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



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

43

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

45

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

48 718.112 Bylaws.—

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

52 (d) Unit owner meetings.—

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



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

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



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

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



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



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

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

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



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

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



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

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





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

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

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

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

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



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

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

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

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

279 721.05 Definitions.—As used in this chapter, the term:

280 (34) "Timeshare estate" means a right to occupy a



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

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

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

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

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



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

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

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

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

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

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



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

341 a. Expenses for the managing entity:

342 (I) Administration of the managing entity.

343 (II) Management fees.

344 (III) Maintenance.

345 (IV) Rent for facilities.

346 (V) Taxes upon timeshare property.

347 (VI) Taxes upon leased areas.

348 (VII) Insurance.

349 (VIII) Security provisions.

350 (IX) Other expenses.

351 (X) Operating capital.

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

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



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

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

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

391 (XII) Fees payable to the division.

392 b. Expenses for a purchaser:



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

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

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

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

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

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

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

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



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

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

426       b. The name and address of the trustee.

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

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

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

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

443       721.15 Assessments for common expenses.—

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





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

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



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

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

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

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

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

497 721.17 Transfer of interest; resale transfer agreements.-

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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

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



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

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

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

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





673           (h) Paragraphs (a)–(d) do not apply to:  
 674           1. A resale broker who offers timeshare interest transfer  
 675 services to a consumer timeshare reseller, so long as the resale  
 676 broker complies in all respects with chapter 475 and with s.  
 677 721.20; or  
 678           2. An attorney who is a member in good standing of The  
 679 Florida Bar or a licensed Florida title insurer or agent in good  
 680 standing who offers timeshare interest transfer services to a  
 681 consumer timeshare reseller, if the total consideration paid by  
 682 the consumer timeshare reseller to such person does not exceed  
 683 \$600, exclusive of any assessments, transfer fees, or moneys  
 684 owed with respect to the consumer resale timeshare interest as  
 685 set forth in the certificate provided for in s.721.15(7)(b), and  
 686 exclusive of any fees owed to a governmental agency for the  
 687 purpose of completing and perfecting the transfer.  
 688           (i) This subsection does not apply to the transfer of  
 689 ownership of a consumer resale timeshare interest from a  
 690 consumer timeshare reseller to the developer or managing entity  
 691 of that timeshare plan.  
 692           Section 6. Subsections (9) and (11) of section 721.82,  
 693 Florida Statutes, are amended to read:  
 694           721.82 Definitions.—As used in this part, the term:  
 695           (9) "Notice address" means:  
 696           (a) As to an assessment lien, the address of the owner of  
 697 a timeshare interest as reflected by the books and records of  
 698 the timeshare plan under ss. 721.13(4) and 721.15(7).  
 699           (b) As to a mortgage lien:  
 700           1. The address of the mortgagor as set forth in the



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

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

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

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

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

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

725 721.84 Appointment of a registered agent; duties.—

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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

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

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

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



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

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





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

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

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

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



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

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

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



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

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

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

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

976 | (6) NOTICE OF SALE.—

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



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

984 (7) MANNER OF SALE.—

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

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

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

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

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

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



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

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

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

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

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

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



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1037 procedure.

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

1039 trustee may sell an encumbered timeshare interest foreclosed

1040 under this section if:

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

1042 lienholder under paragraph (2) (b);

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

1044 the use of the trustee foreclosure procedure under paragraph

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

1046 paragraph (3) (b);

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

1048 the same timeshare interest before the initiation of the trustee

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

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

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

1052 trustee foreclosure sale;

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

1054 promissory note executed by the mortgagor and secured by the

1055 mortgage lien;

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

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

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

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

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

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

1062 mortgage was recorded; and

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

1064 search of the timeshare interest identifying any junior



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

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

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

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

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



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

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

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





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

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

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

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

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

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



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

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

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



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

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

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



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

1216 (f) If notice is perfected under paragraph (c), the  
 1217 trustee shall execute an affidavit in recordable form setting  
 1218 forth the manner in which notice was perfected and attach the  
 1219 affidavit to the certificate of compliance set forth in  
 1220 subsection (9). The affidavit shall include all the information  
 1221 contained in either paragraph (d) or paragraph (e), as  
 1222 applicable, shall state that the notice was perfected by  
 1223 publication and shall state that ~~after~~ diligent search and  
 1224 inquiry was made for the current address for the person, if  
 1225 paragraph (b) applies. The affidavit shall also include ~~a~~  
 1226 ~~statement that notice was perfected by publication, and shall~~  
 1227 ~~set forth~~ the information required, as applicable, by s. 49.041  
 1228 in the case of a natural person or s. 49.051 in the case of a  
 1229 corporation, ~~whichever is applicable.~~ No other action of the  
 1230 trustee is necessary to perfect notice.

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



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

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

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

1251 (6) NOTICE OF SALE.—

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

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



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

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

1268 |         (7) MANNER OF SALE.—

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

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

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

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