside the state; providing penalties;
 48 excepting accredited nontransplant anatomical donation
 49 organizations from requirements for the notification
 50 of and approval from the anatomical board for the
 51 conveyance of human remains for specified purposes;
 52 requiring that nontransplant anatomical donation
 53 organizations be accredited by a certain date;
 54 requiring that human remains received by the
 55 anatomical board be accompanied by a burial-transit
 56 permit; requiring approval by the medical examiner and
 57 consent of certain persons before the dissection,
 58 segmentation, or disarticulation of such remains;

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59 prohibiting the offer of any monetary inducement or
 60 other valuable consideration in exchange for human
 61 remains; providing a definition; deleting an expired
 62 provision; conforming provisions; amending s. 497.005,
 63 F.S.; revising a definition for purposes of the
 64 Florida Funeral, Cemetery, and Consumer Services Act;
 65 amending s. 497.382, F.S.; revising certain reporting
 66 requirements for funeral establishments, direct
 67 disposal establishments, cinerator facilities, and
 68 centralized embalming facilities; amending s. 497.607,
 69 F.S.; providing requirements for the disposal of
 70 unclaimed cremated remains by funeral or direct
 71 disposal establishments; limiting the liability of
 72 funeral or direct disposal establishments and
 73 veterans' service organizations related to the release
 74 of information required to determine the eligibility
 75 for interment in a national cemetery of the unclaimed
 76 cremated remains of a veteran; providing definitions;
 77 amending s. 765.513, F.S.; revising the list of donees
 78 who may accept anatomical gifts and the purposes for
 79 which such a gift may be used; repealing s. 406.54,
 80 F.S., relating to claims of bodies after delivery to
 81 the anatomical board; providing an effective date.

82
 83 Be It Enacted by the Legislature of the State of Florida:

84
 85 Section 1. Subsections (8) and (9) of section 382.002,
 86 Florida Statutes, are amended to read:
 87 382.002 Definitions.—As used in this chapter, the term:

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88 (8) "Final disposition" means the burial, interment,
 89 cremation, removal from the state, anatomical donation, or other
 90 authorized disposition of a dead body or a fetus as described in
 91 subsection (7). In the case of cremation, dispersion of ashes or
 92 cremation residue is considered to occur after final
 93 disposition; the cremation itself is considered final
 94 disposition. In the case of anatomical donation of a dead body,
 95 the donation itself is considered final disposition.

96 (9) "Funeral director" means a licensed funeral director or
 97 direct disposer licensed pursuant to chapter 497 ~~or other person~~
 98 who first assumes custody of or effects the final disposition of
 99 a dead body or a fetus as described in subsection (7).

100 Section 2. Subsection (2) of section 382.006, Florida
 101 Statutes, is amended to read:

102 382.006 Burial-transit permit.—

103 (2) A burial-transit permit shall be issued by the
 104 department or the local registrar or subregistrar of the
 105 registration district in which the death occurred or the body
 106 was found. A burial-transit permit may ~~shall~~ not be issued:

107 (a) Until a complete and satisfactory certificate of death
 108 or fetal death is ~~has been~~ filed in accordance with the
 109 requirements of this chapter and adopted rules, unless the
 110 funeral director provides adequate assurance that a complete and
 111 satisfactory certificate will be so registered.

112 (b) Except under conditions prescribed by the department,
 113 if the death occurred from some disease that ~~which~~ is deemed
 114 ~~held~~ by the department to be infectious, contagious, or
 115 communicable and dangerous to the public health.

116 Section 3. Paragraph (a) of subsection (2) and subsections

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117 (3), (4), and (5) of section 382.008, Florida Statutes, are
118 amended to read:

119 382.008 Death and fetal death registration.-

120 (2) (a) The funeral director who first assumes custody of a
121 dead body or fetus shall file the certificate of death or fetal
122 death. In the absence of the funeral director, the physician or
123 other person in attendance at or after the death or the district
124 medical examiner of the county in which the death occurred or
125 the body was found shall file the certificate of death or fetal
126 death. The person who files the certificate shall obtain
127 personal data from the next of kin or the best qualified person
128 or source available. The medical certification of cause of death
129 shall be furnished to the funeral director, either in person or
130 via certified mail or electronic transfer, by the physician or
131 medical examiner responsible for furnishing such information.
132 For fetal deaths, the physician, midwife, or hospital
133 administrator shall provide any medical or health information to
134 the funeral director within 72 hours after expulsion or
135 extraction.

136 (3) Within 72 hours after receipt of a death or fetal death
137 certificate from the funeral director, the medical certification
138 of cause of death shall be completed and made available to the
139 funeral director by the decedent's primary or attending
140 physician in charge of the decedent's care for the illness or
141 condition which resulted in death, the physician in attendance
142 at the time of death or fetal death or immediately before or
143 after such death or fetal death, or, if s. 382.011 applies, the
144 district medical examiner of the county in which the death
145 occurred or the body was found if the provisions of s. 382.011

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146 ~~apply~~. The primary or attending physician or medical examiner
147 shall certify over his or her signature the cause of death to
148 the best of his or her knowledge and belief. As used in this
149 section, the term "primary or attending physician" means a
150 physician who treated the decedent through examination, medical
151 advice, or medication during the 12 months preceding the date of
152 death.

153 (a) The local registrar may grant the funeral director an
154 extension of time upon a good and sufficient showing of any of
155 the following conditions:

156 1. An autopsy is pending.
157 2. Toxicology, laboratory, or other diagnostic reports have
158 not been completed.

159 3. The identity of the decedent is unknown and further
160 investigation or identification is required.

161 (b) If the decedent's primary or attending physician or
162 district medical examiner of the county in which the death
163 occurred or the body was found indicates ~~has indicated~~ that he
164 or she will sign and complete the medical certification of cause
165 of death, but will not be available until after the 5-day
166 registration deadline, the local registrar may grant an
167 extension of 5 days. If a further extension is required, the
168 funeral director must provide written justification to the
169 registrar.

170 (4) If the local registrar grants ~~has granted~~ an extension
171 of time to provide the medical certification of cause of death,
172 the funeral director shall file a temporary certificate of death
173 or fetal death which shall contain all available information,
174 including the fact that the cause of death is pending. The

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175 decedent's primary or attending physician or the district
 176 medical examiner of the county in which the death occurred or
 177 the body was found shall provide an estimated date for
 178 completion of the permanent certificate.

179 (5) A permanent certificate of death or fetal death,
 180 containing the cause of death and any other information that
 181 ~~which~~ was previously unavailable, shall be registered as a
 182 replacement for the temporary certificate. The permanent
 183 certificate may also include corrected information if the items
 184 being corrected are noted on the back of the certificate and
 185 dated and signed by the funeral director, physician, or district
 186 medical examiner of the county in which the death occurred or
 187 the body was found, as appropriate.

188 Section 4. Subsection (1) of section 382.011, Florida
 189 Statutes, is amended to read:

190 382.011 Medical examiner determination of cause of death.—

191 (1) In the case of any death or fetal death due to causes
 192 or conditions listed in s. 406.11, any ~~or where the death that~~
 193 ~~occurred more than 12 months 30 days~~ after the decedent was last
 194 treated by a primary or attending physician as defined in s.
 195 382.008(3) unless the death was medically expected as certified
 196 ~~by an attending physician, or any death for which where~~ there is
 197 reason to believe that the death may have been due to an
 198 unlawful act or neglect, the funeral director or other person to
 199 whose attention the death may come shall refer the case to the
 200 district medical examiner of the county ~~district~~ in which the
 201 death occurred or the body was found for investigation and
 202 determination of the cause of death.

203 Section 5. Section 406.49, Florida Statutes, is created to

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204 read:

205 406.49 Definitions.—As used in this part, the term:

206 (1) "Anatomical board" means the anatomical board of the
 207 state headquartered at the University of Florida Health Science
 208 Center.

209 (2) "Cremated remains" has the same meaning as provided in
 210 s. 497.005.

211 (3) "Final disposition" has the same meaning as provided in
 212 s. 497.005.

213 (4) "Human remains" or "remains" has the same meaning as
 214 provided in s. 497.005.

215 (5) "Indigent person" means a person whose family income
 216 does not exceed 100 percent of the current federal poverty
 217 guidelines prescribed for the family's household size by the
 218 United States Department of Health and Human Services.

219 (6) "Legally authorized person" has the same meaning as
 220 provided in s. 497.005.

221 (7) "Unclaimed remains" means human remains that are not
 222 claimed by a legally authorized person, other than a medical
 223 examiner or the board of county commissioners, for final
 224 disposition at the person's expense.

225 Section 6. Section 406.50, Florida Statutes, is amended to
 226 read:

227 406.50 Unclaimed ~~dead bodies or human~~ remains; disposition,
 228 procedure.—

229 (1) A person or entity that comes ~~All public officers,~~
 230 ~~agents, or employees of every county, city, village, town, or~~
 231 ~~municipality and every person in charge of any prison, morgue,~~
 232 ~~hospital, funeral parlor, or mortuary and all other persons~~

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233 ~~coming~~ into possession, charge, or control of unclaimed ~~any dead~~
 234 ~~human body or remains that which are unclaimed or which are~~
 235 ~~required to be buried or cremated at public expense shall are~~
 236 ~~hereby required to notify, immediately notify,~~ the anatomical
 237 board, unless:

238 (a) The unclaimed remains are decomposed or mutilated by
 239 wounds;

240 (b) An autopsy is performed on the remains;

241 (c) The remains contain ~~whenever any such body, bodies, or~~
 242 ~~remains come into its possession, charge, or control.~~

243 ~~Notification of the anatomical board is not required if the~~
 244 ~~death was caused by crushing injury, the deceased had a~~
 245 ~~contagious disease;~~

246 (d) A legally authorized person, an autopsy was required to
 247 ~~determine cause of death, the body was in a state of severe~~
 248 ~~decomposition, or a family member objects to use of the remains~~
 249 ~~body for medical education or and research; or~~

250 (e) The deceased person was a veteran of the United States
 251 Armed Forces, United States Reserve Forces, or National Guard
 252 and is eligible for burial in a national cemetery or was the
 253 spouse or dependent child of a veteran eligible for burial in a
 254 national cemetery.

255 (2)(1) Before the final disposition of unclaimed remains,
 256 ~~the person or entity in charge or control of the dead body or~~
 257 ~~human remains shall make a reasonable effort to determine:~~

258 (a) Determine the identity of the deceased person and shall
 259 ~~further make a reasonable effort to~~ contact any relatives of the
 260 ~~such~~ deceased person.

261 (b) Determine whether or not the deceased person is

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262 eligible under 38 C.F.R. s. 38.620 for entitled to burial in a
 263 national cemetery as a veteran of the armed forces and, if
 264 eligible ~~so~~, to cause the deceased person's remains or cremated
 265 remains to be delivered to a national cemetery shall make
 266 arrangements for such burial services in accordance with the
 267 provisions of 38 C.F.R.

268
 269 For purposes of this subsection, "a reasonable effort" includes
 270 contacting the National Cemetery Scheduling Office, the county
 271 veterans service office, or the regional office of the United
 272 States Department of Veterans Affairs.

273 (3)(2) Unclaimed remains ~~Such dead human bodies as~~
 274 ~~described in this chapter~~ shall be delivered to the anatomical
 275 board as soon as possible after death. When no family exists or
 276 is available, a funeral director licensed under chapter 497 may
 277 assume the responsibility of a legally authorized person and
 278 may, after 24 hours have elapsed since the time of death,
 279 authorize arterial embalming for the purposes of storage and
 280 delivery of unclaimed remains to the anatomical board. A funeral
 281 director licensed under chapter 497 is not liable for damages
 282 under this subsection.

283 (4) The remains of a deceased person whose identity is not
 284 known may not be cremated, donated as an anatomical gift, buried
 285 at sea, or removed from the state.

286 (5) If the anatomical board does not accept the unclaimed
 287 remains, the board of county commissioners or its designated
 288 county department of the county in which the death occurred or
 289 the remains were found may authorize and arrange for the burial
 290 or cremation of the entire remains. A board of county

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291 commissioners may by resolution or ordinance, in accordance with
 292 applicable laws and rules, prescribe policies and procedures for
 293 final disposition of unclaimed remains.

294 ~~(6)(3) This part does not~~ ~~Nothing herein shall~~ affect the
 295 right of a medical examiner to hold human ~~such dead body or~~
 296 remains for the purpose of investigating the cause of death or
 297 ~~nor shall this chapter affect~~ the right of any court of
 298 competent jurisdiction to enter an order affecting the
 299 disposition of such ~~body or~~ remains.

300 ~~(4) In the event more than one legally authorized person~~
 301 ~~claims a body for interment, the requests shall be prioritized~~
 302 ~~in accordance with s. 732.103.~~

303
 304 ~~For purposes of this chapter, the term "anatomical board" means~~
 305 ~~the anatomical board of this state located at the University of~~
 306 ~~Florida Health Science Center, and the term "unclaimed" means a~~
 307 ~~dead body or human remains that is not claimed by a legally~~
 308 ~~authorized person, as defined in s. 497.005, for interment at~~
 309 ~~that person's expense.~~

310 Section 7. Section 406.51, Florida Statutes, is amended to
 311 read:

312 406.51 Final disposition of unclaimed deceased veterans;
 313 contract requirements.—Any contract by a local governmental
 314 entity for the final disposition ~~disposal~~ of unclaimed human
 315 remains must provide for compliance with s. 406.50(2) ~~406.50(1)~~
 316 and require that the procedures in 38 C.F.R. s. 38.620, relating
 317 to disposition of unclaimed deceased veterans, are ~~be~~ followed.

318 Section 8. Section 406.52, Florida Statutes, is amended to
 319 read:

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320 (Substantial rewording of section. See
 321 s. 406.52, F.S., for present text.)

322 406.52 Retention of human remains before use; claim after
 323 delivery to anatomical board; procedures for unclaimed remains
 324 of indigent persons.—

325 (1) The anatomical board shall keep in storage all human
 326 remains that it receives for at least 48 hours before allowing
 327 their use for medical education or research. Human remains may
 328 be embalmed when received. The anatomical board may, for any
 329 reason, refuse to accept unclaimed remains or the remains of an
 330 indigent person.

331 (2) At any time before their use for medical education or
 332 research, human remains delivered to the anatomical board may be
 333 claimed by a legally authorized person. The anatomical board
 334 shall release the remains to the legally authorized person after
 335 payment of the anatomical board's expenses incurred for
 336 transporting, embalming, and storing the remains.

337 (3) (a) A board of county commissioners may by resolution or
 338 ordinance, in accordance with applicable laws and rules,
 339 prescribe policies and procedures for the burial or cremation of
 340 the entire unclaimed remains of an indigent person whose death
 341 occurred, or whose remains were found, in the county.

342 (b) A person licensed under chapter 497 is not liable for
 343 any damages resulting from cremating or burying such human
 344 remains at the written direction of the board of county
 345 commissioners or its designee.

346 Section 9. Section 406.53, Florida Statutes, is amended to
 347 read:

348 (Substantial rewording of section. See

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349 s. 406.53, F.S., for present text.)
 350 406.53 Unclaimed remains of indigent person; exemption from
 351 notice to the anatomical board.—A board of county commissioners
 352 or its designated county department that receives a report of
 353 the unclaimed remains of an indigent person, notwithstanding s.
 354 406.50(1), is not required to notify the anatomical board of the
 355 remains if:
 356 (1) The indigent person's remains are decomposed or
 357 mutilated by wounds or if an autopsy is performed on the
 358 remains;
 359 (2) A legally authorized person or a relative by blood or
 360 marriage claims the remains for final disposition at his or her
 361 expense or, if such relative or legally authorized person is
 362 also an indigent person, in a manner consistent with the
 363 policies and procedures of the board of county commissioners of
 364 the county in which the death occurred or the remains were
 365 found;
 366 (3) The deceased person was a veteran of the United States
 367 Armed Forces, United States Reserve Forces, or National Guard
 368 and is eligible for burial in a national cemetery or was the
 369 spouse or dependent child of a veteran eligible for burial in a
 370 national cemetery; or
 371 (4) A funeral director licensed under chapter 497 certifies
 372 that the anatomical board has been notified and either accepted
 373 or declined the remains.
 374 Section 10. Section 406.55, Florida Statutes, is amended to
 375 read:
 376 406.55 Contracts for delivery of human remains body after
 377 death prohibited.—The anatomical board may not enter is

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378 ~~specifically prohibited from entering~~ into any contract, oral or
 379 written, ~~that provides for whereby~~ any sum of money ~~to shall~~ be
 380 paid to any living person in exchange for ~~which~~ the delivery of
 381 ~~that person's remains body of said person shall be delivered~~ to
 382 the anatomical board when ~~the~~ such living person dies.
 383 Section 11. Section 406.56, Florida Statutes, is amended to
 384 read:
 385 406.56 Acceptance of human remains bodies under will.—If
 386 any person ~~being~~ of sound mind executes ~~shall execute~~ a will
 387 leaving his or her remains body to the anatomical board for ~~the~~
 388 ~~advancement of medical education or research science and the~~
 389 ~~such~~ person dies within the geographical limits of the state,
 390 the anatomical board may is hereby empowered to accept and
 391 receive the person's remains ~~such body~~.
 392 Section 12. Section 406.57, Florida Statutes, is amended to
 393 read:
 394 406.57 Distribution of human remains ~~dead bodies~~.—The
 395 anatomical board or its duly authorized agent shall take and
 396 receive human remains ~~the bodies~~ delivered to it as provided in
 397 ~~under the provisions of~~ this chapter and shall:
 398 (1) Distribute the remains ~~them~~ equitably ~~to and~~ among the
 399 medical and dental schools, teaching hospitals, medical
 400 institutions, and health-related teaching programs that require
 401 cadaveric material for study; or
 402 (2) Loan the remains ~~same may be loaned for examination or~~
 403 ~~study purposes to~~ accredited colleges of mortuary science
 404 ~~recognized associations of licensed embalmers or funeral~~
 405 ~~directors, or medical or dental examining boards for educational~~
 406 or research purposes ~~at the discretion of the anatomical board.~~

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407 Section 13. Section 406.58, Florida Statutes, is amended to
408 read:

409 406.58 Fees; authority to accept additional funds; annual
410 audit.-

411 (1) The anatomical board may:

412 (a) Adopt ~~is empowered to prescribe~~ a schedule of fees to
413 be collected from the institutions ~~institution or association~~ to
414 which the human remains ~~bodies, as described in this chapter,~~
415 are distributed or loaned to defray the costs of obtaining and
416 preparing the remains ~~such bodies~~.

417 (b)(2) The anatomical board is hereby empowered to Receive
418 money from public or private sources, in addition to the fees
419 collected from the institutions ~~institution or association~~ to
420 which human remains ~~the bodies~~ are distributed, to be used to
421 defray the costs of embalming, handling, shipping, storing,
422 cremating, and otherwise storage, cremation, and other costs
423 ~~relating to the obtaining and using the remains. use of such~~
424 ~~bodies as described in this chapter; the anatomical board is~~
425 ~~empowered to~~

426 (c) Pay or reimburse the reasonable expenses, as determined
427 by the anatomical board, incurred by a funeral establishment or
428 removal service licensed under chapter 497 for the removal,
429 storage, and transportation ~~any person delivering the bodies as~~
430 ~~described in this chapter~~ to the anatomical board of unclaimed
431 human remains. ~~and is further empowered to~~

432 (d) Enter into contracts and perform such other acts as are
433 necessary for ~~to~~ the proper performance of its duties. ~~+~~

434 (2) The anatomical board shall keep a complete record of
435 all fees and other financial transactions. The University of

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436 Florida shall conduct an audit of the financial records of the
437 anatomical board at least once every 3 years or more frequently
438 as the university deems necessary. Within 90 days after
439 completing an audit, the university shall provide a copy of the
440 audit to the Department of Financial Services. The university
441 may contract with a licensed public accounting firm to provide
442 for the audit, which firm may be paid from the fees collected by
443 the of said anatomical board shall be kept and audited annually
444 by the Department of Financial Services, and a report of such
445 audit shall be made annually to the University of Florida.

446 Section 14. Section 406.59, Florida Statutes, is amended to
447 read:

448 406.59 Institutions receiving human remains ~~bodies.~~ ~~A~~ ~~No~~
449 university, school, college, teaching hospital, or institution
450 may not, ~~or association shall be allowed or permitted to~~ receive
451 any human remains from the anatomical board such body or bodies
452 as described in this chapter until its facilities are ~~have been~~
453 inspected and approved by the anatomical board. Human remains
454 All such bodies received by such university, school, college,
455 teaching hospital, or institution may not, ~~or association shall~~
456 be used for any ~~no other~~ purpose other than the promotion of
457 medical education or research ~~science~~.

458 Section 15. Section 406.60, Florida Statutes, is amended to
459 read:

460 406.60 Disposition of human remains ~~bodies~~ after use. ~~At~~
461 any time When human remains ~~any body or bodies or part or parts~~
462 ~~of any body or bodies, as described in this chapter,~~ shall have
463 been used for, and are not deemed of any ~~no~~ further value to,
464 medical or dental education or research ~~science,~~ ~~then~~ the

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465 anatomical board or a cinerator facility licensed under chapter
 466 ~~497 person or persons having charge of said body or parts of~~
 467 ~~said body~~ may dispose of the remains or any part thereof by
 468 cremation.

469 Section 16. Section 406.61, Florida Statutes, is amended to
 470 read:

471 406.61 Selling, buying, or conveying human remains bodies
 472 outside state prohibited; exceptions; ~~7~~ penalty.—

473 (1) (a) The anatomical board may transport human remains
 474 outside the state for educational or scientific purposes. Any
 475 ~~person who sells or buys any body or parts of bodies as~~
 476 ~~described in this chapter or any person except a recognized~~
 477 ~~Florida medical or dental school who transmits or conveys or~~
 478 ~~causes to be transmitted or conveyed such body or parts of~~
 479 ~~bodies to any place outside this state commits a misdemeanor of~~
 480 ~~the first degree, punishable as provided in ss. 775.082 and~~
 481 ~~775.083. However,~~ This chapter does not prohibit the transport
 482 of anatomical board from transporting human remains, any part of
 483 such remains specimens outside the state for educational or
 484 scientific purposes or prohibit the transport of bodies, parts
 485 of bodies, or tissue specimens in furtherance of lawful
 486 examination, investigation, or autopsy conducted pursuant to s.
 487 406.11.

488 (b) ~~A~~ Any person, institution, or organization that conveys
 489 human remains bodies or any part thereof parts of bodies into or
 490 outside out of the state for medical or dental education or
 491 research purposes must shall notify the anatomical board of such
 492 intent and receive approval from the board.

493 (c) Notwithstanding paragraph (b), a nontransplant

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494 anatomical donation organization accredited by the American
 495 Association of Tissue Banks may convey human remains or any part
 496 thereof into or outside the state for medical or dental
 497 education or research purposes without notifying or receiving
 498 approval from the anatomical board. Effective October 1, 2014, a
 499 nontransplant anatomical donation organization must be
 500 accredited by the American Association of Tissue Banks.

501 (d) A person who sells or buys human remains or any part
 502 thereof, or a person who transmits or conveys or causes to be
 503 transmitted or conveyed such remains or part thereof to any
 504 place outside this state, in violation of this section commits a
 505 misdemeanor of the first degree, punishable as provided in s.
 506 775.082 or s. 775.083. This paragraph does not apply to a
 507 recognized Florida medical or dental school.

508 (2) (a) Human remains received in this state by the
 509 anatomical board or a nontransplant anatomical donation
 510 organization must be accompanied by the original burial-transit
 511 permit issued pursuant to s. 382.007. The remains may not be
 512 dissected, segmented, or disarticulated until the district
 513 medical examiner of the county in which the death occurred or
 514 the remains were found grants approval pursuant to s. 406.11.

515 (b) A nontransplant anatomical donation organization must
 516 obtain specific written consent for the dissection,
 517 segmentation, or disarticulation of any part of the remains from
 518 a person who is authorized under s. 765.512 to give such
 519 consent. Such consent must conspicuously describe each part of
 520 the remains that may be dissected, segmented, or disarticulated.

521 (3) A person may not offer in exchange for human remains
 522 any monetary inducement or other valuable consideration,

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 523 including goods or services, to a donor, a legally authorized
 524 person, the donor's estate, or any other third party. As used in
 525 this subsection, the term "valuable consideration" does not
 526 include, and this subsection does not prohibit, payment or
 527 reimbursement of the reasonable costs associated with the
 528 removal, storage, and transportation of human remains, including
 529 payment or reimbursement of a funeral establishment or removal
 530 service licensed under chapter 497 or the reasonable costs after
 531 use, including payment or reimbursement for the disposition of
 532 human remains pursuant to s. 406.60.

533 (4)(2) An Any entity accredited by the American Association
 534 of Museums may convey plastinated human remains bodies or any
 535 part thereof within, parts of bodies into, or outside out of the
 536 state for exhibition and public educational purposes without the
 537 consent of the anatomical board if the accredited entity:

538 (a) Notifies the anatomical board of the conveyance and the
 539 duration and location of the exhibition at least 30 days before
 540 the intended conveyance.

541 (b) Submits to the anatomical board a description of the
 542 remains bodies or any part thereof parts of bodies and the name
 543 and address of the company providing the remains bodies or any
 544 part thereof parts of bodies.

545 (c) Submits to the anatomical board documentation that the
 546 remains or each part thereof body was donated by the decedent or
 547 his or her next of kin for purposes of plastination and public
 548 exhibition, or, in lieu of such documentation, an affidavit
 549 stating that the remains or each part thereof body was donated
 550 directly by the decedent or his or her next of kin for such
 551 purposes to the company providing the remains body and that such

34-00650-13 2013370__
 552 company has a donation form on file for the remains body.
 553 ~~(3) Notwithstanding paragraph (2)(c) and in lieu of the~~
 554 ~~documentation or affidavit required under paragraph (2)(c), for~~
 555 ~~a plastinated body that, before July 1, 2009, was exhibited in~~
 556 ~~this state by any entity accredited by the American Association~~
 557 ~~of Museums, such an accredited entity may submit an affidavit to~~
 558 ~~the board stating that the body was legally acquired and that~~
 559 ~~the company providing the body has acquisition documentation on~~
 560 ~~file for the body. This subsection expires January 1, 2012.~~

561 Section 17. Subsection (32) of section 497.005, Florida
 562 Statutes, is amended to read:

563 497.005 Definitions.—As used in this chapter, the term:

564 (32) "Final disposition" means the final disposal of a dead
 565 human body by earth interment, aboveground interment, cremation,
 566 burial at sea, anatomical donation, or delivery to a medical
 567 institution for lawful dissection if the medical institution or
 568 entity receiving the anatomical donation assumes responsibility
 569 for disposition after use pursuant to s. 406.60 disposal. The
 570 term "Final disposition" does not include the disposal or
 571 distribution of cremated remains and residue of cremated
 572 remains.

573 Section 18. Section 497.382, Florida Statutes, is amended
 574 to read:

575 497.382 Reports of cases embalmed and bodies handled.—

576 (1) Each funeral establishment, direct disposal
 577 establishment, cinerator facility, and centralized embalming
 578 facility shall record monthly report on a form prescribed and
 579 furnished by the licensing authority the name of the deceased
 580 and such other information as may be required by rule with

34-00650-13 2013370
 581 respect to each dead human body embalmed or otherwise handled by
 582 the establishment or facility. Such forms shall be signed
 583 monthly by the embalmer who performs the embalming, if the body
 584 is embalmed, and the funeral director in charge of the
 585 establishment or facility or by the direct disposer who disposes
 586 of the body and shall be maintained at the business premises of
 587 the establishment or facility for inspection by division staff.
 588 The licensing authority shall prescribe by rule the procedures
 589 for preparing and retaining ~~in submitting~~ such forms
 590 documentation. Reports required by this subsection shall be
 591 filed by the 20th day of each month for final dispositions
 592 handled the preceding month.

593 (2) Funeral directors performing disinterments shall record
 594 monthly on the form specified in subsection (1) and pursuant to
 595 ~~report, using a form and~~ procedures prescribed ~~specified~~ by
 596 rule, the name of the deceased and such other information as may
 597 be required by rule with respect to each dead human body
 598 disinterred.

599 Section 19. Subsection (2) of section 497.607, Florida
 600 Statutes, is amended to read:

601 497.607 Cremation; procedure required.—

602 (2) (a) With respect to any person who intends to provide
 603 for the cremation of the deceased, if, after a period of 120
 604 days from the time of cremation the cremated remains have not
 605 been claimed, the funeral or direct disposal establishment may
 606 dispose of the cremated remains. Such disposal shall include
 607 scattering them at sea or placing them in a licensed cemetery
 608 scattering garden or pond or in a church columbarium or
 609 otherwise disposing of the remains as provided by rule.

34-00650-13 2013370
 610 (b) A reasonable effort shall be made before such disposal
 611 to determine whether the cremated remains are those of a veteran
 612 of the United States Armed Forces, United States Reserve Forces,
 613 or National Guard eligible for burial in a national cemetery or
 614 a spouse or dependent child of a veteran eligible for burial in
 615 a national cemetery.

616 (c) If the unclaimed cremated remains are those of an
 617 eligible veteran or the spouse or dependent child of an eligible
 618 veteran, the funeral or direct disposal establishment shall
 619 arrange for the interment of the cremated remains in a national
 620 cemetery. A funeral or direct disposal establishment may use the
 621 assistance of a veterans' service organization for this purpose.
 622 A funeral or direct disposal establishment or veterans' service
 623 organization acting in good faith is not liable for any damages
 624 resulting from the release of required information to determine
 625 eligibility for interment.

626 (d) This subsection does not require a funeral or direct
 627 disposal establishment to:

628 1. Determine whether the cremated remains are those of a
 629 veteran if the funeral or direct disposal establishment is
 630 informed by a legally authorized person that the decedent was
 631 not a veteran.

632 2. Relinquish possession of the cremated remains to a
 633 veterans' service organization if the funeral or direct disposal
 634 establishment is informed by a legally authorized person that
 635 the decedent did not desire any funeral, ceremony, or interment-
 636 related services recognizing the decedent's service as a
 637 veteran.

638 (e) For purposes of this subsection, the term:

34-00650-13 2013370__

639 1. "Reasonable effort" includes contacting the National
 640 Cemetery Scheduling Office, the county veterans service office,
 641 the regional office of the United States Department of Veterans
 642 Affairs, or a veterans' service organization.

643 2. "Veterans' service organization" means an association,
 644 corporation, or other entity that qualifies under s. 501(c)(3)
 645 or s. 501(c)(19) of the Internal Revenue Code as a tax-exempt
 646 organization, that is organized for the benefit of veterans'
 647 burial and interment, and that is recognized by the Memorial
 648 Affairs Division of the United States Department of Veterans
 649 Affairs. The term includes a member or employee of an eligible
 650 nonprofit veterans' corporation, association, or entity that
 651 specifically assists in facilitating the identification,
 652 recovery, and interment of the unclaimed cremated remains of
 653 veterans.

654 Section 20. Subsection (1) of section 765.513, Florida
 655 Statutes, is amended to read:

656 765.513 Donees; purposes for which anatomical gifts may be
 657 made.—

658 (1) The following persons or entities may become donees of
 659 anatomical gifts of bodies or parts of them for the purposes
 660 stated:

661 (a) Any procurement organization or accredited medical or
 662 dental school, college, or university for education, research,
 663 therapy, or transplantation.

664 (b) Any individual specified by name for therapy or
 665 transplantation needed by him or her.

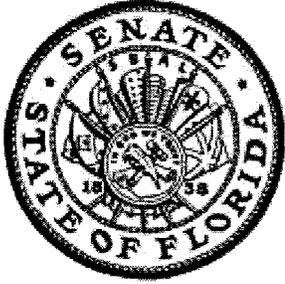
666 (c) The anatomical board as defined in s. 406.49 for
 667 donation of the whole body for medical or dental education or

34-00650-13 2013370__

668 research.

669 Section 21. Section 406.54, Florida Statutes, is repealed.

670 Section 22. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Senator Maria Lorts Sachs
Minority Leader Pro Tempore
District 34

Committees:

Gaming
Vice Chair

Agriculture

Education

Appropriations
Subcommittee on
Education

Appropriations
Subcommittee on
Finance and Tax

Military Affairs, Space,
and Domestic Security

Regulated Industries

STAFF:

Joshua Freeman
Legislative Assistant

Caitlin Lewis
Legislative Assistant

August Mangeney
Legislative Assistant

February 14, 2013

The Office of Senator Stargel
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I am writing to request that Senate Bill 370 (Disposition of Human Remains) be heard during the Regulated Industries Committee Meeting on March 7th. If you have any questions feel free to contact me or my staff. Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Maria Lorts Sachs".

Sen. Maria Sachs,
District 34

Cc: Patrick L. "Booter" Imhof
Lynn Koon
Rachel Barnes
Chris Dowdy
Samantha Van Camp

17th Avenue, Suite E, Delray Beach, Florida 33445 (561) 279-1427
Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5091

Senate's Website: www.flsenate.gov

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/07/2013

Meeting Date

Topic Disposition of Human Remains

Bill Number 370
(if applicable)

Name Ross A. McVoy

Amendment Barcode _____
(if applicable)

Job Title General Counsel/Lobbyist

Address 660 E. Jefferson Street , Suite 202

Phone 850 412 212

Street

Tallahassee

FL

32301

E-mail rmcvoy@ssclawfirm.com

City

State

Zip

Speaking: For Against Information

Representing Florida Cemetery, Cremation & Funeral Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/7/2013
Meeting Date

Topic Human Body Disposition

Bill Number SB 370
(if applicable)

Name Charles W. SWAIN

Amendment Barcode
(if applicable)

Job Title President FECCA

Address 1006 Buena Vista Dr
Street
TLH FL 32304
City State Zip

Phone 850.567.2541
E-mail cswain37@comcast.net

Speaking: For Against Information

Representing Florida Funeral Cemetery Consumer Advocacy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

M

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/7/12

Meeting Date

Topic Disposition of Human Remains

Bill Number 370
(if applicable)

Name Susan Harbin

Amendment Barcode 206074
(if applicable)

Job Title Legislative Advocate

Address B 110 S Monroe

Phone 850 922-4300

Street

Tall FL 32301

City

State

Zip

E-mail s.harbin@fl-comtles.com

Speaking: For Against Information

Representing FL Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/8/13
Meeting Date

Topic _____ Bill Number SB 370
(if applicable)

Name Logan McFaddin Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address LL-26 The Capitol Phone 413-2890
Street

Tallahassee FL 32399 E-mail logan.mcfaddin@myflorida
City State Zip cfp.com

Speaking: For Against Information

Representing Dept. of Financial Services

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic _____

Bill Number 370
(if applicable)

Name Suhan Nixon

Amendment Barcode _____
(if applicable)

Job Title Consultant

Address 219 E. Park Ave

Phone 222 2591

Street
Rel F 32308
City State Zip

E-mail _____

Speaking: For Against Information

Representing Independent Funeral Directors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 874

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Open Parties

DATE: March 8, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			CJ	
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 874 amends s. 856.015, F.S., relating to Open House Parties. The bill expands the provisions of the section to include property as defined as a residence, vacant structure, or open acreage with or without a structure. The bill provides that it is a violation of the section if a person who has control of the property and fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor when the minor is lawfully on the property. The person must have actual knowledge that the minor possesses or is consuming the alcoholic beverages or drugs.

The bill maintains the current penalty for violation of the section as a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500 and a first degree misdemeanor punishable by up to one year in jail and a fine not exceeding \$1,000 for a second and subsequent offense.

The bill provides a July 1, 2013 effective date.

The bill substantially amends section 856.015, Florida Statutes.

II. Present Situation:

Section 856.015, F.S., addresses social gatherings at a residence, defined as “open house” parties at a residence. Residence is defined as a home, apartment, condominium or other dwelling unit. A person 18 years of age or older having control of any residence may not allow an open house party to take place if he or she knows that any alcoholic beverage or drug is possessed or consumed at the residence by any minor not legally permitted by reason of age to possess alcoholic beverages. Actual knowledge is defined as “direct and clear knowledge.”¹

Failure to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug constitutes a second degree misdemeanor, with any subsequent violation treated more severely as a first degree misdemeanor. Conviction of a second degree misdemeanor is punishable by up to 60 days in jail and a fine not exceeding \$500, and a first degree misdemeanor is punishable by up to one year in jail and a fine not exceeding \$1,000.

A person convicted of a second degree misdemeanor may be sentenced to imprisonment not exceeding 60 days and a \$500 fine; a person convicted of a first degree misdemeanor may be sentenced to imprisonment not exceeding 1 year and or a fine of \$1000.²

In upholding the statute against a constitutional challenge for vagueness, the Florida Supreme Court held that the statute “prohibits an adult, who is in control of the premises, from having a party and knowingly permitting a minor to continue to consume or possess alcoholic beverages or drugs on the premises. That adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof.”³

Section 856.015, F.S., does not apply to use of alcoholic beverages at legally protected religious observances or activities.

A prior version of the open house party law was challenged in 1995 on the basis that the phrase “reasonable steps” to be taken by the person in control of the residence was ambiguous. The Florida Supreme Court held that the Legislature has indirectly ceded discretion to the courts by employing language in legislation that commonly requires judicial construction.⁴

III. Effect of Proposed Changes:

The bill deletes the definitions of “open house party” and “residence” in s. 856.015, F.S. The bill defines “property” as “a residence, vacant structure, or open acreage with or without a structure.”

The bill provides that it is a violation of the section if a person who has control of the property fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor when the minor is lawfully on the property.

¹ Black's Law Dictionary (9th ed. 2009), knowledge (actual knowledge).

² See s. 775.082 and s. 775.083, F.S.

³ See *State v. Manfredonia*, 649 So.2d 1388, 1391 (Fla. 1995).

⁴ See *Bunkley v. State*, 882 So.2d 890 at 915 (Fla. 2004)

The bill amends the provision concerning control of the property where the party is located and imposes a requirement that a person who has control of the property have “actual knowledge” that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the property.

The bill has an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on jails as a result of the expanded locations where a violation of the section may occur.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may give prosecutors clarification of the conduct being regulated, by imposing the standard of “actual knowledge” by the person who has control of a property.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 7, 2013:

The committee substitute provides that a property owner is subject to criminal penalties only when the owner has actual knowledge that a minor is in possession of or consuming alcoholic beverages or drugs on the property, and the minor is lawfully on the property.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



263904

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Galvano) recommended the following:

Senate Amendment

Delete line 39
and insert:
possession of or being consumed by a minor lawfully at the
property,

By Senator Galvano

26-01025A-13

2013874

1 A bill to be entitled
 2 An act relating to open parties; amending s. 856.015,
 3 F.S.; revising definitions prohibiting a person from
 4 allowing a party to take place if a minor is in
 5 possession of or consuming alcohol or drugs; revising
 6 an exemption; providing criminal penalties; conforming
 7 provisions; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Section 856.015, Florida Statutes, is amended to
 12 read:
 13 856.015 Open ~~house~~ parties.—
 14 (1) Definitions.—As used in this section:
 15 (a) "Alcoholic beverage" means distilled spirits and any
 16 beverage containing 0.5 percent or more alcohol by volume. The
 17 percentage of alcohol by volume is shall be determined in
 18 accordance with ~~the provisions of~~ s. 561.01(4)(b).
 19 (b) "Control" means the authority or ability to regulate,
 20 direct, or dominate.
 21 (c) "Drug" means a controlled substance, as that term is
 22 defined in ss. 893.02(4) and 893.03.
 23 (d) "Minor" means an individual not legally permitted by
 24 reason of age to possess alcoholic beverages pursuant to chapter
 25 562.
 26 ~~(e) "Open house party" means a social gathering at a~~
 27 ~~residence.~~
 28 (e)(f) "Person" means an individual 18 years of age or
 29 older.

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

26-01025A-13

2013874

30 (f) "Property" means a residence, vacant structure, or open
 31 acreage with or without a structure.
 32 ~~(g) "Residence" means a home, apartment, condominium, or~~
 33 ~~other dwelling unit.~~
 34 (2) A person who has ~~having~~ control of any property and who
 35 has actual knowledge ~~residence may not allow an open house party~~
 36 ~~to take place at the residence if any alcoholic beverage or drug~~
 37 ~~is possessed or consumed at the residence by any minor where the~~
 38 ~~person knows~~ that an alcoholic beverage or drug is in the
 39 possession of or being consumed by a minor at the property,
 40 ~~residence~~ and ~~where~~ the person fails to take reasonable steps to
 41 prevent the possession or consumption of the alcoholic beverage
 42 or drug commits a violation of this section.
 43 (3) ~~The provisions of~~ This section does ~~shall~~ not apply to
 44 the use of alcoholic beverages at legally protected religious
 45 observances or activities.
 46 (4) A ~~Any~~ person who violates ~~any of the provisions of~~
 47 subsection (2) commits a misdemeanor of the second degree,
 48 punishable as provided in s. 775.082 or s. 775.083. A person who
 49 violates subsection (2) a second or subsequent time commits a
 50 misdemeanor of the first degree, punishable as provided in s.
 51 775.082 or s. 775.083.
 52 (5) If a violation of subsection (2) causes or contributes
 53 to causing serious bodily injury, as defined in s. 316.1933, or
 54 death to the minor, or if the minor causes or contributes to
 55 causing serious bodily injury or death to another as a result of
 56 the minor's consumption of alcohol or drugs at the open ~~house~~
 57 party, the violation is a misdemeanor of the first degree,
 58 punishable as provided in s. 775.082 or s. 775.083.

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

26-01025A-13

2013874__

59

Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO

26th District

February 19, 2013

Senator Kelli Stargel
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madam Chair Stargel:

I respectfully request that SB 874, Open Parties, be scheduled for a hearing in the Committee on Regulated Industries at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Galvano".

Bill Galvano

cc: Patrick L. "Booter" Imhof
Lynn Koon

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 696

INTRODUCER: Regulated Industries Committee and Senator Stargel

SUBJECT: Vacation and Timeshare Plans

DATE: March 7, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 696 relates to the Florida Vacation Plan and Timesharing Act. The bill revises provisions related to the nonjudicial, trustee foreclosure process for the foreclosure of liens on timeshare interests, including liens based on unpaid assessments and unpaid mortgage obligations. In current law, the lienholders appoint a trustee to serve the required notices and forms on the timeshare interest holder. The bill:

- Exempts timeshare condominiums from the requirements related to the conduct of condominium board member elections;
- Permits timeshare plan reserves to be calculated using the pooling accounting method as an alternative to the straight line accounting method, as is also currently permitted for condominium associations;
- Revises the definition of the term “timeshare estate” in s. 721.05(34), F.S., to include direct and indirect interest in a trust;
- Revises the definition of the term “notice address” to include any address that is known to be the current address of a timeshare mortgagor, owner, or junior interestholder;

- The bill amends the definition of the term “permitted delivery service” in s. 721.82(11), F.S., to allow the trustee to use a foreign jurisdiction’s recognized equivalent of certified or registered mail;
- Requires that the required title search must be conducted and delivered to the trustee prior to the sale of the timeshare interest with an effective date of within sixty days of the date it is delivered to the trustee;
- Provides that the initiation of a foreclosure proceeding against a timeshare interest does not automatically act as a lis pendens, which is a notice, recorded in the chain of title to real property that gives notice that the property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome;
- Provides the information that must be included in a notice of lis pendens;
- Provides a good faith standard for determining whether the obligor is the person who signed the receipt of the notice of default and intent to foreclose;
- Provides that it will not be a third degree felony, as provided in current law, if the trustee makes an incorrect determination as to the identity of the signature on the notice receipt and he or she made a good faith effort to properly ascertain if the obligor signed the return receipt in accordance with the good faith standards provided in this bill;
- Delineates the information that must be included in the publication notice that is required if the obligor cannot be served with a notice of default and intent to foreclose;
- Provides that circumstances in which the attestation that a diligent search and inquiry has been done is not required;
- Permits the notice of default and intent to foreclose to be perfected as to all obligors at the same address, so long as notice is perfected as to at least one obligor at that address;
- Permits the trustee to use a third party to conduct the sale on behalf of the trustee; and
- Corrects scrivener’s error by deleting duplicative terms.

The bill has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 718.112, 721.05, 721.07, 721.82, 721.84, 721.855, and 721.856.

II. Present Situation:

Timeshares

A timeshare interest is a form of ownership of real and personal property.¹ According to a report prepared by the American Resort Development Association (ARDA), Florida had 23 percent of the estimated 1,548 timeshare resorts in the United States as of December 31, 2011.²

In a timeshare, the real property is typically a condominium unit or a cooperative unit. A timeshare property is typically a resort in which multiple parties hold the right to use the

¹ See s. 721.05(36), F.S.

² ARDA International Foundation, State of the Vacation Timeshare Industry, 2012 Edition, a copy of the report is available at: http://www.arda.org/uploadedFiles/ARDA/News_and_Information/Industry_Information/2012%20state%20of%20industry%20fact%20sheet.pdf (Last visited February 27, 2013).

property. Each owner of a timeshare interest is allotted a period of time (typically one week) in which they may use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.³ Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.⁴ A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁵ A timeshare plan is any arrangement, plan, scheme, or similar device whereby a purchaser gives consideration for ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years.⁶

Section 721.05(34), F.S., defines a “timeshare estate” as “a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.” The term also includes an interest in a condominium unit, a cooperative unit, or a trust. This definition does not specify whether the term includes both direct and indirect interests in trusts. An example of an indirect interest in a trust is a trust beneficiary’s spouse or other dependent.

A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.⁷

For each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners’ association.⁸ The public offering statement must include an estimated operating budget for the timeshare plan, and a schedule of the purchaser’s expenses to be paid to the timeshare plan and the managing entity.⁹ A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures.

Calculation of Reserves

Section 721.07(5)(t)3.a.(XI)(A), F.S., provides that reserves for timeshare plans must be calculated by a formula based upon the estimated life and replacement cost of each reserve item. This is also known as the “straight-line accounting method.” An alternative method is known as

³ Section 721.02(2) and (3), F.S.

⁴ Section 721.03, F.S.

⁵ See ss. 721.05(41) and 718.103(26), F.S.

⁶ Section 721.05(39), F.S.

⁷ Section 721.07, F.S.

⁸ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.,

⁹ Section 721.07(5)(t)3., F.S.

the ‘pooling method’ in which the reserves for two or more assets are accounted together. Condominium associations may account for reserves with the pooling method.¹⁰

Nonjudicial Process for Foreclosure of Liens on Timeshare Interests

Section 721.855 and 856, F.S., provide a nonjudicial, trustee foreclosure process for the foreclosure of liens on timeshare interests. In order to institute trustee foreclosure proceedings, adequate notice must be provided to the mortgagor, the owner of the timeshare interest if different than the mortgagor, and any junior interestholder.¹¹ In this process the lienholders appoint a trustee to serve the required notices and forms on the timeshare interest holder.¹² Section 721.855, F.S., provides for the foreclosure of assessment liens. Section 721.856, F.S., provides for the foreclosure of mortgage liens.

Section 721.82(9), F.S., defines the term “notice address” as the address that is used in the books and records of the timeshare plan. However, a mortgagor, owner, or junior interestholder’s current address may be different than the address used in the timeshare plan’s books and records.

Section 721.82(10), F.S., defines the term “obligor” to mean the mortgagor, the person subject to an assessment lien, or the owner of the timeshare interest.

Section 721.82(11), F.S., defines the term “permitted delivery service” as “any nationally recognized common carrier delivery service or international airmail service that allows for return receipt service.” This definition does not permit the trustee to use a foreign country’s equivalent of certified or registered mail.

In any foreclosure proceeding, the trustee is required to notify the obligor of the proceeding by sending him or her a written notice of default and intent to foreclose. The notice must be sent to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail or permitted delivery service, postage prepaid.¹³

In order to initiate a trustee foreclosure proceeding against a timeshare interest, the trustee must deliver an affidavit and a title search of the timeshare interest identifying junior lienholders.¹⁴ The title search must have been conducted within sixty days of the date of the affidavit.¹⁵

Recording of a Lis Pendens

A lis pendens is a notice, recorded in the chain of title to real property that gives notice that the property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome.¹⁶ One of the conditions for a trustee sale of a timeshare interest after a nonjudicial foreclosure is that no lis pendens is recorded and pending against the

¹⁰ See ss. 718.111(13) and 718.112(2)(f), F.S., and rule 61B-22.005(3), F.A.C. A “junior interestholder” is defined as “any person who has a lien or interest of record against a timeshare interest in the county or counties in which the timeshare interest is located, which is inferior to the mortgage lien or assessment lien being foreclosed under this part [pt. III, ch. 721, F.S.]”.

¹¹ See ss. 721.855(5)(a) and 721.856(5)(a), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Sections 721.855(2)(c)1. and 721.856(2)(b)1., F.S.

¹⁵ *Id.*

¹⁶ Black’s Law Dictionary (9th ed. 2009).

same timeshare interest and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale.¹⁷ Timeshare industry representatives have expressed concern regarding whether the initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest.

Standard for Trustee Ascertaining Signature

The trustee is required to notify the obligor of the proceeding by sending a written notice of default and intent to foreclose to the obligor's notice address.¹⁸ Notice is not perfected if the trustee cannot ascertain whether the obligor is the person who signed the receipt of notice.¹⁹ A trustee who determines that the obligor signed the receipt, when he or she knows or should know that this determination is not correct, commits a third degree felony.²⁰

Notice of Default and Intent to Foreclose

Sections 721.855(5)(a)1. and 721.856(5)(a)1., F.S., set forth the information that is required to be included in the notice of default and intent to foreclose, including:

- The identity of the obligor;
- The notice address of the obligor;
- The legal description of the timeshare interest;
- The nature of the default;
- The amounts secured by the lien;
- A per diem amount to account for further accrual of the amounts secured by the lien; and
- The method by which the obligor may cure the default, including the period of time within which the obligor may cure the default.

Notice is perfected when the trustee receives the return receipt of notice bearing the signature of the obligor or junior interestholder within thirty calendar days after the notice was sent.²¹ In some instances, notice by permitted delivery service is not perfected and notice by publication is appropriate.²² Unlike with the "standard" notice of default procedure, the current statutory language does not delineate what information must be included in the publication notice. As a result, there is confusion in the industry as to how much and what information is to be included in the publication notice.

Certification of Perfected Notice

Sections 721.855(5)(e) and 721.856(5)(e), F.S., list information that must be included in the affidavit certifying perfected notice. Specifically, the information to be included is:

- The nature of the notice;
- The dates on which the notice was mailed;

¹⁷ Sections 721.855(4)(c) and 721.856(4)(c), F.S.

¹⁸ Sections 721.855(5)(a) and 721.856(5)(a), F.S.

¹⁹ Sections 721.855(5)(a)5. and 721.856(5)(a)5., F.S.

²⁰ Sections 721.855(14)(b) and 721.856(13)(b), F.S. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding \$5,000.

²¹ Sections 721.855(5)(a)5. and 721.856(5)(a)5., F.S.

²² See, generally: ss. 721.855(5)(c) and 721.856(5)(c), F.S.

- The name and address on the envelopes containing the notice;
- The manner in which the notices were mailed;
- The fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received; and
- The name and address on the envelopes containing the notice.

The second use of “the name and address on the envelopes containing the notice” is duplicative, and is a scrivener’s error.

Notice is not perfected, and notice by publication is appropriate, when:

- Notice is returned as undeliverable within thirty calendar days after the trustee sent the notice;
- The trustee cannot ascertain who signed the receipt of notice; or
- The receipt of notice is returned or refused within thirty calendar days after the trustee sent the notice.²³

If the notice is returned as undeliverable within thirty calendar days after the trustee sent the notice, the trustee is obligated to conduct a diligent search and inquiry to determine a different address for the obligor or junior interestholder.²⁴ If the trustee’s diligent search and inquiry produces an address different from the notice address, the trustee must attempt to perfect notice at the new address before attempting to perfect notice by publication.²⁵ However, the diligent search and inquiry is only required to be conducted the first time that the notice is returned as undeliverable; any subsequent time that the notice is returned as undeliverable, the trustee may proceed with notice by publication.

A trustee who perfects notice by publication is required to prepare an affidavit setting forth the manner in which notice was perfected.²⁶ Among other things, the affidavit must include a statement that a diligent search and inquiry was made for the person’s current address.

Manner of Sale

Sections 721.855(7)(b) and 721.856(7)(b), F.S., require the trustee to conduct the foreclosure sale of the timeshare interest, and to act as the auctioneer. This provision would not permit anyone other than the trustee to conduct the sale or act as the auctioneer.

III. Effect of Proposed Changes:

Timeshare Condominiums – Elections

The bill amends s. 718.112(2)(d)4., F.S., to exempt timeshare condominiums from the requirements related to the conduct of condominium board member elections.²⁷

²³ *Id.*

²⁴ Sections 721.855(5)(b) and 721.856(5)(b), F.S.

²⁵ Sections 721.855(5)(b)1. and 721.856(5)(b)1., F.S.

²⁶ *See, generally:* ss. 721.855(5)(f) and 721.856(5)(f), F.S.

²⁷ Section 718.112(2)(d)4., F.S., provides procedures related to the conduct of elections for members to the condominium’s Board of Administration (the board), including the use of proxies and the issuance of election notices. Prior to 2011, the provisions in s. 718.112(2)(d)4., F.S., were located in s. 718.112(2)(d)3., F.S., and included an exemption for timeshare

Calculation of Reserves

The bill amends s. 721.07(5)(t)3.a.(XI)(A), F.S., to permit timeshare plan reserves to be calculated using the pooling accounting method as an alternative to the straight line accounting method. The bill would permit timeshare associations to calculate reserves in the same manner as condominium associations.²⁸

Timeshare Estate Definition

The bill amends the definition of the term “timeshare estate” in s. 721.05(34), F.S., to include “direct and indirect interest” in a trust. The trust must comply in all respects with s. 721.08(2)(c)4., F.S., which provides the procedures for the placement of a timeshare interest in a trust.

Trustee Foreclosure Definitions

The bill amends the definition of the term “notice address” in s. 721.82(9)(d), F.S., to include any address that is known to be the current address of a timeshare mortgagor, owner, or junior interestholder if the person’s address is not the address recorded in the books and records of the timeshare plan or the mortgagee.

The bill amends the definition of the term “permitted delivery service” in s. 721.82(11), F.S., to allow the trustee to use a foreign jurisdiction’s recognized equivalent of certified or registered mail.

Trustee Foreclosure Title Searches

The bill amends ss. 721.855(2)(c)1. and 721.856(2)(b)1., F.S., to delete the requirement that the title search must be conducted within sixty days of the date of the affidavit. To initiate a trustee foreclosure procedure, a lienholder is required to deliver an affidavit to the trustee that identifies the obligor, the obligor’s notice address, the timeshare interest, the date of the notice, the official record book and page, and the name and address on any junior interestholder.

The bill creates ss. 721.855(4)(f) and 721.856(4)(g), F.S., to require that a title search be conducted and delivered to the trustee prior to the sale of the timeshare interest. The effective date of the title search must be within sixty days of the date that it is delivered to the trustee. If incorrect obligors or junior interestholders were served or additional obligors or junior interestholders have not been served, the foreclosure action may not continue until the correct or additional notices have been served and all applicable time periods have expired.

Recording of a Lis Pendens

The bill amends ss. 721.855(4)(c) and 721.856(4)(c), F.S., to provide that the initiation of a foreclosure proceeding against a timeshare interest does not automatically act as a lis pendens. The bill also creates ss. 721.855(5)(h) and 721.856(5)(h), F.S., to provide that the initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest if a notice of lis pendens is recorded in the county in which the deed conveying the timeshare interest to the obligor was recorded. The notice of lis pendens must include:

condominiums. *See* s. 718.112(2)(d)3., F.S. (2010). In 2011, the provisions of s. 718.112(2)(d), F.S., were restructured and the exemption for timeshare condominiums was deleted. *See* s. 3, ch. 2011-196, L.O.F. This reinstates that provision.

²⁸ *See* 61B-22.005(3), F.A.C.

- The name of the obligor;
- The date of the initiation of the trustee foreclosure action;
- The name and contact information of the trustee;
- The legal description of the timeshare interest; and
- A statement that a trustee foreclosure action has been initiated against the timeshare interest.

Permitted Delivery Service

The bill amends ss. 721.855(5)(a), 721.855(5)(a)4., 721.855(5)(b)1., 721.856(5)(a), 721.856(5)(a)4., and 721.856(5)(b)1., F.S., to delete the scrivener's error that duplicates the reference to the term "permitted delivery service."

Standard for Trustee Ascertaining Signature

The bill amends ss. 721.855(5)(a)5., 721.855(5)(b)1., 721.856(5)(a)5., and 721.856(5)(b)1., F.S., to provide a good faith standard in determining whether the obligor is the person who signed the receipt of notice of default and intent to foreclose on the timeshare interest. Notice is completed or perfected when the receipt is returned with the signature of the obligor or junior interest holder. The bill would allow the notice to be perfected if the trustee cannot in good faith ascertain whether the obligor signed the receipt, including if all or a portion of the obligor's name is not on the signed receipt, or if the trustee cannot otherwise determine that the obligor signed the receipt.

The bill also amends ss. 721.855(14)(b) and 721.856(13)(b), F.S., to provide that if the trustee makes an incorrect determination as to the identity of the signature on the notice receipt, it will not be a third degree felony as provided in these sections. However, the trustee must have made a good faith effort to properly ascertain if the obligor signed the return receipt in accordance with s. 721.855(5), F.S.

Published Notice of Default

The bill amends ss. 721.855(5)(c) and 721.856(5)(c), F.S., to delineate the information that must be included in the publication notice. Specifically, the notice of default and intent to foreclose by publication shall identify:

- The obligor;
- The notice address of the obligor;
- The legal description of the timeshare interest;
- The nature of the action in short and simple terms;
- The name and contact information of the trustee; and
- The period of time within which the obligor may cure the default.

Publication Notice

The bill amends ss. 721.855(5)(e) and 721.856(5)(e), F.S., to delete the duplication of the term "the name and address on the envelope containing the notice."

The bill amends ss. 721.855(5)(f) and 721.856(5)(f), F.S., to provide that the attestation that a diligent search and inquiry has been done is not required if the provisions of ss. 721.855(5)(b)

and 721.856(5)(b), F.S., respectively, apply. These provisions delineate the process for serving the notice of default and intent to foreclose when the initial delivery is returned as undeliverable. This process include mailing to an address found by a diligent search and inquiry and notice by publication.

Perfection of Service at Same Address

The bill creates ss. 721.855(5)(g) and 721.856(5)(g), F.S., to permit the notice of default and intent to foreclose to be perfected as to all obligors at the same address, so long as notice is perfected as to at least one obligor at that address.

Manner of Sale

The bill amends ss. 721.855(7)(b) and 721.856(7)(b), F.S., to permit the trustee to use a third party to conduct the sale on behalf of the trustee. However, the trustee remains liable for the conduct of the sale, including the actions of any third party auctioneer.

Effective Date

The bill has an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 7, 2013:

The committee substitute (CS) amends the definition of the term “timeshare estate” in s. 721.05(34), F.S., to include “direct and indirect interest” in a trust. The trust must comply in all respects with s. 721.08(2)(c)4., F.S., which provides the procedures for the placement of a timeshare interest in a trust.

The CS does not amend the definition of the term “obligor” in s. 721.82(10), F.S. to include the personal representative, court appointed counsel, or guardian ad litem on behalf of the mortgagor, person subject to an assessment lien, and the record owner of the timeshare interest.

The CS does not amend ss. 721.855(5)(f) and 721.856(5)(f), F.S., to provide that the attestation that a diligent search and inquiry has been done is not required if service was refused, returned as undeliverable, or the trustee has ascertained that the obligor or junior interestholder is the person who signed the receipt. Instead, the CS amends these provisions to provide that the attestation that a diligent search and inquiry has been done is not required if the provisions of ss. 721.855(5)(b) and 721.856(5)(b), F.S., respectively, apply.

The CS amends s. 721.856(13)(b), F.S., to cross reference s. 721.856(5), F.S., instead of s. 721.855(6), F.S., in regards to the signature verification provisions for the mortgage foreclosure process.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
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	.	

The Committee on Regulated Industries (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

718.112 Bylaws.—

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

(d) Unit owner meetings.—

1. An annual meeting of the unit owners shall be held at



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13 the location provided in the association bylaws and, if the
14 bylaws are silent as to the location, the meeting shall be held
15 within 45 miles of the condominium property. However, such
16 distance requirement does not apply to an association governing
17 a timeshare condominium.

18 2. Unless the bylaws provide otherwise, a vacancy on the
19 board caused by the expiration of a director's term shall be
20 filled by electing a new board member, and the election must be
21 by secret ballot. An election is not required if the number of
22 vacancies equals or exceeds the number of candidates. For
23 purposes of this paragraph, the term "candidate" means an
24 eligible person who has timely submitted the written notice, as
25 described in sub-subparagraph 4.a., of his or her intention to
26 become a candidate. Except in a timeshare condominium, or if the
27 staggered term of a board member does not expire until a later
28 annual meeting, or if all members' terms would otherwise expire
29 but there are no candidates, the terms of all board members
30 expire at the annual meeting, and such members may stand for
31 reelection unless prohibited by the bylaws. If the bylaws permit
32 staggered terms of no more than 2 years and upon approval of a
33 majority of the total voting interests, the association board
34 members may serve 2-year staggered terms. If the number of board
35 members whose terms expire at the annual meeting equals or
36 exceeds the number of candidates, the candidates become members
37 of the board effective upon the adjournment of the annual
38 meeting. Unless the bylaws provide otherwise, any remaining
39 vacancies shall be filled by the affirmative vote of the
40 majority of the directors making up the newly constituted board
41 even if the directors constitute less than a quorum or there is



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42 only one director. In a condominium association of more than 10
43 units or in a condominium association that does not include
44 timeshare units or timeshare interests, coowners of a unit may
45 not serve as members of the board of directors at the same time
46 unless they own more than one unit or unless there are not
47 enough eligible candidates to fill the vacancies on the board at
48 the time of the vacancy. Any unit owner desiring to be a
49 candidate for board membership must comply with sub-subparagraph
50 4.a. and must be eligible to serve on the board of directors at
51 the time of the deadline for submitting a notice of intent to
52 run in order to have his or her name listed as a proper
53 candidate on the ballot or to serve on the board. A person who
54 has been suspended or removed by the division under this
55 chapter, or who is delinquent in the payment of any fee, fine,
56 or special or regular assessment as provided in paragraph (n),
57 is not eligible for board membership. A person who has been
58 convicted of any felony in this state or in a United States
59 District or Territorial Court, or who has been convicted of any
60 offense in another jurisdiction which would be considered a
61 felony if committed in this state, is not eligible for board
62 membership unless such felon's civil rights have been restored
63 for at least 5 years as of the date such person seeks election
64 to the board. The validity of an action by the board is not
65 affected if it is later determined that a board member is
66 ineligible for board membership due to having been convicted of
67 a felony.

68 3. The bylaws must provide the method of calling meetings
69 of unit owners, including annual meetings. Written notice must
70 include an agenda, must be mailed, hand delivered, or



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71 electronically transmitted to each unit owner at least 14 days
72 before the annual meeting, and must be posted in a conspicuous
73 place on the condominium property at least 14 continuous days
74 before the annual meeting. Upon notice to the unit owners, the
75 board shall, by duly adopted rule, designate a specific location
76 on the condominium property or association property where all
77 notices of unit owner meetings shall be posted. This requirement
78 does not apply if there is no condominium property or
79 association property for posting notices. In lieu of, or in
80 addition to, the physical posting of meeting notices, the
81 association may, by reasonable rule, adopt a procedure for
82 conspicuously posting and repeatedly broadcasting the notice and
83 the agenda on a closed-circuit cable television system serving
84 the condominium association. However, if broadcast notice is
85 used, the notice and agenda must be broadcast at least four
86 times every broadcast hour of each day that a posted notice is
87 otherwise required under this section. If broadcast notice is
88 provided, the notice and agenda must be broadcast in a manner
89 and for a sufficient continuous length of time so as to allow an
90 average reader to observe the notice and read and comprehend the
91 entire content of the notice and the agenda. Unless a unit owner
92 waives in writing the right to receive notice of the annual
93 meeting, such notice must be hand delivered, mailed, or
94 electronically transmitted to each unit owner. Notice for
95 meetings and notice for all other purposes must be mailed to
96 each unit owner at the address last furnished to the association
97 by the unit owner, or hand delivered to each unit owner.
98 However, if a unit is owned by more than one person, the
99 association must provide notice to the address that the



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100 developer identifies for that purpose and thereafter as one or
101 more of the owners of the unit advise the association in
102 writing, or if no address is given or the owners of the unit do
103 not agree, to the address provided on the deed of record. An
104 officer of the association, or the manager or other person
105 providing notice of the association meeting, must provide an
106 affidavit or United States Postal Service certificate of
107 mailing, to be included in the official records of the
108 association affirming that the notice was mailed or hand
109 delivered in accordance with this provision.

110 4. The members of the board shall be elected by written
111 ballot or voting machine. Proxies may not be used in electing
112 the board in general elections or elections to fill vacancies
113 caused by recall, resignation, or otherwise, unless otherwise
114 provided in this chapter. This subparagraph does not apply to an
115 association governing a timeshare condominium.

116 a. At least 60 days before a scheduled election, the
117 association shall mail, deliver, or electronically transmit, by
118 separate association mailing or included in another association
119 mailing, delivery, or transmission, including regularly
120 published newsletters, to each unit owner entitled to a vote, a
121 first notice of the date of the election. Any unit owner or
122 other eligible person desiring to be a candidate for the board
123 must give written notice of his or her intent to be a candidate
124 to the association at least 40 days before a scheduled election.
125 Together with the written notice and agenda as set forth in
126 subparagraph 3., the association shall mail, deliver, or
127 electronically transmit a second notice of the election to all
128 unit owners entitled to vote, together with a ballot that lists



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129 all candidates. Upon request of a candidate, an information
130 sheet, no larger than 8 1/2 inches by 11 inches, which must be
131 furnished by the candidate at least 35 days before the election,
132 must be included with the mailing, delivery, or transmission of
133 the ballot, with the costs of mailing, delivery, or electronic
134 transmission and copying to be borne by the association. The
135 association is not liable for the contents of the information
136 sheets prepared by the candidates. In order to reduce costs, the
137 association may print or duplicate the information sheets on
138 both sides of the paper. The division shall by rule establish
139 voting procedures consistent with this sub-subparagraph,
140 including rules establishing procedures for giving notice by
141 electronic transmission and rules providing for the secrecy of
142 ballots. Elections shall be decided by a plurality of ballots
143 cast. There is no quorum requirement; however, at least 20
144 percent of the eligible voters must cast a ballot in order to
145 have a valid election. A unit owner may not permit any other
146 person to vote his or her ballot, and any ballots improperly
147 cast are invalid. A unit owner who violates this provision may
148 be fined by the association in accordance with s. 718.303. A
149 unit owner who needs assistance in casting the ballot for the
150 reasons stated in s. 101.051 may obtain such assistance. The
151 regular election must occur on the date of the annual meeting.
152 Notwithstanding this sub-subparagraph, an election is not
153 required unless more candidates file notices of intent to run or
154 are nominated than board vacancies exist.

155 b. Within 90 days after being elected or appointed to the
156 board, each newly elected or appointed director shall certify in
157 writing to the secretary of the association that he or she has



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158 read the association's declaration of condominium, articles of
159 incorporation, bylaws, and current written policies; that he or
160 she will work to uphold such documents and policies to the best
161 of his or her ability; and that he or she will faithfully
162 discharge his or her fiduciary responsibility to the
163 association's members. In lieu of this written certification,
164 within 90 days after being elected or appointed to the board,
165 the newly elected or appointed director may submit a certificate
166 of having satisfactorily completed the educational curriculum
167 administered by a division-approved condominium education
168 provider within 1 year before or 90 days after the date of
169 election or appointment. The written certification or
170 educational certificate is valid and does not have to be
171 resubmitted as long as the director serves on the board without
172 interruption. A director who fails to timely file the written
173 certification or educational certificate is suspended from
174 service on the board until he or she complies with this sub-
175 subparagraph. The board may temporarily fill the vacancy during
176 the period of suspension. The secretary shall cause the
177 association to retain a director's written certification or
178 educational certificate for inspection by the members for 5
179 years after a director's election. Failure to have such written
180 certification or educational certificate on file does not affect
181 the validity of any board action.

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



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187 documents relating to unit owner decisionmaking, except that
188 unit owners may take action by written agreement, without
189 meetings, on matters for which action by written agreement
190 without meetings is expressly allowed by the applicable bylaws
191 or declaration or any law that provides for such action.

192 6. Unit owners may waive notice of specific meetings if
193 allowed by the applicable bylaws or declaration or any law. If
194 authorized by the bylaws, notice of meetings of the board of
195 administration, unit owner meetings, except unit owner meetings
196 called to recall board members under paragraph (j), and
197 committee meetings may be given by electronic transmission to
198 unit owners who consent to receive notice by electronic
199 transmission.

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

204 8. A unit owner may tape record or videotape a meeting of
205 the unit owners subject to reasonable rules adopted by the
206 division.

207 9. Unless otherwise provided in the bylaws, any vacancy
208 occurring on the board before the expiration of a term may be
209 filled by the affirmative vote of the majority of the remaining
210 directors, even if the remaining directors constitute less than
211 a quorum, or by the sole remaining director. In the alternative,
212 a board may hold an election to fill the vacancy, in which case
213 the election procedures must conform to sub-subparagraph 4.a.
214 unless the association governs 10 units or fewer and has opted
215 out of the statutory election process, in which case the bylaws



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216 of the association control. Unless otherwise provided in the
217 bylaws, a board member appointed or elected under this section
218 shall fill the vacancy for the unexpired term of the seat being
219 filled. Filling vacancies created by recall is governed by
220 paragraph (j) and rules adopted by the division.

221 10. This chapter does not limit the use of general or
222 limited proxies, require the use of general or limited proxies,
223 or require the use of a written ballot or voting machine for any
224 agenda item or election at any meeting of a timeshare
225 condominium association.

226
227 Notwithstanding subparagraph (b)2. and sub-subparagraph
228 4.a., an association of 10 or fewer units may, by affirmative
229 vote of a majority of the total voting interests, provide for
230 different voting and election procedures in its bylaws, which
231 may be by a proxy specifically delineating the different voting
232 and election procedures. The different voting and election
233 procedures may provide for elections to be conducted by limited
234 or general proxy.

235 Section 2. Subsection (34) of section 721.05, Florida
236 Statutes, is amended to read:

237 721.05 Definitions.—As used in this chapter, the term:

238 (34) "Timeshare estate" means a right to occupy a timeshare
239 unit, coupled with a freehold estate or an estate for years with
240 a future interest in a timeshare property or a specified portion
241 thereof. The term includes ~~shall also mean~~ an interest in a
242 condominium unit pursuant to s. 718.103, an interest in a
243 cooperative unit pursuant to s. 719.103, or a direct or indirect
244 ~~an~~ interest in a trust that complies in all respects with the



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245 provisions of s. 721.08(2)(c)4., provided that the trust does
246 not contain any personal property timeshare interests. A
247 timeshare estate is a parcel of real property under the laws of
248 this state.

249 Section 3. Paragraph (t) of subsection (5) of section
250 721.07, Florida Statutes, is amended to read:

251 721.07 Public offering statement.—Prior to offering any
252 timeshare plan, the developer must submit a filed public
253 offering statement to the division for approval as prescribed by
254 s. 721.03, s. 721.55, or this section. Until the division
255 approves such filing, any contract regarding the sale of that
256 timeshare plan is subject to cancellation by the purchaser
257 pursuant to s. 721.10.

258 (5) Every filed public offering statement for a timeshare
259 plan which is not a multisite timeshare plan shall contain the
260 information required by this subsection. The division is
261 authorized to provide by rule the method by which a developer
262 must provide such information to the division.

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

266 1. The estimated annual expenses of the timeshare plan
267 collectible from purchasers by assessments. The estimated
268 payments by the purchaser for assessments shall also be stated
269 in the estimated amounts for the times when they will be due.
270 Expenses shall also be shown for the shortest timeshare period
271 offered for sale by the developer. If the timeshare plan
272 provides for the offer and sale of units to be used on a
273 nontimeshare basis, the estimated monthly and annual expenses of



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274 such units shall be set forth in a separate schedule.

275 2. The estimated weekly, monthly, and annual expenses of
276 the purchaser of each timeshare interest, other than assessments
277 payable to the managing entity. Expenses which are personal to
278 purchasers that are not uniformly incurred by all purchasers or
279 that are not provided for or contemplated by the timeshare plan
280 documents may be excluded from this estimate.

281 3. The estimated items of expenses of the timeshare plan
282 and the managing entity, except as excluded under subparagraph
283 2., including, but not limited to, if applicable, the following
284 items, which shall be stated either as management expenses
285 collectible by assessments or as expenses of the purchaser
286 payable to persons other than the managing entity:

287 a. Expenses for the managing entity:

288 (I) Administration of the managing entity.

289 (II) Management fees.

290 (III) Maintenance.

291 (IV) Rent for facilities.

292 (V) Taxes upon timeshare property.

293 (VI) Taxes upon leased areas.

294 (VII) Insurance.

295 (VIII) Security provisions.

296 (IX) Other expenses.

297 (X) Operating capital.

298 (XI) Reserves for deferred maintenance and reserves for
299 capital expenditures, including:

300 (A) Reserves for deferred maintenance or capital
301 expenditures of accommodations and facilities of a real property
302 timeshare plan, if any. All reserves for any accommodations and



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303 facilities of real property timeshare plans located in this
304 state shall be calculated using ~~by~~ a formula ~~which is~~ based upon
305 estimated life and replacement cost of each reserve item that
306 will provide funds equal to the total estimated deferred
307 maintenance expense or total estimated life and replacement cost
308 for an asset or group of assets over the remaining useful life
309 of the asset or group of assets. Funding formulas for reserves
310 shall be based on either a separate analysis of each of the
311 required assets using the straight-line accounting method or a
312 pooled analysis of two or more of the required assets using the
313 pooling accounting method. Reserves for deferred maintenance for
314 such accommodations and facilities shall include accounts for
315 roof replacement, building painting, pavement resurfacing,
316 replacement of timeshare unit furnishings and equipment, and any
317 other component, the useful life of which is less than the
318 useful life of the overall structure. For any accommodations and
319 facilities of real property timeshare plans located outside of
320 this state, the developer shall disclose the amount of reserves
321 for deferred maintenance or capital expenditures required by the
322 law of the situs state, if applicable, and maintained for such
323 accommodations and facilities.

324 (B) Reserves for deferred maintenance or capital
325 expenditures of accommodations and facilities of a personal
326 property timeshare plan, if any. If such reserves are
327 maintained, the estimated operating budget shall disclose the
328 methodology of how the reserves are calculated. If a personal
329 property timeshare plan does not require reserves, the following
330 statement, in conspicuous type, shall appear in both the budget
331 and the public offering statement:



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332 The estimated operating budget for this personal property
333 timeshare plan does not include reserves for deferred
334 maintenance or capital expenditures; each timeshare interest may
335 be subject to substantial special assessments from time to time
336 because no such reserves exist.

337 (XII) Fees payable to the division.

338 b. Expenses for a purchaser:

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

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

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

349 5. If the developer intends to guarantee the level of
350 assessments, such guarantee must be based upon a good faith
351 estimate of the revenues and expenses of the timeshare plan. The
352 guarantee must include a description of the following:

353 a. The specific time period measured in one or more
354 calendar or fiscal years during which the guarantee will be in
355 effect.

356 b. A statement that the developer will pay all common
357 expenses incurred in excess of the total revenues of the
358 timeshare plan pursuant to s. 721.15(2) if the developer has
359 excused himself or herself from the payment of assessments
360 during the guarantee period.



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

365 6. If the developer intends to provide a trust fund to
366 defer or reduce the payment of annual assessments, a copy of the
367 trust instrument shall be attached as an exhibit and shall
368 include a description of such arrangement, including, but not
369 limited to:

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

372 b. The name and address of the trustee.

373 c. The investment methods permitted by the trust agreement.

374 d. A statement in conspicuous type that the funds from the
375 trust account may not cover all assessments and that there is no
376 guarantee that purchasers will not have to pay assessments in
377 the future.

378 7. The budget of a phase timeshare plan may contain a note
379 identifying the number of timeshare interests covered by the
380 budget, indicating the number of timeshare interests, if any,
381 estimated to be declared as part of the timeshare plan during
382 that calendar year, and projecting the common expenses for the
383 timeshare plan based upon the number of timeshare interests
384 estimated to be declared as part of the timeshare plan during
385 that calendar year.

386 Section 4. Subsections (9) and (11) of section 721.82,
387 Florida Statutes, are amended to read:

388 721.82 Definitions.—As used in this part, the term:

389 (9) "Notice address" means:



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

393 (b) As to a mortgage lien:

394 1. The address of the mortgagor as set forth in the
395 mortgage, the promissory note or a separate document executed by
396 the mortgagor at the time the mortgage lien was created, or the
397 most current address of the mortgagor according to the records
398 of the mortgagee; and

399 2. If the owner of the timeshare interest is different from
400 the mortgagor, the address of the owner of the timeshare
401 interest as reflected by the books and records of the mortgagee.

402 (c) As to a junior interestholder, the address as set forth
403 in the recorded instrument creating the junior lien or interest,
404 or in any recorded amendment thereto changing the address, or in
405 any written notification by the junior interestholder to the
406 foreclosing lienholder changing the address.

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

411 (11) "Permitted delivery service" means any nationally
412 recognized common carrier delivery service, ~~or~~ international
413 airmail service that allows for return receipt service, or a
414 service recognized by an international jurisdiction as the
415 equivalent of certified, registered mail for that jurisdiction.

416 Section 5. Subsection (6) of section 721.84, Florida
417 Statutes, is amended to read:

418 721.84 Appointment of a registered agent; duties.-



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419 (6) Unless otherwise provided in this section, a registered
420 agent in receipt of any notice or other document addressed from
421 the lienholder to the obligor in care of the registered agent at
422 the registered office must mail, by first-class ~~first-class~~ mail
423 if the obligor's address is within the United States, and by
424 international air mail if the obligor's address is outside the
425 United States, with postage fees prepaid, such notice or
426 documents to the obligor at the obligor's last designated
427 address within 5 days after receipt.

428 Section 6. Paragraph (c) of subsection (2), subsections (4)
429 and (5), paragraph (c) of subsection (6), paragraph (b) of
430 subsection (7), and paragraph (b) of subsection (14) of section
431 721.855, Florida Statutes, are amended to read:

432 721.855 Procedure for the trustee foreclosure of assessment
433 liens.—The provisions of this section establish a trustee
434 foreclosure procedure for assessment liens.

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

436 (c)1. In order to initiate a trustee foreclosure procedure
437 against a timeshare interest, the lienholder shall deliver an
438 affidavit to the trustee that identifies the obligor; the notice
439 address of the obligor; the timeshare interest; the date that
440 the notice of the intent to file a lien was given, if
441 applicable; the official records book and page number where the
442 claim of lien is recorded; and the name and notice address of
443 any junior interestholder. ~~The affidavit shall be accompanied by
444 a title search of the timeshare interest identifying any junior
445 interestholders of record, and the effective date of the title
446 search must be a date that is within 60 calendar days before the
447 date of the affidavit.~~



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448 2. The affidavit shall also state the facts that establish
449 that the obligor has defaulted in the obligation to make a
450 payment under a specified provision of the timeshare instrument
451 or applicable law.

452 3. The affidavit shall also specify the amounts secured by
453 the lien as of the date of the affidavit and a per diem amount
454 to account for further accrual of the amounts secured by the
455 lien.

456 4. The affidavit shall also state that the assessment lien
457 was properly created and authorized pursuant to the timeshare
458 instrument and applicable law.

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

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

464 (b) The trustee has not received a written objection to the
465 use of the trustee foreclosure procedure under paragraph (3) (a)
466 and the timeshare interest was not redeemed under paragraph
467 (3) (b);

468 (c) There is no lis pendens recorded and pending against
469 the same timeshare interest before the recording of the notice
470 of lis pendens pursuant to paragraph (5) (h), and the trustee has
471 not been served notice of the filing of any action to enjoin the
472 trustee foreclosure sale;

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



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

480 (f) The lienholder has provided the trustee with a title
481 search of the timeshare interest identifying any junior
482 interestholders of record, the effective date of which search
483 must be within 60 calendar days before the date it is delivered
484 to the trustee. If a title search reveals that incorrect
485 obligors or junior interestholders have been served or
486 additional obligors or junior interestholders have not been
487 served, the foreclosure action may not proceed until the notices
488 required pursuant to this section have been served on the
489 correct or additional obligors or junior interestholders and all
490 applicable time periods have expired.

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

492 (a) In any foreclosure proceeding under this section, the
493 trustee is required to notify the obligor of the proceeding by
494 sending the obligor a written notice of default and intent to
495 foreclose to the notice address of the obligor by certified
496 mail, registered mail, or permitted delivery service, return
497 receipt requested, and by first-class mail ~~or permitted delivery~~
498 ~~service~~, postage prepaid, as follows:

499 1. The notice of default and intent to foreclose shall
500 identify the obligor, the notice address of the obligor, the
501 legal description of the timeshare interest, the nature of the
502 default, the amounts secured by the lien, and a per diem amount
503 to account for further accrual of the amounts secured by the
504 lien and shall state the method by which the obligor may cure
505 the default, including the period of time after the date of the



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506 notice of default and intent to foreclose within which the
507 obligor may cure the default.

508 2. The notice of default and intent to foreclose shall
509 include an objection form with which the obligor can object to
510 the use of the trustee foreclosure procedure by signing and
511 returning the objection form to the trustee. The objection form
512 shall identify the obligor, the notice address of the obligor,
513 the timeshare interest, and the return address of the trustee
514 and shall state: "The undersigned obligor exercises the
515 obligor's right to object to the use of the trustee foreclosure
516 procedure contained in section 721.855, Florida Statutes."

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

519 If you fail to cure the default as set forth in this notice
520 or take other appropriate action with regard to this foreclosure
521 matter, you risk losing ownership of your timeshare interest
522 through the trustee foreclosure procedure established in section
523 721.855, Florida Statutes. You may choose to sign and send to
524 the trustee the enclosed objection form, exercising your right
525 to object to the use of the trustee foreclosure procedure. Upon
526 the trustee's receipt of your signed objection form, the
527 foreclosure of the lien with respect to the default specified in
528 this notice shall be subject to the judicial foreclosure
529 procedure only. You have the right to cure your default in the
530 manner set forth in this notice at any time before the trustee's
531 sale of your timeshare interest. If you do not object to the use
532 of the trustee foreclosure procedure, you will not be subject to
533 a deficiency judgment even if the proceeds from the sale of your
534 timeshare interest are insufficient to offset the amounts



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535 secured by the lien.

536 4. The trustee shall also mail a copy of the notice of
537 default and intent to foreclose, without the objection form, to
538 the notice address of any junior interestholder by certified
539 mail, registered mail, or permitted delivery service, return
540 receipt requested, and by first-class mail ~~or permitted delivery~~
541 ~~service~~, postage prepaid.

542 5. Notice under this paragraph is considered perfected upon
543 the trustee receiving the return receipt bearing the signature
544 of the obligor or junior interestholder, as applicable, within
545 30 calendar days after the trustee sent the notice under this
546 paragraph. Notice under this paragraph is not perfected if:

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

549 b. The trustee cannot, in good faith, ascertain ~~from the~~
550 ~~receipt~~ that the obligor or junior interestholder, as
551 applicable, is the person who signed the receipt because all or
552 a portion of the obligor's or junior interestholder's name is
553 not on the signed receipt or because the trustee cannot
554 otherwise determine that the obligor or junior interestholder
555 signed the receipt; ~~or~~

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

559 (b) If the notice required by paragraph (a) is returned as
560 undeliverable within 30 calendar days after the trustee sent the
561 notice, the trustee shall perform a diligent search and inquiry
562 to obtain a different address for the obligor or junior
563 interestholder. For purposes of this paragraph, any address



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564 known and used by the lienholder for sending regular mailings or
565 other communications from the lienholder to the obligor or
566 junior interestholder, as applicable, shall be included with
567 other addresses produced from the diligent search and inquiry,
568 if any.

569 1. If the trustee's diligent search and inquiry produces an
570 address different from the notice address, the trustee shall
571 mail a copy of the notice by certified mail, registered mail, or
572 permitted delivery service, return receipt requested, and by
573 first-class mail ~~or permitted delivery service~~, postage prepaid,
574 to the new address. Notice under this subparagraph is considered
575 perfected upon the trustee receiving the return receipt bearing
576 the signature of the obligor or junior interestholder, as
577 applicable, within 30 calendar days after the trustee sent the
578 notice under this subparagraph. Notice under this subparagraph
579 is not perfected if the receipt from the obligor or junior
580 interestholder, as applicable, is refused, returned, or the
581 trustee cannot, in good faith, ascertain from the receipt that
582 the obligor or junior interestholder, as applicable, is the
583 person who signed the receipt because all or a portion of the
584 obligor's or junior interestholder's name is not on the signed
585 receipt or because the trustee cannot otherwise determine that
586 the obligor or junior interestholder signed the receipt ~~or the~~
587 ~~receipt from the obligor or junior interestholder, as~~
588 ~~applicable, is returned refused~~. If the trustee does not perfect
589 notice under this subparagraph, the trustee shall perfect
590 service in the manner set forth in paragraph (c).

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



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

595 (c) If the notice is not perfected under subparagraph
596 (a)5., and such notice was not returned as undeliverable, or if
597 the notice was not perfected under subparagraph (b)1., the
598 trustee may perfect notice by publication in a newspaper of
599 general circulation in the county or counties in which the
600 timeshare interest is located. The notice shall appear at least
601 once a week for 2 consecutive weeks. The notice of default and
602 intent to foreclose perfected by publication shall identify the
603 obligor, the notice address of the obligor, the legal
604 description of the timeshare interest, the nature of the action
605 in short and simple terms, the name and contact information of
606 the trustee, and the period of time after the date of the notice
607 of default and intent to foreclose within which the obligor may
608 cure the default. The trustee may group an unlimited number of
609 notices in the same publication, if all of the notices pertain
610 to the same timeshare plan. Notice under this paragraph is
611 considered perfected upon publication as required in this
612 paragraph.

613 (d) If notice is perfected under subparagraph (a)5., the
614 trustee shall execute an affidavit in recordable form setting
615 forth the manner in which notice was perfected and attach the
616 affidavit to the certificate of compliance set forth in
617 subsection (9). The affidavit shall state the nature of the
618 notice, the date on which the notice was mailed, the name and
619 address on the envelope containing the notice, the manner in
620 which the notice was mailed, and the basis for that knowledge.

621 (e) If notice is perfected under subparagraph (b)1., the



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622 trustee shall execute an affidavit in recordable form setting
623 forth the manner in which notice was perfected and attach the
624 affidavit to the certificate of compliance set forth in
625 subsection (9). The affidavit shall state the nature of the
626 notice, the dates on which the notice was mailed, the name and
627 addresses on the envelopes containing the notice, the manner in
628 which the notices were mailed, and the fact that a signed
629 receipt from the certified mail, registered mail, or permitted
630 delivery service was timely received, ~~and the name and address~~
631 ~~on the envelopes containing the notice.~~

632 (f) If notice is perfected by publication under paragraph
633 (c), the trustee shall execute an affidavit in recordable form
634 setting forth the manner in which notice was perfected and
635 attach the affidavit to the certificate of compliance set forth
636 in subsection (9). The affidavit shall include all the
637 information contained in either paragraph (d) or paragraph (e),
638 as applicable, shall state that the notice was perfected by
639 publication and shall state that ~~after~~ diligent search and
640 inquiry was made for the current address for the person, if
641 paragraph (b) applies. The affidavit ~~and~~ shall also include a
642 ~~statement that notice was perfected by publication, and shall~~
643 ~~set forth~~ the information required, as applicable, by s. 49.041
644 in the case of a natural person or s. 49.051 in the case of a
645 corporation, ~~whichever is applicable.~~ No other action of the
646 trustee is necessary to perfect notice.

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



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651 (h) The initiation of a trustee foreclosure action operates
652 as a lis pendens on the timeshare interest pursuant to s. 48.23
653 if a notice of lis pendens is recorded in the official records
654 of the county in which the deed conveying the timeshare interest
655 to the obligor was recorded and such notice has not expired
656 pursuant to s. 48.23(2) or been withdrawn or discharged. The
657 notice of lis pendens must contain the following:

- 658 1. The name of the obligor.
659 2. The date of the initiation of the trustee foreclosure
660 action, which date shall be the date of the sending of the
661 notice of default and intent to foreclose to the obligor.
662 3. The name and contact information of the trustee.
663 4. The legal description of the timeshare interest.
664 5. A statement that a trustee foreclosure action has been
665 initiated against the timeshare interest pursuant to this
666 section.

667 (6) NOTICE OF SALE.—

668 (c) After the date of recording of the notice of sale,
669 notice is not required to be given to any person claiming an
670 interest in the timeshare interest except as provided in this
671 section. If a notice of lis pendens has not previously been
672 recorded pursuant to paragraph (5)(h), the recording of the
673 notice of sale has the same force and effect as the filing of a
674 lis pendens in a judicial proceeding under s. 48.23.

675 (7) MANNER OF SALE.—

676 (b) The trustee shall conduct the sale and act as the
677 auctioneer. The trustee may use a third party to conduct the
678 sale on behalf of the trustee and the trustee is liable for the
679 conduct of the sale and the actions of the third party with



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680 respect to the conduct of the sale.

681 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
682 PROCEDURE.—

683 (b) Any trustee who intentionally violates the provisions
684 of this section concerning the trustee foreclosure procedure
685 commits a felony of the third degree, punishable as provided in
686 s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly
687 ascertains that the obligor signed the return receipt as
688 required in s. 721.855(5) does not violate this section if the
689 trustee made a good faith effort to properly ascertain that the
690 obligor signed the return receipt in accordance with subsection
691 (5).

692 Section 7. Paragraph (b) of subsection (2), subsections (4)
693 and (5), paragraphs (c) and (d) of subsection (6), paragraph (b)
694 of subsection (7), and paragraph (b) of subsection (13) of
695 section 721.856, Florida Statutes, are amended to read:

696 721.856 Procedure for the trustee foreclosure of mortgage
697 liens.—The provisions of this section establish a trustee
698 foreclosure procedure for mortgage liens.

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

700 (b)1. In order to initiate a trustee foreclosure procedure
701 against a timeshare interest, the lienholder shall deliver an
702 affidavit to the trustee that identifies the obligor, the notice
703 address of the obligor, the timeshare interest, the official
704 records book and page number where the mortgage is recorded, and
705 the name and notice address of any junior interestholder. ~~The~~
706 ~~affidavit shall be accompanied by a title search of the~~
707 ~~timeshare interest identifying any junior interestholders of~~
708 ~~record, and the effective date of the title search must be a~~



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709 ~~date that is within 60 calendar days before the date of the~~
710 ~~affidavit.~~

711 2. The affidavit shall also state the facts that establish
712 that the obligor has defaulted in the obligation to make a
713 payment under a specified provision of the mortgage or is
714 otherwise deemed in uncured default under a specified provision
715 of the mortgage.

716 3. The affidavit shall also specify the amounts secured by
717 the lien as of the date of the affidavit and a per diem amount
718 to account for further accrual of the amounts secured by the
719 lien.

720 4. The affidavit shall also state that the appropriate
721 amount of documentary stamp tax and intangible taxes has been
722 paid upon recording of the mortgage, or otherwise paid to the
723 state.

724 5. The affidavit shall also state that the lienholder is
725 the holder of the note and has complied with all preconditions
726 in the note and mortgage to determine the amounts secured by the
727 lien and to initiate the use of the trustee foreclosure
728 procedure.

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

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

734 (b) The trustee has not received a written objection to the
735 use of the trustee foreclosure procedure under paragraph (3) (a)
736 and the timeshare interest was not redeemed under paragraph
737 (3) (b);



738 (c) There is no lis pendens recorded and pending against
739 the same timeshare interest before the initiation of the trustee
740 foreclosure action and provided a notice of lis pendens has been
741 recorded pursuant to paragraph (5)(h), and the trustee has not
742 been served notice of the filing of any action to enjoin the
743 trustee foreclosure sale;

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

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

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

753 (g) The lienholder has provided the trustee with a title
754 search of the timeshare interest identifying any junior
755 interestholders of record, the effective date of which search
756 must be within 60 calendar days before the date it is delivered
757 to the trustee. If a title search reveals that incorrect
758 obligors or junior interestholders have been served or
759 additional obligors or junior interestholders have not been
760 served, the foreclosure action may not proceed until the notices
761 required pursuant to this section have been served on the
762 correct or additional obligors or junior interestholders and all
763 applicable time periods have expired.

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

765 (a) In any foreclosure proceeding under this section, the
766 trustee is required to notify the obligor of the proceeding by



767 sending the obligor a written notice of default and intent to
768 foreclose to the notice address of the obligor by certified
769 mail, registered mail, or permitted delivery service, return
770 receipt requested, and by first-class mail ~~or permitted delivery~~
771 ~~service~~, postage prepaid, as follows:

772 1. The notice of default and intent to foreclose shall
773 identify the obligor, the notice address of the obligor, the
774 legal description of the timeshare interest, the nature of the
775 default, the amounts secured by the lien, and a per diem amount
776 to account for further accrual of the amounts secured by the
777 lien and shall state the method by which the obligor may cure
778 the default, including the period of time after the date of the
779 notice of default and intent to foreclose within which the
780 obligor may cure the default.

781 2. The notice of default and intent to foreclose shall
782 include an objection form with which the obligor can object to
783 the use of the trustee foreclosure procedure by signing and
784 returning the objection form to the trustee. The objection form
785 shall identify the obligor, the notice address of the obligor,
786 the timeshare interest, and the return address of the trustee
787 and shall state: "The undersigned obligor exercises the
788 obligor's right to object to the use of the trustee foreclosure
789 procedure contained in section 721.856, Florida Statutes."

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

792 If you fail to cure the default as set forth in this notice
793 or take other appropriate action with regard to this foreclosure
794 matter, you risk losing ownership of your timeshare interest
795 through the trustee foreclosure procedure established in section



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796 721.856, Florida Statutes. You may choose to sign and send to
797 the trustee the enclosed objection form, exercising your right
798 to object to the use of the trustee foreclosure procedure. Upon
799 the trustee's receipt of your signed objection form, the
800 foreclosure of the lien with respect to the default specified in
801 this notice shall be subject to the judicial foreclosure
802 procedure only. You have the right to cure your default in the
803 manner set forth in this notice at any time before the trustee's
804 sale of your timeshare interest. If you do not object to the use
805 of the trustee foreclosure procedure, you will not be subject to
806 a deficiency judgment even if the proceeds from the sale of your
807 timeshare interest are insufficient to offset the amounts
808 secured by the lien.

809 4. The trustee shall also mail a copy of the notice of
810 default and intent to foreclose, without the objection form, to
811 the notice address of any junior interestholder by certified
812 mail, registered mail, or permitted delivery service, return
813 receipt requested, and by first-class mail ~~or permitted delivery~~
814 ~~service~~, postage prepaid.

815 5. Notice under this paragraph is considered perfected upon
816 the trustee receiving the return receipt bearing the signature
817 of the obligor or junior interestholder, as applicable, within
818 30 calendar days after the trustee sent the notice under this
819 paragraph. Notice under this paragraph is not perfected if:

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

822 b. The trustee cannot, in good faith, ascertain from the
823 receipt that the obligor or junior interestholder, as
824 applicable, is the person who signed the receipt because all or



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825 a portion of the obligor's or junior interestholder's name is
826 not on the signed receipt or the trustee cannot otherwise
827 determine that the obligor or junior interestholder signed the
828 receipt; or

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

832 (b) If the notice required by paragraph (a) is returned as
833 undeliverable within 30 calendar days after the trustee sent the
834 notice, the trustee shall perform a diligent search and inquiry
835 to obtain a different address for the obligor or junior
836 interestholder. For purposes of this paragraph, any address
837 known and used by the lienholder for sending regular mailings or
838 other communications from the lienholder to the obligor or
839 junior interestholder, as applicable, shall be included with
840 other addresses produced from the diligent search and inquiry,
841 if any.

842 1. If the trustee's diligent search and inquiry produces an
843 address different from the notice address, the trustee shall
844 mail a copy of the notice by certified mail, registered mail, or
845 permitted delivery service, return receipt requested, and by
846 first-class mail ~~or permitted delivery service~~, postage prepaid,
847 to the new address. Notice under this subparagraph is considered
848 perfected upon the trustee receiving the return receipt bearing
849 the signature of the obligor or junior interestholder, as
850 applicable, within 30 calendar days after the trustee sent the
851 notice under this subparagraph. Notice under this subparagraph
852 is not perfected if the receipt from the obligor or junior
853 interestholder is refused, returned, or the trustee cannot, in



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854 good faith, ascertain ~~from the receipt~~ that the obligor or
855 junior interestholder, as applicable, is the person who signed
856 the receipt because all or a portion of the obligor's or junior
857 interestholder's name is not on the signed receipt or because
858 the trustee cannot otherwise determine that the obligor or
859 junior interestholder signed the receipt ~~or the receipt from the~~
860 ~~obligor or junior interestholder, as applicable, is returned~~
861 ~~refused.~~ If the trustee does not perfect notice under this
862 subparagraph, the trustee shall perfect service in the manner
863 set forth in paragraph (c).

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

868 (c) If the notice is not perfected under subparagraph
869 (a)5., and such notice was not returned as undeliverable, or if
870 the notice was not perfected under subparagraph (b)1., the
871 trustee may perfect notice by publication in a newspaper of
872 general circulation in the county or counties in which the
873 timeshare interest is located. The notice shall appear at least
874 once a week for 2 consecutive weeks. The notice of default and
875 intent to foreclose perfected by publication shall identify the
876 obligor, the notice address of the obligor, the legal
877 description of the timeshare interest, the nature of the action
878 in short and simple terms, the name and contact information of
879 the trustee, and the period of time after the date of the notice
880 of default and intent to foreclose within which the obligor may
881 cure the default. The trustee may group an unlimited number of
882 notices in the same publication, if all of the notices pertain



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883 to the same timeshare plan. Notice under this paragraph is
884 considered perfected upon publication as required in this
885 paragraph.

886 (d) If notice is perfected under subparagraph (a)5., the
887 trustee shall execute an affidavit in recordable form setting
888 forth the manner in which notice was perfected and attach the
889 affidavit to the certificate of compliance set forth in
890 subsection (9). The affidavit shall state the nature of the
891 notice, the date on which the notice was mailed, the name and
892 address on the envelope containing the notice, the manner in
893 which the notice was mailed, and the basis for that knowledge.

894 (e) If notice is perfected under subparagraph (b)1., the
895 trustee shall execute an affidavit in recordable form setting
896 forth the manner in which notice was perfected and attach the
897 affidavit to the certificate of compliance set forth in
898 subsection (9). The affidavit shall state the nature of the
899 notice, the dates on which the notice was mailed, the name and
900 addresses on the envelopes containing the notice, the manner in
901 which the notice was mailed, and the fact that a signed receipt
902 from the certified mail, registered mail, or permitted delivery
903 service was timely received, ~~and the name and address on the~~
904 ~~envelopes containing the notice.~~

905 (f) If notice is perfected under paragraph (c), the trustee
906 shall execute an affidavit in recordable form setting forth the
907 manner in which notice was perfected and attach the affidavit to
908 the certificate of compliance set forth in subsection (9). The
909 affidavit shall include all the information contained in either
910 paragraph (d) or paragraph (e), as applicable, shall state that
911 the notice was perfected by publication and shall state that



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912 ~~after~~ diligent search and inquiry was made for the current
913 address for the person, if paragraph (b) applies. The affidavit
914 shall also include a statement that notice was perfected by
915 publication, and shall set forth the information required, as
916 applicable, by s. 49.041 in the case of a natural person or s.
917 49.051 in the case of a corporation, whichever is applicable. No
918 other action of the trustee is necessary to perfect notice.

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

923 (h) The initiation of a trustee foreclosure action operates
924 as a lis pendens on the timeshare interest pursuant to s. 48.23
925 if a notice of lis pendens is recorded in the official records
926 of the county or counties in which the mortgage is recorded and
927 such notice has not expired pursuant to s. 48.23(2) or been
928 withdrawn or discharged. The notice of lis pendens must contain
929 the following:

- 930 1. The name of the obligor.
931 2. The date of the initiation of the trustee foreclosure
932 action, which date shall be the date of the sending of the
933 notice of default and intent to foreclose to the obligor.
934 3. The name and contact information of the trustee.
935 4. The legal description of the timeshare interest.
936 5. A statement that a trustee foreclosure action has been
937 initiated against the timeshare interest pursuant to this
938 section.

939 (6) NOTICE OF SALE.—

940 (c) After the date of recording of the notice of sale,



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941 notice is not required to be given to any person claiming an
942 interest in the timeshare interest except as provided in this
943 section. If a notice of lis pendens has not previously been
944 recorded pursuant to paragraph (5)(h), the recording of the
945 notice of sale has the same force and effect as the filing of a
946 lis pendens in a judicial proceeding under s. 48.23.

947 (d)1. The trustee shall publish the notice of sale in a
948 newspaper of general circulation in the county or counties in
949 which the timeshare interest is located at least once a week for
950 2 consecutive weeks before the date of the sale. The last
951 publication shall occur at least 5 calendar days before the
952 sale.

953 2. The trustee may group an unlimited number of notices of
954 sale in the same publication, if all of the notices of sale
955 pertain to the same timeshare plan.

956 (7) MANNER OF SALE.—

957 (b) The trustee shall conduct the sale and act as the
958 auctioneer. The trustee may use a third party to conduct the
959 sale on behalf of the trustee and the trustee is liable for the
960 conduct of the sale and the actions of the third party with
961 respect to the conduct of the sale.

962 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
963 PROCEDURE.—

964 (b) Any trustee who intentionally violates the provisions
965 of this section concerning the trustee foreclosure procedure
966 commits a felony of the third degree, punishable as provided in
967 s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly
968 ascertains that the obligor signed the return receipt as
969 required in s. 721.856(5) does not violate this section if the



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970 trustee made a good faith effort to properly ascertain that it
971 is the obligor who signed the return receipt in accordance with
972 subsection (5).

973 Section 8. This act shall take effect July 1, 2013.

974

975

976 ===== T I T L E A M E N D M E N T =====

977 And the title is amended as follows:

978 Delete everything before the enacting clause
979 and insert:

980 A bill to be entitled

981 An act relating to timeshares; amending s. 718.112,
982 F.S.; specifying that certain provisions relating to
983 condominium board elections do not apply to timeshare
984 condominiums; amending s. 721.05, F.S.; revising the
985 definition of "timeshare estate"; amending s. 721.07,
986 F.S.; revising formula requirements for calculating
987 reserves for accommodations and facilities of real
988 property timeshare plans; amending s. 721.82, F.S.;
989 revising definitions applicable to the Timeshare Lien
990 Foreclosure Act; amending s. 721.84, F.S.; making an
991 editorial change; amending s. 721.855, F.S.; revising
992 procedure for the trustee foreclosure of assessment
993 liens; revising conditions under which a trustee may
994 sell a foreclosed encumbered timeshare interest;
995 revising and providing notice requirements; providing
996 for perfection of notice; providing requirements for a
997 notice of lis pendens; providing sale requirements;
998 providing exceptions for actions for failure to follow



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999 the trustee foreclosure procedure; amending s.
1000 721.856, F.S.; revising procedure for the trustee
1001 foreclosure of mortgage liens; revising conditions
1002 under which a trustee may sell a foreclosed encumbered
1003 timeshare interest; revising and providing notice
1004 requirements; providing for perfection of notice;
1005 providing requirements for a notice of lis pendens;
1006 providing sale requirements; providing exceptions for
1007 actions for failure to follow the trustee foreclosure
1008 procedure; providing an effective date.

By Senator Stargel

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1 A bill to be entitled
 2 An act relating to vacation and time share plans;
 3 amending s. 718.112, F.S.; exempting associations that
 4 govern a timeshare condominium from the prohibition of
 5 using proxies for electing members of the board;
 6 amending s. 721.07, F.S.; revising the formula to
 7 calculate the reserves for any accommodations and
 8 facilities of real property time share plans; amending
 9 s. 721.82, F.S.; revising the definition of the terms
 10 "notice address," "obligor," and "permitted delivery
 11 service"; amending s. 721.84, F.S.; making technical
 12 changes; amending s. 721.855, F.S.; removing a
 13 provision that requires a title search to accompany
 14 the affidavit initiating a trustee foreclosure
 15 proceeding of assessment liens; revising conditions to
 16 a trustee's exercise of power of sale relating to lis
 17 pendens; providing that a trustee may sell a timeshare
 18 interest if the lienholder delivers a certain title
 19 search which identifies junior interestholders of
 20 record; providing conditions when the foreclosure may
 21 not proceed; removing reference to an alternative to
 22 first-class mail for service of notice; revising
 23 criteria when notice of a foreclosure proceeding is
 24 not perfected; revising the criteria for perfecting
 25 notice of foreclosure by publication in a newspaper;
 26 revising criteria that must be included in an
 27 affidavit certifying notice was perfected by
 28 publication; providing additional criteria for
 29 perfecting notice; providing the notice of sale has

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30 certain force and effect if a notice of lis pendens
 31 was not previously recorded; allowing a trustee under
 32 certain conditions to use a third party to conduct a
 33 sale; providing a trustee an exception for certain
 34 violations of the trustee foreclosure procedures of
 35 assessment liens; amending s. 721.856, F.S.; removing
 36 a provision that requires a title search to accompany
 37 the affidavit initiating a trustee foreclosure
 38 proceeding of mortgage liens; revising conditions to a
 39 trustee's exercise of power of sale relating to lis
 40 pendens; providing that a trustee may sell a timeshare
 41 interest if the lienholder delivers a certain title
 42 search which identifies junior interestholders of
 43 record; providing conditions when the foreclosure may
 44 not proceed; removing reference to an alternative to
 45 first-class mail for service of notice; revising
 46 criteria when notice of a foreclosure proceeding is
 47 not perfected; revising the criteria for perfecting
 48 notice of foreclosure by publication in a newspaper;
 49 revising criteria that must be included in an
 50 affidavit certifying notice was perfected by
 51 publication; providing additional criteria for
 52 perfecting notice; providing the notice of sale has
 53 certain force and effect if a notice of lis pendens
 54 was not previously recorded; allowing a trustee under
 55 certain conditions to use a third party to conduct a
 56 sale; providing a trustee an exception for certain
 57 violations of the trustee foreclosure procedures of
 58 mortgage liens; providing an effective date.

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59
60 Be It Enacted by the Legislature of the State of Florida:

61
62 Section 1. Paragraph (d) of subsection (2) of section
63 718.112, Florida Statutes, is amended to read:

64 718.112 Bylaws.—

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

68 (d) *Unit owner meetings.*—

69 1. An annual meeting of the unit owners must ~~shall~~ be held
70 at the location provided in the association bylaws and, if the
71 bylaws are silent as to the location, the meeting must ~~shall~~ be
72 held within 45 miles of the condominium property. However, such
73 distance requirement does not apply to an association governing
74 a timeshare condominium.

75 2. Unless the bylaws provide otherwise, a vacancy on the
76 board caused by the expiration of a director's term must ~~shall~~
77 be filled by electing a new board member, and the election must
78 be by secret ballot. An election is not required if the number
79 of vacancies equals or exceeds the number of candidates. For
80 purposes of this paragraph, the term "candidate" means an
81 eligible person who has timely submitted the written notice, as
82 described in sub-subparagraph 4.a., of his or her intention to
83 become a candidate. Except in a timeshare condominium, or if the
84 staggered term of a board member does not expire until a later
85 annual meeting, or if all members' terms would otherwise expire
86 but there are no candidates, the terms of all board members
87 expire at the annual meeting, and such members may stand for

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88 reelection unless prohibited by the bylaws. If the bylaws permit
89 staggered terms of no more than 2 years and upon approval of a
90 majority of the total voting interests, the association board
91 members may serve 2-year staggered terms. If the number of board
92 members whose terms expire at the annual meeting equals or
93 exceeds the number of candidates, the candidates become members
94 of the board effective upon the adjournment of the annual
95 meeting. Unless the bylaws provide otherwise, any remaining
96 vacancies shall be filled by the affirmative vote of the
97 majority of the directors making up the newly constituted board
98 even if the directors constitute less than a quorum or there is
99 only one director. In a condominium association of more than 10
100 units or in a condominium association that does not include
101 timeshare units or timeshare interests, coowners of a unit may
102 not serve as members of the board of directors at the same time
103 unless they own more than one unit or unless there are not
104 enough eligible candidates to fill the vacancies on the board at
105 the time of the vacancy. Any unit owner who desires ~~desiring~~ to
106 be a candidate for board membership must comply with sub-
107 subparagraph 4.a. and must be eligible to serve on the board of
108 directors at the time of the deadline for submitting a notice of
109 intent to run in order to have his or her name listed as a
110 proper candidate on the ballot or to serve on the board. A
111 person who has been suspended or removed by the division under
112 this chapter, or who is delinquent in the payment of any fee,
113 fine, or special or regular assessment as provided in paragraph
114 (n), is not eligible for board membership. A person who has been
115 convicted of any felony in this state or in a United States
116 District or Territorial Court, or who has been convicted of any

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117 offense in another jurisdiction which would be considered a
 118 felony if committed in this state, is not eligible for board
 119 membership unless such felon's civil rights have been restored
 120 for at least 5 years ~~before~~ ~~as of~~ the date such person seeks
 121 election to the board. The validity of an action by the board is
 122 not affected if it is later determined that a board member is
 123 ineligible for board membership due to having been convicted of
 124 a felony.

125 3. The bylaws must provide the method of calling meetings
 126 of unit owners, including annual meetings. Written notice must
 127 include an agenda, must be mailed, hand delivered, or
 128 electronically transmitted to each unit owner at least 14 days
 129 before the annual meeting, and must be posted in a conspicuous
 130 place on the condominium property at least 14 continuous days
 131 before the annual meeting. Upon notice to the unit owners, the
 132 board shall, by duly adopted rule, designate a specific location
 133 on the condominium property or association property where all
 134 notices of unit owner meetings shall be posted. This requirement
 135 does not apply if there is no condominium property or
 136 association property for posting notices. In lieu of, or in
 137 addition to, the physical posting of meeting notices, the
 138 association may, by reasonable rule, adopt a procedure for
 139 conspicuously posting and repeatedly broadcasting the notice and
 140 the agenda on a closed-circuit cable television system serving
 141 the condominium association. However, if broadcast notice is
 142 used, the notice and agenda must be broadcast at least four
 143 times every broadcast hour of each day that a posted notice is
 144 otherwise required under this section. If broadcast notice is
 145 provided, the notice and agenda must be broadcast in a manner

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146 and for a sufficient continuous length of time so as to allow an
 147 average reader to observe the notice and read and comprehend the
 148 entire content of the notice and the agenda. Unless a unit owner
 149 waives in writing the right to receive notice of the annual
 150 meeting, such notice must be hand delivered, mailed, or
 151 electronically transmitted to each unit owner. Notice for
 152 meetings and notice for all other purposes must be mailed to
 153 each unit owner at the address last furnished to the association
 154 by the unit owner, or hand delivered to each unit owner.
 155 However, if a unit is owned by more than one person, the
 156 association must provide notice to the address that the
 157 developer identifies for that purpose and thereafter as one or
 158 more of the owners of the unit advise the association in
 159 writing, or if no address is given or the owners of the unit do
 160 not agree, to the address provided on the deed of record. An
 161 officer of the association, or the manager or other person
 162 providing notice of the association meeting, must provide an
 163 affidavit or United States Postal Service certificate of
 164 mailing, to be included in the official records of the
 165 association affirming that the notice was mailed or hand
 166 delivered in accordance with this provision.

167 4. The members of the board shall be elected by written
 168 ballot or voting machine. Proxies may not be used in electing
 169 the board in general elections or elections to fill vacancies
 170 caused by recall, resignation, or otherwise, unless otherwise
 171 provided in this chapter. This subparagraph does not apply to an
 172 association governing a timeshare condominium.

173 a. At least 60 days before a scheduled election, the
 174 association shall mail, deliver, or electronically transmit, by

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175 separate association mailing or included in another association
 176 mailing, delivery, or transmission, including regularly
 177 published newsletters, to each unit owner entitled to a vote, a
 178 first notice of the date of the election. Any unit owner or
 179 other eligible person desiring to be a candidate for the board
 180 must give written notice of his or her intent to be a candidate
 181 to the association at least 40 days before a scheduled election.
 182 Together with the written notice and agenda as set forth in
 183 subparagraph 3., the association shall mail, deliver, or
 184 electronically transmit a second notice of the election to all
 185 unit owners entitled to vote, together with a ballot that lists
 186 all candidates. Upon request of a candidate, an information
 187 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 188 furnished by the candidate at least 35 days before the election,
 189 must be included with the mailing, delivery, or transmission of
 190 the ballot, with the costs of mailing, delivery, or electronic
 191 transmission and copying to be borne by the association. The
 192 association is not liable for the contents of the information
 193 sheets prepared by the candidates. In order to reduce costs, the
 194 association may print or duplicate the information sheets on
 195 both sides of the paper. The division shall by rule establish
 196 voting procedures consistent with this sub-subparagraph,
 197 including rules establishing procedures for giving notice by
 198 electronic transmission and rules providing for the secrecy of
 199 ballots. Elections ~~must shall~~ be decided by a plurality of
 200 ballots cast. There is no quorum requirement; however, at least
 201 20 percent of the eligible voters must cast a ballot in order to
 202 have a valid election. A unit owner may not permit any other
 203 person to vote his or her ballot, and any ballots improperly

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204 cast are invalid. A unit owner who violates this provision may
 205 be fined by the association in accordance with s. 718.303. A
 206 unit owner who needs assistance in casting the ballot for the
 207 reasons stated in s. 101.051 may obtain such assistance. The
 208 regular election must occur on the date of the annual meeting.
 209 Notwithstanding this sub-subparagraph, an election is not
 210 required unless more candidates file notices of intent to run or
 211 are nominated than board vacancies exist.

212 b. Within 90 days after being elected or appointed to the
 213 board, each newly elected or appointed director shall certify in
 214 writing to the secretary of the association that he or she has
 215 read the association's declaration of condominium, articles of
 216 incorporation, bylaws, and current written policies; that he or
 217 she will work to uphold such documents and policies to the best
 218 of his or her ability; and that he or she will faithfully
 219 discharge his or her fiduciary responsibility to the
 220 association's members. In lieu of this written certification,
 221 within 90 days after being elected or appointed to the board,
 222 the newly elected or appointed director may submit a certificate
 223 of having satisfactorily completed the educational curriculum
 224 administered by a division-approved condominium education
 225 provider within 1 year before or 90 days after the date of
 226 election or appointment. The written certification or
 227 educational certificate is valid and does not have to be
 228 resubmitted as long as the director serves on the board without
 229 interruption. A director who fails to timely file the written
 230 certification or educational certificate is suspended from
 231 service on the board until he or she complies with this sub-
 232 subparagraph. The board may temporarily fill the vacancy during

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 233 the period of suspension. The secretary shall cause the
 234 association to retain a director's written certification or
 235 educational certificate for inspection by the members for 5
 236 years after a director's election. Failure to have such written
 237 certification or educational certificate on file does not affect
 238 the validity of any board action.

239 5. Any approval by unit owners called for by this chapter
 240 or the applicable declaration or bylaws, including, but not
 241 limited to, the approval requirement in s. 718.111(8), must be
 242 made at a duly noticed meeting of unit owners and is subject to
 243 all requirements of this chapter or the applicable condominium
 244 documents relating to unit owner decisionmaking, except that
 245 unit owners may take action by written agreement, without
 246 meetings, on matters for which action by written agreement
 247 without meetings is expressly allowed by the applicable bylaws
 248 or declaration or any law that provides for such action.

249 6. Unit owners may waive notice of specific meetings if
 250 allowed by the applicable bylaws or declaration or any law. If
 251 authorized by the bylaws, notice of meetings of the board of
 252 administration, unit owner meetings, except unit owner meetings
 253 called to recall board members under paragraph (j), and
 254 committee meetings may be given by electronic transmission to
 255 unit owners who consent to receive notice by electronic
 256 transmission.

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

261 8. A unit owner may tape record or videotape a meeting of

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 262 the unit owners subject to reasonable rules adopted by the
 263 division.

264 9. Unless otherwise provided in the bylaws, any vacancy
 265 occurring on the board before the expiration of a term may be
 266 filled by the affirmative vote of the majority of the remaining
 267 directors, even if the remaining directors constitute less than
 268 a quorum, or by the sole remaining director. In the alternative,
 269 a board may hold an election to fill the vacancy, in which case
 270 the election procedures must conform to sub-subparagraph 4.a.
 271 unless the association governs 10 units or fewer and has opted
 272 out of the statutory election process, in which case the bylaws
 273 of the association control. Unless otherwise provided in the
 274 bylaws, a board member appointed or elected under this section
 275 must ~~shall~~ fill the vacancy for the unexpired term of the seat
 276 being filled. Filling vacancies created by recall is governed by
 277 paragraph (j) and rules adopted by the division.

278 10. This chapter does not limit the use of general or
 279 limited proxies, require the use of general or limited proxies,
 280 or require the use of a written ballot or voting machine for any
 281 agenda item or election at any meeting of a timeshare
 282 condominium association.

283
 284 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 285 association of 10 or fewer units may, by affirmative vote of a
 286 majority of the total voting interests, provide for different
 287 voting and election procedures in its bylaws, which may be by a
 288 proxy specifically delineating the different voting and election
 289 procedures. The different voting and election procedures may
 290 provide for elections to be conducted by limited or general

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291 proxy.

292 Section 2. Paragraph (t) of subsection (5) of section
293 721.07, Florida Statutes, is amended to read:

294 721.07 Public offering statement.—Prior to offering any
295 timeshare plan, the developer must submit a filed public
296 offering statement to the division for approval as prescribed by
297 s. 721.03, s. 721.55, or this section. Until the division
298 approves such filing, any contract regarding the sale of that
299 timeshare plan is subject to cancellation by the purchaser
300 pursuant to s. 721.10.

301 (5) Every filed public offering statement for a timeshare
302 plan which is not a multisite timeshare plan shall contain the
303 information required by this subsection. The division is
304 authorized to provide by rule the method by which a developer
305 must provide such information to the division.

306 (t) An estimated operating budget for the timeshare plan
307 and a schedule of the purchaser's expenses must ~~shall~~ be
308 attached as an exhibit and must ~~shall~~ contain the following
309 information:

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

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

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

332 a. Expenses for the managing entity:
333 (I) Administration of the managing entity.
334 (II) Management fees.
335 (III) Maintenance.
336 (IV) Rent for facilities.
337 (V) Taxes upon timeshare property.
338 (VI) Taxes upon leased areas.
339 (VII) Insurance.
340 (VIII) Security provisions.
341 (IX) Other expenses.
342 (X) Operating capital.
343 (XI) Reserves for deferred maintenance and reserves for
344 capital expenditures, including:
345 (A) Reserves for deferred maintenance or capital
346 expenditures of accommodations and facilities of a real property
347 timeshare plan, if any. All reserves for any accommodations and
348 facilities of real property timeshare plans located in this

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349 state shall be calculated by using a formula which is based upon
 350 estimated life and replacement cost of each reserve item that
 351 will provide funds equal to the total estimated deferred
 352 maintenance expense or total estimated life and replacement cost
 353 for an asset or group of assets over the remaining useful life
 354 of the asset or group of assets. A funding formula for reserves
 355 must be based on either a separate analysis of each of the
 356 required assets using the straight-line accounting method or a
 357 pooled analysis of two or more of the required assets using the
 358 pooling accounting method. Reserves for deferred maintenance for
 359 such accommodations and facilities ~~must shall~~ include accounts
 360 for roof replacement, building painting, pavement resurfacing,
 361 replacement of timeshare unit furnishings and equipment, and any
 362 other component, the useful life of which is less than the
 363 useful life of the overall structure. For any accommodations and
 364 facilities of real property timeshare plans located outside of
 365 this state, the developer shall disclose the amount of reserves
 366 for deferred maintenance or capital expenditures required by the
 367 law of the situs state, if applicable, and maintained for such
 368 accommodations and facilities.

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

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

383
 384 (XII) Fees payable to the division.

385 b. Expenses for a purchaser:

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

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

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

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

400 a. The specific time period measured in one or more
 401 calendar or fiscal years during which the guarantee will be in
 402 effect.

403 b. A statement that the developer will pay all common
 404 expenses incurred in excess of the total revenues of the
 405 timeshare plan pursuant to s. 721.15(2) if the developer has
 406 excused himself or herself from the payment of assessments

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407 during the guarantee period.

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

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

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

419 b. The name and address of the trustee.

420 c. The investment methods permitted by the trust agreement.

421 d. A statement in conspicuous type that the funds from the
422 trust account may not cover all assessments and that there is no
423 guarantee that purchasers will not have to pay assessments in
424 the future.

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

433 Section 3. Subsections (9), (10), and (11) of section
434 721.82, Florida Statutes, are amended to read:

435 721.82 Definitions.—As used in this part, the term:

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436 (9) "Notice address" means:

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

440 (b) As to a mortgage lien:

441 1. The address of the mortgagor as set forth in the
442 mortgage, the promissory note or a separate document executed by
443 the mortgagor at the time the mortgage lien was created, or the
444 most current address of the mortgagor according to the records
445 of the mortgagee; and

446 2. If the owner of the timeshare interest is different from
447 the mortgagor, the address of the owner of the timeshare
448 interest as reflected by the books and records of the mortgagee.

449 (c) As to a junior interestholder, the address as set forth
450 in the recorded instrument creating the junior lien or interest,
451 or in any recorded amendment thereto changing the address, or in
452 any written notification by the junior interestholder to the
453 foreclosing lienholder changing the address.

454 (d) As to an owner of a timeshare interest, mortgagor, or
455 junior interestholder whose current address is not the address
456 as determined by paragraph (9) (a), paragraph (9) (b), or
457 paragraph (9) (c), the address that is known to be the current
458 address.

459 (10) "Obligor" means the mortgagor, the person subject to
460 an assessment lien, or the record owner of the timeshare
461 interest, or the personal representative, court appointed
462 counsel, or guardian ad litem on behalf of such mortgagor,
463 person subject to an assessment lien, or record owner of the
464 timeshare interest.

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465 (11) "Permitted delivery service" means any nationally
 466 recognized common carrier delivery service or international
 467 airmail service that allows for return receipt service or a
 468 service that is recognized by an international jurisdiction to
 469 be the equivalent of certified, registered mail for the
 470 jurisdiction.

471 Section 4. Subsection (6) of section 721.84, Florida
 472 Statutes, is amended to read:

473 721.84 Appointment of a registered agent; duties.—

474 (6) Unless otherwise provided in this section, a registered
 475 agent in receipt of any notice or other document addressed from
 476 the lienholder to the obligor in care of the registered agent at
 477 the registered office must mail, by first-class ~~first class~~ mail
 478 if the obligor's address is within the United States, and by
 479 international air mail if the obligor's address is outside the
 480 United States, with postage fees prepaid, such notice or
 481 documents to the obligor at the obligor's last designated
 482 address within 5 days after receipt.

483 Section 5. Paragraph (c) of subsection (2), subsections (4)
 484 and (5), paragraph (c) of subsection (6), paragraph (b) of
 485 subsection (7), and paragraph (b) of subsection (14) of section
 486 721.855, Florida Statutes, are amended to read:

487 721.855 Procedure for the trustee foreclosure of assessment
 488 liens.—The provisions of this section establish a trustee
 489 foreclosure procedure for assessment liens.

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

491 (c)1. In order to initiate a trustee foreclosure procedure
 492 against a timeshare interest, the lienholder shall deliver an
 493 affidavit to the trustee that identifies the obligor; the notice

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494 address of the obligor; the timeshare interest; the date that
 495 the notice of the intent to file a lien was given, if
 496 applicable; the official records book and page number where the
 497 claim of lien is recorded; and the name and notice address of
 498 any junior interestholder. ~~The affidavit shall be accompanied by~~
 499 ~~a title search of the timeshare interest identifying any junior~~
 500 ~~interestholders of record, and the effective date of the title~~
 501 ~~search must be a date that is within 60 calendar days before the~~
 502 ~~date of the affidavit.~~

503 2. The affidavit must ~~shall~~ also state the facts that
 504 establish that the obligor has defaulted in the obligation to
 505 make a payment under a specified provision of the timeshare
 506 instrument or applicable law.

507 3. The affidavit must ~~shall~~ also specify the amounts
 508 secured by the lien as of the date of the affidavit and a per
 509 diem amount to account for further accrual of the amounts
 510 secured by the lien.

511 4. The affidavit must ~~shall~~ also state that the assessment
 512 lien was properly created and authorized pursuant to the
 513 timeshare instrument and applicable law.

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

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

519 (b) The trustee has not received a written objection to the
 520 use of the trustee foreclosure procedure under paragraph (3)(a)
 521 and the timeshare interest was not redeemed under paragraph
 522 (3)(b);

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523 (c) There is no lis pendens recorded and pending against
 524 the same timeshare interest before the recording of the notice
 525 of lis pendens pursuant to paragraph (5) (h) and the trustee has
 526 not been served notice of the filing of any action to enjoin the
 527 trustee foreclosure sale;

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

532 (e) The notice of sale required under subsection (6) has
 533 been recorded in the official records of the county or counties
 534 in which the timeshare interest is located; ~~and-~~

535 (f) The lienholder has delivered to the trustee a title
 536 search of the timeshare interest which identifies any junior
 537 interestholders of record, and the effective date of the title
 538 search must be a date that is within 60 calendar days before the
 539 date that it is delivered to the trustee. If it is determined
 540 from the title search that incorrect obligors or junior
 541 interestholders have been served or additional obligors or
 542 junior interestholders have not been served, the foreclosure
 543 action may not proceed until the notices required pursuant to
 544 this section have been served on the correct or additional
 545 obligors or junior interestholders and all applicable time
 546 periods have expired.

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

548 (a) In any foreclosure proceeding under this section, the
 549 trustee is required to notify the obligor of the proceeding by
 550 sending the obligor a written notice of default and intent to
 551 foreclose to the notice address of the obligor by certified

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552 mail, registered mail, or permitted delivery service, return
 553 receipt requested, and by first-class mail ~~or permitted delivery~~
 554 ~~service~~, postage prepaid, as follows:

555 1. The notice of default and intent to foreclose ~~must shall~~
 556 identify the obligor, the notice address of the obligor, the
 557 legal description of the timeshare interest, the nature of the
 558 default, the amounts secured by the lien, and a per diem amount
 559 to account for further accrual of the amounts secured by the
 560 lien and ~~must shall~~ state the method by which the obligor may
 561 cure the default, including the period of time after the date of
 562 the notice of default and intent to foreclose within which the
 563 obligor may cure the default.

564 2. The notice of default and intent to foreclose ~~must shall~~
 565 include an objection form with which the obligor can object to
 566 the use of the trustee foreclosure procedure by signing and
 567 returning the objection form to the trustee. The objection form
 568 ~~must shall~~ identify the obligor, the notice address of the
 569 obligor, the timeshare interest, and the return address of the
 570 trustee and ~~must shall~~ state: "*The undersigned obligor exercises*
 571 *the obligor's right to object to the use of the trustee*
 572 *foreclosure procedure contained in section 721.855, Florida*
 573 *Statutes.*"

574 3. The notice of default and intent to foreclose ~~must shall~~
 575 also contain a statement in substantially the following form:

576

577 *If you fail to cure the default as set forth in this*
 578 *notice or take other appropriate action with regard to*
 579 *this foreclosure matter, you risk losing ownership of*
 580 *your timeshare interest through the trustee*

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581 foreclosure procedure established in section 721.855,
 582 Florida Statutes. You may choose to sign and send to
 583 the trustee the enclosed objection form, exercising
 584 your right to object to the use of the trustee
 585 foreclosure procedure. Upon the trustee's receipt of
 586 your signed objection form, the foreclosure of the
 587 lien with respect to the default specified in this
 588 notice shall be subject to the judicial foreclosure
 589 procedure only. You have the right to cure your
 590 default in the manner set forth in this notice at any
 591 time before the trustee's sale of your timeshare
 592 interest. If you do not object to the use of the
 593 trustee foreclosure procedure, you will not be subject
 594 to a deficiency judgment even if the proceeds from the
 595 sale of your timeshare interest are insufficient to
 596 offset the amounts secured by the lien.
 597

598 4. The trustee shall also mail a copy of the notice of
 599 default and intent to foreclose, without the objection form, to
 600 the notice address of any junior interestholder by certified
 601 mail, registered mail, or permitted delivery service, return
 602 receipt requested, and by first-class mail ~~or permitted delivery~~
 603 ~~service~~, postage prepaid.

604 5. Notice under this paragraph is considered perfected upon
 605 the trustee receiving the return receipt bearing the signature
 606 of the obligor or junior interestholder, as applicable, within
 607 30 calendar days after the trustee sent the notice under this
 608 paragraph. Notice under this paragraph is not perfected if:

609 (I) The notice is returned as undeliverable within 30

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610 calendar days after the trustee sent the notice; ~~if~~
 611 (II) The trustee cannot, in good faith, ascertain ~~from the~~
 612 ~~receipt~~ that the obligor or junior interestholder, as
 613 applicable, is the person who signed the receipt because all or
 614 a portion of the obligor's or junior interestholder's name is
 615 not on the signed receipt or the trustee cannot otherwise
 616 determine that the obligor or junior interestholder signed the
 617 receipt; ~~or if~~

618 (III) The receipt from the obligor or junior
 619 interestholder, as applicable, is returned or refused within 30
 620 calendar days after the trustee sent the notice.

621 (b) If the notice required by paragraph (a) is returned as
 622 undeliverable within 30 calendar days after the trustee sent the
 623 notice, the trustee shall perform a diligent search and inquiry
 624 to obtain a different address for the obligor or junior
 625 interestholder. For purposes of this paragraph, any address
 626 known and used by the lienholder for sending regular mailings or
 627 other communications from the lienholder to the obligor or
 628 junior interestholder, as applicable, shall be included with
 629 other addresses produced from the diligent search and inquiry,
 630 if any.

631 1. If the trustee's diligent search and inquiry produces an
 632 address different from the notice address, the trustee shall
 633 mail a copy of the notice by certified mail, registered mail, or
 634 permitted delivery service, return receipt requested, and by
 635 first-class mail or permitted delivery service, postage prepaid,
 636 to the new address. Notice under this subparagraph is considered
 637 perfected upon the trustee receiving the return receipt bearing
 638 the signature of the obligor or junior interestholder, as

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 639 applicable, within 30 calendar days after the trustee sent the
 640 notice under this subparagraph. Notice under this subparagraph
 641 is not perfected if the receipt from the obligor or junior
 642 interestholder, as applicable, is returned refused, or the
 643 trustee cannot, in good faith, ascertain ~~from the receipt~~ that
 644 the obligor or junior interestholder, as applicable, is the
 645 person who signed the receipt because all or a portion of the
 646 obligor's or junior interestholder's name is not on the signed
 647 receipt or the trustee cannot otherwise determine that the
 648 obligor or junior interestholder signed the receipt or the
 649 receipt from the obligor or junior interestholder, as
 650 applicable, is returned refused. If the trustee does not perfect
 651 notice under this subparagraph, the trustee shall perfect
 652 service in the manner set forth in paragraph (c).

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

657 (c) If the notice is not perfected under subparagraph
 658 (a)5., and such notice was not returned as undeliverable, or if
 659 the notice was not perfected under subparagraph (b)1., the
 660 trustee may perfect notice by publication in a newspaper of
 661 general circulation in the county or counties in which the
 662 timeshare interest is located. The notice ~~must shall~~ appear at
 663 least once a week for 2 consecutive weeks. The notice of default
 664 and intent to foreclose perfected by publication must identify
 665 the obligor, the notice address of the obligor, the legal
 666 description of the timeshare interest, the nature of the action
 667 in short and simple terms, the name and contact information of

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 668 the trustee, and the period of time after the date of the notice
 669 of default and intent to foreclose within which the obligor may
 670 cure the default. The trustee may group an unlimited number of
 671 notices in the same publication, if all of the notices pertain
 672 to the same timeshare plan. Notice under this paragraph is
 673 considered perfected upon publication as required in this
 674 paragraph.

675 (d) If notice is perfected under subparagraph (a)5., the
 676 trustee shall execute an affidavit in recordable form setting
 677 forth the manner in which notice was perfected and attach the
 678 affidavit to the certificate of compliance set forth in
 679 subsection (9). The affidavit ~~must shall~~ state the nature of the
 680 notice, the date on which the notice was mailed, the name and
 681 address on the envelope containing the notice, the manner in
 682 which the notice was mailed, and the basis for that knowledge.

683 (e) If notice is perfected under subparagraph (b)1., the
 684 trustee shall execute an affidavit in recordable form setting
 685 forth the manner in which notice was perfected and attach the
 686 affidavit to the certificate of compliance set forth in
 687 subsection (9). The affidavit ~~must shall~~ state the nature of the
 688 notice, the dates on which the notice was mailed, the name and
 689 addresses on the envelopes containing the notice, and the manner
 690 in which the notices were mailed, and the fact that a signed
 691 receipt from the certified mail, registered mail, or permitted
 692 delivery service was timely received, ~~and the name and address~~
 693 ~~on the envelopes containing the notice.~~

694 (f) If notice is perfected by publication under paragraph
 695 (c), the trustee shall execute an affidavit in recordable form
 696 setting forth the manner in which notice was perfected and

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 697 attach the affidavit to the certificate of compliance set forth
 698 in subsection (9). The affidavit ~~must shall~~ include all the
 699 information contained in ~~either~~ paragraph (d) or paragraph (e),
 700 as applicable, ~~must shall~~ state that the notice was perfected by
 701 publication and must state that after diligent search and
 702 inquiry was made for the current address for the person, unless
 703 such diligent search was not required because service was
 704 refused, returned as undeliverable, or the trustee has
 705 ascertained that that the obligor or junior interestholder, as
 706 applicable, is the person who signed the receipt. The affidavit
 707 must also and shall include a statement that notice was
 708 perfected by publication, and shall set forth the information
 709 required by s. 49.041 in the case of a natural person or s.
 710 49.051 in the case of a corporation, whichever is applicable. No
 711 other action of the trustee is necessary to perfect notice.

712 (g) Notice under subparagraph (a) or subparagraph (b) of
 713 this subsection is deemed perfected as to all obligors who have
 714 the same address if notice is perfected as to at least one
 715 obligor at that address pursuant to the provisions of this
 716 subsection.

717 (h) The initiation of a trustee foreclosure action operates
 718 as a lis pendens on the timeshare interest pursuant to s. 48.23
 719 only if a notice of lis pendens is recorded in the official
 720 records of the county in which the deed conveying the timeshare
 721 interest to the obligor was recorded and such notice has not
 722 expired pursuant to s. 48.23 or been withdrawn or discharged.
 723 The notice of lis pendens must contain the following:

724 1. The name of the obligor.

725 2. The date of the initiation of the trustee foreclosure

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 726 action, which date must be the date of the sending of the notice
 727 of default and intent to foreclose to the obligor.

728 3. The name and contact information of the trustee.

729 4. The legal description of the timeshare interest.

730 5. A statement that a trustee foreclosure action has been
 731 initiated against the timeshare interest pursuant to this
 732 section.

733 (6) NOTICE OF SALE.—

734 (c) After the date of recording of the notice of sale,
 735 notice is not required to be given to any person claiming an
 736 interest in the timeshare interest except as provided in this
 737 section. If a notice of lis pendens has not previously been
 738 recorded pursuant to paragraph (5) (h), the recording of the
 739 notice of sale has the same force and effect as the filing of a
 740 lis pendens in a judicial proceeding under s. 48.23.

741 (7) MANNER OF SALE.—

742 (b) The trustee shall conduct the sale and act as the
 743 auctioneer. The trustee may use a third party to conduct the
 744 sale on behalf of the trustee; provided, however, that the
 745 trustee remains liable for the conduct of the sale and the
 746 actions of the third party with respect to the conduct of the
 747 sale.

748 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 749 PROCEDURE.—

750 (b) Any trustee who intentionally violates the provisions
 751 of this section concerning the trustee foreclosure procedure
 752 commits a felony of the third degree, punishable as provided in
 753 s. 775.082, s. 775.083, or s. 775.084. A trustee does not commit
 754 a violation of this section if he or she incorrectly ascertains

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755 that it is the obligor who signed the return receipt as required
 756 in s. 721.855(5); provided, however, that the trustee makes a
 757 good faith effort to properly ascertain if the obligor signed
 758 the return receipt in accordance with s. 721.855(5).

759 Section 6. Paragraph (b) of subsection (2), subsections (4)
 760 and (5), paragraph (c) of subsection (6), paragraph (b) of
 761 subsection (7), and paragraph (b) of subsection (13) of section
 762 721.856, Florida Statutes, are amended to read:

763 721.856 Procedure for the trustee foreclosure of mortgage
 764 liens.—The provisions of this section establish a trustee
 765 foreclosure procedure for mortgage liens.

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

767 (b)1. In order to initiate a trustee foreclosure procedure
 768 against a timeshare interest, the lienholder shall deliver an
 769 affidavit to the trustee that identifies the obligor, the notice
 770 address of the obligor, the timeshare interest, the official
 771 records book and page number where the mortgage is recorded, and
 772 the name and notice address of any junior interestholder. ~~The~~
 773 ~~affidavit shall be accompanied by a title search of the~~
 774 ~~timeshare interest identifying any junior interestholders of~~
 775 ~~record, and the effective date of the title search must be a~~
 776 ~~date that is within 60 calendar days before the date of the~~
 777 ~~affidavit.~~

778 2. The affidavit shall also state the facts that establish
 779 that the obligor has defaulted in the obligation to make a
 780 payment under a specified provision of the mortgage or is
 781 otherwise deemed in uncured default under a specified provision
 782 of the mortgage.

783 3. The affidavit shall also specify the amounts secured by

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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784 the lien as of the date of the affidavit and a per diem amount
 785 to account for further accrual of the amounts secured by the
 786 lien.

787 4. The affidavit shall also state that the appropriate
 788 amount of documentary stamp tax and intangible taxes has been
 789 paid upon recording of the mortgage, or otherwise paid to the
 790 state.

791 5. The affidavit shall also state that the lienholder is
 792 the holder of the note and has complied with all preconditions
 793 in the note and mortgage to determine the amounts secured by the
 794 lien and to initiate the use of the trustee foreclosure
 795 procedure.

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

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

801 (b) The trustee has not received a written objection to the
 802 use of the trustee foreclosure procedure under paragraph (3) (a)
 803 and the timeshare interest was not redeemed under paragraph
 804 (3) (b);

805 (c) There is no lis pendens recorded and pending against
 806 the same timeshare interest before the initiation of the trustee
 807 foreclosure action and provided a notice of lis pendens has been
 808 recorded pursuant to paragraph (5) (h), and the trustee has not
 809 been served notice of the filing of any action to enjoin the
 810 trustee foreclosure sale;

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

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

817 (f) The notice of sale required under subsection (6) has
818 been recorded in the official records of the county in which the
819 mortgage was recorded.

820 (g) The lienholder has delivered to the trustee a title
821 search of the timeshare interest identifying any junior
822 interestholders of record, and the effective date of the title
823 search must be a date that is within 60 calendar days before the
824 date that it is delivered to the trustee. If it is determined
825 from the title search that incorrect obligors or junior
826 interestholders have been served or additional obligors or
827 junior interestholders have not been served, the foreclosure
828 action may not proceed until the notices required pursuant to
829 this section have been served on the correct or additional
830 obligors or junior interestholders and all applicable time
831 periods have expired.

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

833 (a) In any foreclosure proceeding under this section, the
834 trustee is required to notify the obligor of the proceeding by
835 sending the obligor a written notice of default and intent to
836 foreclose to the notice address of the obligor by certified
837 mail, registered mail, or permitted delivery service, return
838 receipt requested, and by first-class mail ~~or permitted delivery~~
839 ~~service~~, postage prepaid, as follows:

840 1. The notice of default and intent to foreclose ~~must shall~~
841 identify the obligor, the notice address of the obligor, the

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842 legal description of the timeshare interest, the nature of the
843 default, the amounts secured by the lien, and a per diem amount
844 to account for further accrual of the amounts secured by the
845 lien and ~~must shall~~ state the method by which the obligor may
846 cure the default, including the period of time after the date of
847 the notice of default and intent to foreclose within which the
848 obligor may cure the default.

849 2. The notice of default and intent to foreclose ~~must shall~~
850 include an objection form with which the obligor can object to
851 the use of the trustee foreclosure procedure by signing and
852 returning the objection form to the trustee. The objection form
853 ~~must shall~~ identify the obligor, the notice address of the
854 obligor, the timeshare interest, and the return address of the
855 trustee and shall state: "The undersigned obligor exercises the
856 obligor's right to object to the use of the trustee foreclosure
857 procedure contained in section 721.856, Florida Statutes."

858 3. The notice of default and intent to foreclose ~~must shall~~
859 also contain a statement in substantially the following form:

860

861 *If you fail to cure the default as set forth in this*
862 *notice or take other appropriate action with regard to*
863 *this foreclosure matter, you risk losing ownership of*
864 *your timeshare interest through the trustee*
865 *foreclosure procedure established in section 721.856,*
866 *Florida Statutes. You may choose to sign and send to*
867 *the trustee the enclosed objection form, exercising*
868 *your right to object to the use of the trustee*
869 *foreclosure procedure. Upon the trustee's receipt of*
870 *your signed objection form, the foreclosure of the*

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871 lien with respect to the default specified in this
872 notice shall be subject to the judicial foreclosure
873 procedure only. You have the right to cure your
874 default in the manner set forth in this notice at any
875 time before the trustee's sale of your timeshare
876 interest. If you do not object to the use of the
877 trustee foreclosure procedure, you will not be subject
878 to a deficiency judgment even if the proceeds from the
879 sale of your timeshare interest are insufficient to
880 offset the amounts secured by the lien.

881
882 4. The trustee shall also mail a copy of the notice of
883 default and intent to foreclose, without the objection form, to
884 the notice address of any junior interestholder by certified
885 mail, registered mail, or permitted delivery service, return
886 receipt requested, and by first-class mail ~~or permitted delivery~~
887 ~~service~~, postage prepaid.

888 5. Notice under this paragraph is considered perfected upon
889 the trustee receiving the return receipt bearing the signature
890 of the obligor or junior interestholder, as applicable, within
891 30 calendar days after the trustee sent the notice under this
892 paragraph. Notice under this paragraph is not perfected if:

893 (I) The notice is returned as undeliverable within 30
894 calendar days after the trustee sent the notice; ~~if~~

895 (II) The trustee cannot, in good faith, ascertain ~~from the~~
896 ~~receipt~~ that the obligor or junior interestholder, as
897 applicable, is the person who signed the receipt because all or
898 a portion of the obligor's or junior interestholder's name is
899 not on the signed receipt or the trustee cannot otherwise

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900 determine that the obligor or junior interestholder signed the
901 receipt; ~~or if~~

902 (III) The receipt from the obligor or junior
903 interestholder, as applicable, is returned or refused within 30
904 calendar days after the trustee sent the notice.

905 (b) If the notice required by paragraph (a) is returned as
906 undeliverable within 30 calendar days after the trustee sent the
907 notice, the trustee shall perform a diligent search and inquiry
908 to obtain a different address for the obligor or junior
909 interestholder. For purposes of this paragraph, any address
910 known and used by the lienholder for sending regular mailings or
911 other communications from the lienholder to the obligor or
912 junior interestholder, as applicable, must ~~shall~~ be included
913 with other addresses produced from the diligent search and
914 inquiry, if any.

915 1. If the trustee's diligent search and inquiry produces an
916 address different from the notice address, the trustee shall
917 mail a copy of the notice by certified mail, registered mail, or
918 permitted delivery service, return receipt requested, and by
919 first-class mail ~~or permitted delivery service~~, postage prepaid,
920 to the new address. Notice under this subparagraph is considered
921 perfected upon the trustee receiving the return receipt bearing
922 the signature of the obligor or junior interestholder, as
923 applicable, within 30 calendar days after the trustee sent the
924 notice under this subparagraph. Notice under this subparagraph
925 is not perfected if the receipt from the obligor or junior
926 interestholder, as applicable, is returned refused, or the
927 trustee cannot, in good faith, ascertain ~~from the receipt~~ that
928 the obligor or junior interestholder, as applicable, is the

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 929 person who signed the receipt because all or a portion of the
 930 obligor's or junior interestholder's name is not on the signed
 931 receipt or the trustee cannot otherwise determine that the
 932 obligor or junior interestholder signed the receipt or the
 933 receipt from the obligor or junior interestholder, as
 934 applicable, is returned refused. If the trustee does not perfect
 935 notice under this subparagraph, the trustee shall perfect
 936 service in the manner set forth in paragraph (c).

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

(c) If the notice is not perfected under subparagraph
 941 (a)5., and such notice was not returned as undeliverable, or if
 942 the notice was not perfected under subparagraph (b)1., the
 943 trustee may perfect notice by publication in a newspaper of
 944 general circulation in the county or counties in which the
 945 timeshare interest is located. The notice must shall appear at
 946 least once a week for 2 consecutive weeks. The notice of default
 947 and intent to foreclose perfected by publication must identify
 948 the obligor, the notice address of the obligor, the legal
 949 description of the timeshare interest, the nature of the action
 950 in short and simple terms, the name and contact information of
 951 the trustee, and the period of time after the date of the notice
 952 of default and intent to foreclose within which the obligor may
 953 cure the default. The trustee may group an unlimited number of
 954 notices in the same publication, if all of the notices pertain
 955 to the same timeshare plan. Notice under this paragraph is
 956 considered perfected upon publication as required in this
 957

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 958 paragraph.
 959 (d) If notice is perfected under subparagraph (a)5., the
 960 trustee shall execute an affidavit in recordable form setting
 961 forth the manner in which notice was perfected and attach the
 962 affidavit to the certificate of compliance set forth in
 963 subsection (9). The affidavit must shall state the nature of the
 964 notice, the date on which the notice was mailed, the name and
 965 address on the envelope containing the notice, the manner in
 966 which the notice was mailed, and the basis for that knowledge.
 967 (e) If notice is perfected under subparagraph (b)1., the
 968 trustee shall execute an affidavit in recordable form setting
 969 forth the manner in which notice was perfected and attach the
 970 affidavit to the certificate of compliance set forth in
 971 subsection (9). The affidavit must shall state the nature of the
 972 notice, the dates on which the notice was mailed, the name and
 973 addresses on the envelopes containing the notice, the manner in
 974 which the notice was mailed, and the fact that a signed receipt
 975 from the certified mail, registered mail, or permitted delivery
 976 service was timely received, and the name and address on the
 977 envelopes containing the notice.
 978 (f) If notice is perfected under paragraph (c), the trustee
 979 shall execute an affidavit in recordable form setting forth the
 980 manner in which notice was perfected and attach the affidavit to
 981 the certificate of compliance set forth in subsection (9). The
 982 affidavit must shall include all the information contained in
 983 either paragraph (d) or paragraph (e), as applicable, must shall
 984 state that the notice was perfected by publication and must
 985 state that after diligent search and inquiry was made for the
 986 current address for the person, unless such diligent search was

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 987 ~~not required because service was refused, returned as~~
 988 ~~undeliverable, or the trustee has ascertained that the obligor~~
 989 ~~or junior interestholder, as applicable, is the person who~~
 990 ~~signed the receipt. The affidavit must also shall include a~~
 991 ~~statement that notice was perfected by publication, and shall~~
 992 ~~set forth~~ the information required by s. 49.041 in the case of a
 993 natural person or s. 49.051 in the case of a corporation,
 994 whichever is applicable. No other action of the trustee is
 995 necessary to perfect notice.

996 (g) Notice under subparagraph (a) or subparagraph (b) of
 997 this subsection shall be deemed perfected as to all obligors who
 998 have the same address if notice is perfected as to at least one
 999 obligor at that address pursuant to the provisions of this
 1000 subsection.

1001 (h) The initiation of a trustee foreclosure action operates
 1002 as a lis pendens on the timeshare interest pursuant to s. 48.23
 1003 only if a notice of lis pendens is recorded in the official
 1004 records of the county or counties in which the mortgage is
 1005 recorded and such notice has not expired pursuant to subsection
 1006 (2) of s. 48.23 or been withdrawn or discharged. The notice of
 1007 lis pendens must contain the following:

- 1008 1. The name of the obligor.
- 1009 2. The date of the initiation of the trustee foreclosure
 1010 action, which date must be the date of the sending of the notice
 1011 of default and intent to foreclose to the obligor.
- 1012 3. The name and contact information of the trustee.
- 1013 4. The legal description of the timeshare interest.
- 1014 5. A statement that a trustee foreclosure action has been
 1015 initiated against the timeshare interest pursuant to this

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 1016 section.
 1017 (6) NOTICE OF SALE.—
 1018 (c) After the date of recording of the notice of sale,
 1019 notice is not required to be given to any person claiming an
 1020 interest in the timeshare interest except as provided in this
 1021 section. If a notice of lis pendens has not previously been
 1022 recorded pursuant to paragraph (5)(h), the recording of the
 1023 notice of sale has the same force and effect as the filing of a
 1024 lis pendens in a judicial proceeding under s. 48.23.

1025 (7) MANNER OF SALE.—
 1026 (b) The trustee shall conduct the sale and act as the
 1027 auctioneer. The trustee may use a third party to conduct the
 1028 sale on behalf of the trustee; provided, however, that the
 1029 trustee remains liable for the conduct of the sale and the
 1030 actions of such third party with respect to the conduct of the
 1031 sale.

1032 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 1033 PROCEDURE.—

1034 (b) Any trustee who intentionally violates the provisions
 1035 of this section concerning the trustee foreclosure procedure
 1036 commits a felony of the third degree, punishable as provided in
 1037 s. 775.082, s. 775.083, or s. 775.084. A trustee does not commit
 1038 a violation of this section if he or she incorrectly ascertains
 1039 that it is the obligor who signed the return receipt as required
 1040 in s. 721.855(6); provided, however, that the trustee makes a
 1041 good faith effort to properly ascertain if the obligor signed
 1042 the return receipt in accordance with s. 721.855(6).

1043 Section 7. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-7-13

Meeting Date

Topic Timeshares

Bill Number 696

Name Jason Gamel

Amendment Barcode 974784
(if applicable)

Job Title Vice President-State Government Affairs

Address 4901 Vine land Road Suite 635

Phone 407 245-7601

Street

Orlando

FL

32811

City

State

Zip

E-mail jgamel@arda.org

Speaking: For Against Information

Representing American Resort Development Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/7/13
Meeting Date

Topic Timeshare

Bill Number 696
(if applicable)

Name Kurt Gruber

Amendment Barcode 974784
(if applicable)

Job Title Attorney - Baker Hostetter

Address 200 S Orange Ave, Suite 2300
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Orlando FL 32836
City State Zip

Phone 407-649-4042

E-mail Kgruber@bakerlaw.com

Speaking: For Against Information

Representing American Resort Development Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: SB 301

Caption: Regulated Industries Committee

Case:

Judge:

Type:

Started: 3/7/2013 10:33:11 AM

Ends: 3/7/2013 11:32:31 AM

Length: 00:59:21

10:33:26 AM Meeting called to order
10:33:32 AM Roll call
10:34:25 AM SB 874 - Senator Galvano
10:34:37 AM Senator Galvano to explain the bill
10:36:40 AM Amendment #263904 - Senator Galvano
10:36:57 AM Senator Galvano to explain the amendment
10:37:24 AM Amendment - Adopted
10:37:45 AM Senator Sachs commenting
10:38:07 AM Senator Detert commenting
10:38:33 AM SB 874 moved as a CS
10:38:55 AM CS/SB 874 - Passes
10:39:19 AM SB 370 - Senator Sachs
10:39:38 AM Amendment #206074
10:39:53 AM Senator Sachs to explain the amendment
10:41:57 AM Amendment - Adopted
10:42:56 AM SB 370 moved as a CS
10:43:37 AM CS/SB 370 - Passes
10:44:03 AM SB 696 - Senator Stargel
10:44:29 AM Amendment # 974784 - Senator Stargel
10:44:44 AM Senator Stargel to explain the amendment
10:45:47 AM Amendment - Adopted
10:46:18 AM SB 686 moved as a CS
10:46:38 AM CS/SB 696 - Passes
10:47:13 AM Recording Paused
10:50:19 AM Recording Resumed
10:50:44 AM SB 658 - Senator Simpson
10:51:01 AM Senator Simpson to explain the bill
10:52:49 AM Senator Detert questioning
10:53:03 AM Senator Legg questioning
10:53:21 AM Senator Sachs questioning
10:57:17 AM Senator Gibson questioning
11:00:00 AM Amendment - Senator Sobel
11:00:16 AM Senator Sobel to explain the amendment
11:00:41 AM Senator Detert questioning
11:01:07 AM Senator Galvano questioning
11:01:58 AM Senator Simpson commenting
11:02:11 AM Senator Gibson questioning
11:02:36 AM Late Filed Amendment Adopted106308
11:03:17 AM Slater Bayliss, Free Flow Wines
11:06:23 AM Mitchell Ruben, Florida Beer Wholesalers Assoc.
11:11:40 AM Senator Stargel questioning
11:13:11 AM Senator Galvano questioning
11:15:03 AM Senator Thrasher questioning
11:18:11 AM Michael Martinez - DBPR
11:23:15 AM Senator Sachs questioning
11:25:07 AM Senator Gibson questioning
11:27:20 AM Richard Turner, Florida Restaurant and Lodging Assoc.
11:27:45 AM Eric Criss, Beer Industry of Florida
11:29:17 AM Brian Pitts, Justice-2-Jesus
11:30:30 AM Scot Dick, Florida Retail Federation
11:32:03 AM SB 658 moved as a CS
11:32:16 AM CS/SB 658 - Passes

11:32:24 AM Meeting adjourned